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Kimley»Horn

June 19, 2026

Todd Moody, Public Works Director
Josh Eller, Public Works Deputy Director
Town of Boone, NC
321 E King Street
Boone, NC 28607

Re: Letter Agreement for Professional Services for the South Fork Water Intake – Resiliency Project

Dear Mr. Moody and Mr. Eller,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") submits this Letter Agreement ("Agreement") to the Town of Boone ("the Town" or "Client") for providing professional engineering services for the South Fork Water Intake – Resiliency Project ("Project").

The Town of Boone owns and operates three (3) raw water pump stations (RWPSs) and one (1) raw water booster pump station (RWBPS): South Fork New River RWPS, Greg Young New River RWPS and RWBPS, and Winklers Creek RWPS. These stations deliver raw water to the Ricky L. Miller Water Treatment Facility (WTF), which has a permitted maximum day flow (MDF) capacity of 4.5 million gallons per day (MGD). The Town primarily relies on the South Fork New River RWPS and Greg Young New River RWPS to supply raw water to the WTF, while Winklers Creek RWPS is operated as needed or during emergency events. In late September 2024, Hurricane Helene brought historic rainfall that caused significant flooding and damage to the South Fork New River RWPS intake structure and pump station. The recorded flood elevation was approximately 5 feet above the building finished floor elevation. As a result, the RWPS was taken out of service and underwent interim emergency electrical repairs to restore 3.0 MGD firm pumping capacity until permanent repairs and hardening improvements could be implemented. Interim electrical repairs included replacement of the existing drop service, main disconnect, throw switch, generator, and main distribution panel. Additionally, the two (2) existing 200 HP vertical turbine pump soft starters were replaced with variable frequency drives (VFDs).

In August 2025, Kimley-Horn provided engineering services to evaluate the South Fork New River RWPS and developed recommended rehabilitation alternatives and associated opinions of probable construction costs. Improvements focused on raising the finished mechanical and electrical floor elevation, replacing existing vertical turbine pumps, and relocating main electrical equipment to the new elevated floor. Since that time, the Town applied for and was awarded funding through NCDEQ-DWI under SRF Supplemental Appropriations associated with Hurricane Helene to implement the Water System Resilience in Boone Project. The funding for the Water System Resilience in Boone Project included funding for the South Fork New River RWPS, Solar Field Addition at the WTF, and supplemental funding to address the construction funding gap for the Winklers Creek Intake Access Bridge Replacement.

Following the funding award, the Town issued a Request for Letters of Interest (RFLOI) in May 2026 for professional engineering services to support funding administration and provide engineering design, permitting, bidding, and construction phase services for the improvements at the South Fork New River RWPS only. Kimley-Horn was selected in May 2026 to provide these services. As such, this proposal includes professional engineering services for the requested services listed in the RFLOI.

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

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Scope of Services

TASK 1 – PROJECT MANAGEMENT

A. Kimley-Horn will attend one (1) virtual project kick-off meeting with the Town to verify project goals, objectives, and project preferences. Kimley-Horn will prepare minutes from the meeting for distribution to the project team.

B. Kimley-Horn will conduct and coordinate activities related to project scope, budget, schedule, quality assurance and quality control as well as correspondence related to data collection and submittals. Kimley-Horn will monitor job progress activities, arrange resources for the Project, and communicate to the Town the status of the Project. Kimley-Horn will prepare and submit monthly project progress reports and invoices to the Town to send to NCDEQ-DWI to maintain funding compliance requirements.

TASK 2 – ENGINEERING REPORT AND ENVIRONMENTAL INFORMATION DOCUMENT (ER/EID)

A. Kimley-Horn will prepare one (1) draft ER/EID for Town review. To maintain funding compliance with NCDEQ-DWI, Kimley-Horn will develop the ER/EID for the entire funded project (the Water System Resilience in Boone Project), inclusive of the Solar Field Addition at the WTF and the Winklers Creek Intake Access Bridge Replacement. It is assumed that the entire Water System Resilience in Boone Project will be Categorically Exempt by Project Type (CET) and will not require to be Categorically Exempt by Project Review (CER) and will not require a full Environmental Information Document to be developed. Kimley-Horn will provide NCDEQ-DWI CET form along with the draft ER/EID for Town Review.

