



City of High Point

Meeting Agenda

Finance Committee

Municipal Office Building
211 S. Hamilton Street
High Point, NC 27260

Mayor Pro Tempore Britt Moore, Chair
Committee Members:
Monica Peters
Michael Holmes
Tim Andrew

Cyril Jefferson, Mayor (Alternate)

Thursday, April 3, 2025

4:00 PM

Council Chambers

Finance Committee - Britt W. Moore, Chair

CALL TO ORDER

PRESENTATION OF ITEMS

- 2025-120 **Consideration of a Purchase from Cummins Incorporated**
City Council is requested to consider a purchase with Cummins Incorporated in the amount of \$279,219.00 for a Cummins C175D6D Diesel Generator, a budget ordinance amendment, and authorize the appropriate City Official(s) to execute all necessary documents.
- 2025-121 **Consideration of Task Order #3 to Kimley-Horn and Associates, Inc.**
City Council is requested to consider Task Order #3 to Kimley-Horn and Associates, Inc., with a total amount of \$153,915.97 for professional planning services and technical assistance in developing the High Point Metropolitan Planning Organization (MPO) 2050 Metropolitan Transportation Plan (MTP), and authorize the appropriate City Official(s) to execute all necessary documents.

ADJOURNMENT

TITLE: Consideration of a Purchase from Cummins Incorporated

FROM:

Kevin Rogers, Fleet Services Director

MEETING DATE:

April 7, 2025

PUBLIC HEARING:

No

ADVERTISED DATE/BY:

N/A

ATTACHMENTS:

1. Budget Ordinance Amendment
 2. Bid Recommendation Form
-

PURPOSE: Fleet Services performs repairs on all city vehicles and equipment, including 24/7 service during inclement weather, and currently does not have any back-up power for the facility. Using the Sourcewell Cummins Contract #092222-CMM, one (1) C175D6D Diesel Generator has been identified to power the entire fleet facility and fueling site at 3524 Triangle Lake Road during power outages. Fleet Services is recommending this generator for approval by the City Council.

BACKGROUND: Fleet Services is currently in need of back-up power to ensure that all city vehicles and equipment can be properly repaired and maintained during inclement weather events. Fleet Services functions on a 24/7 basis during these events, and the absence of adequate power could be detrimental to the operations of not only Fleet Services, but other departments. The Electric Department provided their expert support in this selection. The total cost of the generator and installation is \$279,219.00 and the estimated completion of the projection should not exceed nine (9) months.

BUDGET IMPACT: A budget ordinance amendment appropriating additional sale of surplus vehicle revenues is included with this item.

RECOMMENDED ACTION REQUESTED: City Council is requested to consider a purchase with Cummins Incorporated in the amount of \$279,219.00 for a Cummins C175D6D Diesel Generator, a budget ordinance amendment, and authorize the appropriate City Official(s) to execute all necessary documents.

“AN ORDINANCE AMENDING THE 2024-2025 BUDGET ORDINANCE
OF THE CITY OF HIGH POINT, NORTH CAROLINA
TO APPROPRIATE ADDITIONAL SALE OF SURPLUS VEHICLE REVENUES FOR THE PURCHASE
OF A GENERATOR

Be it ordained by the City Council of the City of High Point, North Carolina, as follows:

Section 1. Fleet Services is currently in need of backup power to ensure that all city vehicles and equipment can be properly repaired and maintained during inclement weather events. The proposed amendment appropriates \$279,219 in sale of surplus vehicle revenues for the acquisition of a generator for Fleet Services.

Section 2. The 2024-2025 Budget Ordinance of the City of High Point should be amended as follows:

(A) That the following Central Services Fund revenues be amended as follows:

Sale of Surplus Vehicles	\$279,219
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(B) That the following Central Services Fund expenditures be amended as follows:

Capital Equipment - Generator	\$279,219
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Section 3. That all ordinances, or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4. That this ordinance shall be effective from and after its passage."

Adopted by High Point City Council, this the 7th day of April 2025

Cyril Jefferson, Mayor

ATTEST

Sandra Keeney, City Clerk

BID RECOMMENDATION

DEPARTMENT: **Fleet Services**

COUNCIL AGENDA DATE: **April 7, 2025**

BID NO.: **Sourcewell** CONTRACT NO.: **Cummins 092222-CMM** DATE OPEN:

DESCRIPTION:

Cummins C175D6D Building Generator

PURPOSE:

Fleet Services performs repairs on all city vehicles and equipment, and this includes 24/7 service during inclement weather. Currently Fleet Services does not have any source of backup power. Using the Sourcewell Cummins Contract# 092222-CMM one (1) C175D6D Diesel Generator has been identified to power the entire facility and fueling site during power outages. Fleet Services is recommending this generator for Council approval.

COMMENTS:

The price of \$279,219 is for the generator and full installation to ensure backup power for both the Fleet Services facility and fueling site and 3524 Triangle Lake Road. Estimated delivery is expected within six (6) months.

RECOMMEND AWARD TO: **Cummins Incorporated** AMOUNT: **\$279,219**

JUSTIFICATION:

The City of High Point has experienced significant savings utilizing the Sourcewell Contract.

ACCOUNTING UNIT	ACCOUNT	ACTIVITY	CATEGORY	BUDGETED AMOUNT
501271	532401			\$279,219
TOTAL BUDGETED AMOUNT				\$279,219

DEPARTMENT HEAD: **KEVIN ROGERS** Digitally signed by KEVIN ROGERS
Date: 2025.03.26 07:09:47 -04'00' DATE: **03/25/2025**

The Purchasing Division concurs with recommendation submitted by the **Fleet Department** and recommends award to the lowest responsible, responsive bidder **Cummins Incorporated** in the amount of **\$279,219.00**.

PURCHASING MANAGER: **Candy E. Harmon** Digitally signed by Candy E. Harmon
Date: 2025.03.26 08:30:21 -04'00' DATE: **3/26/2025**

Approved for Submission to
Council

FINANCIAL SERVICES DIRECTOR: **Bobby Fitzjohn** Digitally signed by Bobby Fitzjohn
Date: 2025.03.26 09:08:03 -04'00' DATE: **3/26/25**

CITY MANAGER: DATE:
(For City Council Approval Only)

TITLE: Consideration of Task Order #3 to Kimley-Horn and Associates, Inc.

FROM:

Andrew Edmonds, Transportation Planning
Administrator

MEETING DATE:

April 7, 2025

PUBLIC HEARING:

No

ADVERTISED DATE/BY:

N/A

ATTACHMENTS:

1. Task Order #3 with Kimley-Horn
-

PURPOSE: Staff requests the approval of Task Order #3 to the Transportation Department's Master Agreement for Professional Services with Kimley-Horn and Associates, Inc. to provide Professional Planning Services and technical assistance in developing the High Point Metropolitan Planning Organization (MPO) 2050 Metropolitan Transportation Plan (MTP).

BACKGROUND: Federal guidelines require an update to the MPO's MTP every five years. While this document has been updated in-house by MPO staff in recent cycles, federal guidelines have evolved, requiring a need for technical assistance rendered by professional planning firms. Kimley-Horn's work program will primarily include development of a recommended project list and prioritization of projects, development of a Financial Plan, ensuring state and federal compliance, and the development of draft and final reports. The total amount of the contract is \$153,915.97, which will be paid through the High Point MPO's PL 104 Planning Grant funds over the next two fiscal years.

BUDGET IMPACT: Funding is available in the FY 2024-25 budget and will be programmed in the FY 2025-26 budget.

RECOMMENDED ACTION REQUESTED: City Council is requested to consider Task Order #3 to Kimley-Horn and Associates, Inc., with a total amount of \$153,915.97 for professional planning services and technical assistance in developing the High Point MPO 2050 MTP, and authorize the appropriate City Official(s) to execute all necessary documents.



March 26, 2025

Andrew Edmonds
Transportation Planning Director
High Point Metropolitan Planning Organization
211 S Hamilton
2nd Floor, Suite 210
High Point, NC 27260

Re: Letter Agreement for Professional Services for the HPMPO 2050 MTP

Dear Mr. Edmonds:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") submits this Letter Agreement ("Agreement") to the High Point Urban Area Metropolitan Planning Organization ("Client") for providing planning services to develop the 2050 Metropolitan Transportation Plan ("Project").

Scope of Services

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

TASK 1: PROJECT MANAGEMENT

1.1 Biweekly Coordination

The Consultant will prepare for and facilitate biweekly progress meetings (virtually) for coordination and review of project status with the Project Team. A few additional virtual meetings may be necessary prior to major milestones. This task assumes up to five (5) in person meetings, with one being reserved for the project kick-off meeting associated with Task 1.2.

1.2 Project Work Plan and Engagement Strategy

The Consultant will prepare a draft schedule and work plan for specific work tasks, interim and final deliverables, and quality control reviews. The draft will be presented for discussion at the project kick-off meeting. Based on this discussion, the Consultant will make revisions and submit a final project schedule and work plan. The Consultant will coordinate with the Client to integrate their engagement and committee activities into the draft schedule.

1.3 Data Needs Memorandum

The Consultant will create a data needs request memorandum that lists technical data (e.g., GIS data) and applicable documents (e.g., previous plans, local ordinances, approved developments). The Client will be responsible for assembling and transmitting the data to the Consultant. The Consultant will reach out to resource agency partners to gather current data for use in the planning process. The Consultant will create a ShareFile site for data transfer.

1.4 Progress Reports

The Consultant will prepare monthly progress reports. Progress reports will be organized by task and provide a bulleted list of recent activities and a percent complete. The progress reports will be included with a copy of each month's invoice.

TASK 2: COMMUNITY INVOLVEMENT

2.1 Project Branding

The Consultant will develop two (2) alternative branding themes, which will consist of a project title, logo, and color scheme. The Client will select the preferred theme, which the Consultant will incorporate into materials generated by the project team. Design files as well as document, mapping, and presentation templates will be provided to the Client.

2.2 HPMPO Committee Meeting Support

The Consultant will prepare materials to support presentations to the High Point Metropolitan Planning Organization (HPMPO) Transportation Advisory Committee (TAC) and Technical Coordinating Committee (TCC). The Consultant will assist in preparing materials for up to six (6) total presentations. Plan adoption meetings will be included as part of this total.

2.3 Project Website Content

Content related to the preparation of the 2050 MTP will be posted directly on the HPMPO website. The Consultant will prepare content suitable for inclusion on the project website, including one interim set of materials, the draft MTP, and the final adopted MTP.

2.4 Stakeholder Interviews

The Consultant will work with the Client to identify individuals and small groups that may be engaged in a stakeholder engagement process. Stakeholder engagement may occur as part of or separate from the overall public engagement effort. The Client will lead the stakeholder engagement efforts and provide feedback to the Consultant.

2.5 Public Engagement Summary

The Consultant will receive information from the Client regarding public engagement activities conducted during the development of the MTP. The Consultant will summarize this feedback and will include it as appendix to the MTP.

TASK 3: EXISTING CONDITIONS ASSESSMENT

3.1 Policy, Program, and Document Review

The Consultant will conduct a high-level review of up to twenty-five (25) current planning documents, policies, and programs in the study area. The documents will be selected in consultation with the Client and may include the High Point Pedestrian Plan, the Regional Bike Plan, the Regional Transit Development Plan, the High Point Downtown Multimodal Vision Plan, the HPMPO Comprehensive Transportation Plan, local transportation plans, and local land use/comprehensive plans.

3.2 Existing Conditions Assessment

The Consultant will compile existing conditions content, including demographics, community characteristics, environmental features, and the transportation network based on currently available data. Information previously gathered by the Client will be furnished to the Consultant and used as a part of this task. No new data is anticipated to be developed by the Consultant as a part of this effort. The existing conditions assessment will include the following topics:

- **Socioeconomic Factors.** The Consultant will review existing and projected socioeconomic demographics to inform the planning process. The Consultant will be provided with a calibrated base year model and 2050 future year regional travel demand model to use in the MTP analysis.

The Consultant will not make any updates to the travel demand model structure or socioeconomic data.

- **Land Use and Environment.** Using existing GIS data, the Consultant will review future land use data and consider potential growth areas in the study area. The Consultant also will prepare an environmental features map. These features may include major streams/rivers, wetlands, prime farmlands, water supply watersheds, wildlife habitats, major community features such as the local area designated as “horse country” and golf courses, and open spaces. This information will be used during recommendations development and project prioritization to identify places in the study area that 1) should be avoided when possible or will require some form of mitigation, 2) are challenging or unconquerable obstacles to implementation, and 3) are assets that could be leveraged (i.e., riparian corridors ideal for greenways and trails).
- **Roadway.** The Consultant will perform an assessment of existing roadway conditions, including a review of previous plans, community input, and the results from the regional travel demand model. This scope assumes that the PART model currently being updated will be made available to the Consultant in a timely fashion for use for both base year and future year travel conditions. If this model is unavailable, the previous PART travel demand model will be used. No modification of the base year or future year travel demand model is anticipated. Any modifications requested either to the socioeconomic data or traffic analysis zones (TAZs) would be considered additional services.
- **Bicycle, Pedestrian, and Transit.** The Consultant will incorporate available data from the Client and NCDOT and in consultation directly with resource agencies who may have more accurate data to reflect existing conditions related to the bicycle and pedestrian network. The Consultant will review existing transit service and any plans, policies, or programs in place and incorporate the relevant elements. The documentation of transit conditions will be coordinated with the transit study expected to be developed under separate contract.
- **Freight, Rail, and Aviation.** Based on data made available by the Client and resource agencies, the Consultant will review current freight and rail operations in the study area. This analysis will include heavy freight movements, freight routes, and freight generators (based on data availability).
- **Safety and Security.** Through a review of available crash data and community input, the Consultant will identify safety concerns at the intersection and corridor levels. The Consultant also will identify threats to the security of the transportation system for motorized and non-motorized users.
- **ITS and Transportation Demand Management.** The Consultant will review and document existing conditions and planned improvements to the region’s ITS system and Transportation Demand Management procedures (if any).
- **Environmental Justice.** The Consultant will leverage readily available data (including the most recent data available from the US Census or readily available state and local data sources) to document Environmental Justice (EJ)/Title VI populations. This analysis will reference current federal statute as well as local precedent to identify historically disadvantaged populations (which may include persons of color, low-income households, limited English proficient individuals, persons 65 years of age and older, zero car households, low educational level attainment, and persons with disabilities). Transportation recommendations developed in Task 4 will be overlaid on the outcomes of this EJ/Title VI mapping to identify locations of concern or to be considered for future mitigation.

3.3 Existing Conditions Chapter

The Consultant will create a chapter that summarizes existing conditions content. The Consultant will respond to up to one (1) round of consolidated comments, provided by the Client, on the chapter.

TASK 4: MULTIMODAL RECOMMENDATIONS AND ROADWAY PRIORITIZATION

4.1 Recommendations Development

The Consultant will review recommendations identified in the HPMPO Comprehensive Transportation Plan and consider previous plans, community input, and other information from Task 3 as inputs into developing ways to address capacity shortfalls, safety concerns, and multimodal transportation needs. The set of recommendations will include physical projects, policies, and programs and will be documented using narrative, tables, and mapping. This process will consist of the following elements:

- **Existing plus committed (E+C) projects** – The Consultant will prepare a list of existing plus committed projects, highlighting projects completed or underway. A “no build” run of the travel demand model with just the E+C projects will be provided to the Consultant to compare against the horizon year networks following the prioritization and financial plan development.
- **Roadway corridor recommendations** – The Consultant will compile the roadway corridor recommendations from previous plans to identify safety, access management, roadway modernization, capacity addition, and new location facilities. Freight recommendations will be folded into the roadway corridor recommendations as appropriate.
- **Intersection recommendations** – Based on available crash data, previous plans, and community input, the Consultant will develop an intersection safety recommendations list. High-level proposed solutions will be identified for each location.
- **Transit** – The Consultant will incorporate recommendations from the Regional Transit Development Plan and resulting from feedback from transit providers and the public into a series of transit recommendations.
- **Bicycle/Pedestrian** – The Consultant will compile bicycle and pedestrian infrastructure recommendations from local bicycle/pedestrian plans for inclusion in the MTP. The NCDOT Complete Streets policy will be referenced.
- **Transportation Technology** – The Consultant will conduct a review of best practices on the implementation of Automated, Connected, Electric, Shared (ACES) vehicle and Smart City infrastructure. This scan will include a review of the MPO's role in planning and implementing this infrastructure and how the MPO can best position itself to support implementation partners. This effort will be coordinated with NCDOT's National Electric Vehicle Infrastructure Formula (NEVI) planning process and document the location of existing and future EV charging stations (statewide with NEVI and regionally for the MPO).

4.2 Federal Planning Factors

The development of recommendations within the MTP will follow the '3 C's' approach by implementing strategies, services, and projects that address factors defined in 23 CFR 450.306. The MTP will include a section that lists each planning factor and provides a brief narrative of how the MTP addresses the planning factors.

4.3 Project Prioritization

The Consultant will develop a roadway project ranking methodology that considers the latest approved Strategic Transportation Prioritization (SPOT) prioritization requirements, the latest federal guidance, and community input. The Client will be asked for input prior to finalizing this methodology. Following the development of a finalized methodology, the Consultant will prioritize roadway corridor and

intersection recommendations identified during Task 4.1. The prioritization methodology and results will be documented within the MTP.

TASK 5: FINANCIAL PLAN

The Consultant will develop a financially constrained set of recommendations in accordance with federal guidance. The financial plan will reflect the year of expenditure for revenues and costs. This task will include the following elements:

5.1 Revenues

The Consultant will prepare an estimate of projected revenue sources through the lifetime of the plan. The intent is to identify and project reasonably available current and future funding sources for all travel modes. The Consultant and Client will jointly determine what share of available revenues have been committed or pledged to existing projects. The Consultant will coordinate with the Client and NCDOT to obtain data needed for existing and projected revenues. An annual growth rate will be identified for projecting these revenues through the life of the MTP.

5.2 Cost Opinions

The Consultant will develop planning level cost opinions for recommendations in each mode based on constructability, environmental and social characteristics/mitigation, and the proposed cross-section. The level of detail used in the preparation of the cost opinions will depend on the availability of data, and data sources will be approved by the Client prior to their use and documented by the Consultant. Planning level construction cost opinions for recommended roadway, bicycle, and pedestrian improvements will be prepared using unit cost information (provided by the Client, NCDOT, or estimated from geographically similar areas) developed for the applicable transportation elements. The Consultant will provide an opinion of cost percentages relative to engineering, design, and right-of-way provisions. Right-of-way percentages will be assessed using opinions of low, medium, and high values. This process will be generated in spreadsheet form, with the spreadsheet provided to the Client for use in future efforts as part of Task 7. Coordination with the Client and NCDOT will occur to provide consistency and accuracy in the estimates.

Any opinions the Consultant renders as to cost or revenue are preliminary and based on currently available information and the limited scope of services. The Consultant cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost. Estimated cost of construction and actual revenue will differ from any projections made at this time.

5.3 Financially Constrained Plan

The Consultant will compare the projected revenues with the project cost estimates to develop a financially constrained plan. The financially constrained plan will be developed in year of expenditure dollars. The Consultant will document revenues, cost estimates, and financial constraint in an easy-to-use spreadsheet for use by the Client following development of the MTP. The final deliverable of this component will be a financially constrained MTP that is based on an expectation of future transportation funding, as can reasonably be estimated based on information available at the time of the project. The availability of maintenance funding also will be considered.

5.4 Travel Demand Model Integration

The financially constrained plan projects will be incorporated into the regional travel demand model. No other modifications to the travel demand model (Traffic Analysis Zone (TAZ) boundary modifications, socioeconomic data, etc.) will be undertaken as part of this task. The Consultant will provide the Existing plus Committed (E+C) and final MTP networks to the Client.

TASK 6: STATE AND FEDERAL COMPLIANCE

6.1 Federal Compliance

The Consultant will prepare plan elements that satisfy compliance with relevant federal and state requirements of 23 CFR 450.300. This includes the latest areas of focus introduced by the Infrastructure Investment and Jobs Act (IIJA) such as transportation technology, equity, resilience, carbon reduction, housing, etc.

6.2 System Performance Report

The Consultant will prepare a System Performance Report section of the MTP that contains the planning emphasis areas and HPMPO performance measures. The System Performance Report will document how the MPO is working toward achieving the performance targets and how the plan recommendations relate to them.

TASK 7: DOCUMENTATION

7.1 Summary Report

The Consultant will develop a final report using narrative, graphics, and mapping that satisfies federal transportation planning requirements. The Consultant will prepare a draft version of the MTP for consideration by the public, stakeholders, agency partners, and elected and appointed officials. The draft report will be made available for comment by all interested persons pursuant to the requirements included in the HPMPO Public Involvement Plan. The Client will coordinate the public review period and, at its conclusion, will provide one (1) set of consolidated comments based on all comments received. The Consultant will revise the public draft report based on these consolidated comments and will provide a final report back to the Client.

7.2 GIS Map Packages and Digital Files

Following acceptance of the final report, the Consultant will compile technical data (e.g., spreadsheets, GIS map packages, model files, and geodatabases) and digital files (report, images, graphics, and maps) for delivery via USB or ShareFile.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at Kimley-Horn's then-current hourly rates.

Information Provided by Client

Kimley-Horn 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 with the goal of meeting a Federal deadline for adoption of the 2050 MTP by the HPMPO Governing Board no later than the Federal adoption deadline. Some task items not directly related to this adoption may extend beyond this date.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 7 for the total lump sum fee below. All permitting, application, and similar project fees will be paid directly by the Client.

Total Lump Sum Fee: \$153,915.97

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

Closure

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

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.

Signed: _____

Printed Name: _____

Title: _____

City of High Point

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS
(with additional clauses 20 and 21)

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). 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. 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. The Client will remit all payments electronically to:

Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to [a](#) at the time of payment.
 - d. 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.
 - e. 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.
 - f.

- g. 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 Deliverables.** All documents, data, and other deliverables 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 deliverables, or any reuse of the deliverables 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 deliverables 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. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 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, attorneys' fees, 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 the limited insurance required by the City and maintained by Kimley-Horn accordingly. 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 changed or 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.** Jurisdictions for all dispute resolution effort, including mediation and litigation, shall be North Carolina with venue being in the general courts of justice and Alamance County. All claims arising out of this Agreement or its breach shall be submitted first to mediation as a condition precedent to litigation. North Carolina law shall be applicable.
- 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 observing construction and reporting to the Client whether the contractors' work generally conforms 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.
- 20) **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.** This Agreement incorporates by reference (Attachment) Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and the applicable contract provisions as noted by the US Code of Federal Regulations.
- 21) Kimley-Horn shall maintain insurance as set out in Attachment 1.