B. Kimley-Horn will attend one (1) virtual review meeting to review the draft ER/EID with the Town to collect comments and address questions. Kimley-Horn will consolidate comments and questions received and prepare a final ER/EID to submit to the Town for submittal to NCDEQ-DWI. Kimley-Horn assumes up to two (2) requests for additional information will be issued from NCDEQ-DWI and will require formal response.

TASK 3 – DESIGN PHASE SERVICES

A. Kimley-Horn will perform up to two (2) site visits to confirm/verify existing field conditions for design documentation preparation.

B. Kimley-Horn will review existing documentation for the project area to understand design parameters and to review the geotechnical report being prepared for the Project.

C. Kimley-Horn will design structural, mechanical, and instrumentation improvement details to facilitate construction of the proposed RWPS improvements.

D. Kimley-Horn will utilize the services of Howard Engineering, Inc. to provide professional electrical and HVAC engineering services to facilitate the proposed RWPS improvements.

E. Kimley-Horn will utilize the services of Spatial Data Consultants to perform LiDAR based spatial data collection and traditional survey collection for detailed design development. Kimley-Horn will conduct one (1) site visit with Spatial Data Consultants to coordinate survey requirements and observe field data collection as it is performed.

F. Kimley-Horn will contract with a materials testing / geotechnical subconsultant, Terracon, to provide up to three (3) standard penetration test (SPT) bores for use in designing proposed improvements. Following the field and laboratory testing, Terracon will provide an evaluation

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report to summarize findings and provide recommendations regarding the foundations. Kimley-Horn will contract with the Subconsultant solely for the Client's administrative convenience, and Consultant is not responsible for these services. This task also compensates Consultant for the labor necessary to administer the Subconsultant's contract. Client acknowledges that Consultant will not be reviewing the work product of the Subconsultant and will not be liable for it in any way. If the Client has any future claim related to these services, it is assumed the Client will pursue the Subconsultant directly and not the Consultant.

G. Kimley-Horn will design improvements for replacement of the existing vertical turbine pumps with new pump assemblies and discharge piping and valving, while retaining the recently installed 200 HP TEFC motors. Kimley-Horn assumes the new vertical turbine pump design will be based on the original pump design duty conditions and that the operating point will remain unchanged. Kimley-Horn will select and size the new vertical turbine pumps based on existing hydraulic conditions and anticipated operating scenarios, and will coordinate with the pump manufacturer regarding available configurations for extended column piping and discharge head assemblies required to accommodate the elevated pump motor configuration associated with the new second floor.

H. Kimley-Horn will design structural improvements associated with a building vertical expansion to create a new second floor and raise the roof at the existing pump station to elevate critical equipment above the existing finished floor elevation. Listed below are the specific subtasks and assumptions for the structural design:
    a. The existing CMU walls and foundations can be reused, with localized modifications required to support the additional loading and to meet current building code requirements.

    b. Develop building load information and evaluate code compliance.

    c. Design a new, conventionally reinforced cast-in-place concrete second floor slab supported by the existing CMU walls.

    d. Prepare demolition notes and details for the removal of the existing roof.

    e. Design a new roof system assumed to consist of structural steel beams and metal deck roofing.

    f. Structural design will consider applicable dead, live, wind, and snow loads, as well as equipment loads associated with elevated pumps motors, additional column piping, and electrical equipment.

    g. Design shallow spread foundations for the new, exterior stairs and provide design criteria for the stairs. The stairs are assumed to be structural steel and will be a delegated design to the contractor.

    h. The design will be in accordance with provisions in the 2018 North Carolina Building Code and the 2018 North Carolina Existing Building Code.

I. Kimley-Horn will prepare construction drawings for the proposed improvements. It is estimated that approximately 30 - 35 drawings will be required. The construction drawings for the proposed improvements are anticipated to consist of the following sheets:
    1. Cover Sheet (1)

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2. Appendix B Code Summary Sheet (1)
3. Legend and Abbreviations (1)
4. Site Key Map and General Notes (including suggested construction sequence Plan) (1)
5. Structural General Notes (1)
6. Structural Statement and Schedule of Special Inspections (1)
7. Structural Plan and Sections (3)
8. Structural Details (5)
9. Lower Mechanical Plan and Sections (2)
10. Upper Mechanical Plan and Sections (2)
11. Misc. Construction Details (4)
12. Instrumentation Notes, Symbols, and Abbreviations (1)
13. Process and Instrumentation Diagram (1)
14. Electrical General Notes, Electrical Plan and Sections, Lighting Plan, One line Diagrams, Riser Diagrams and Supporting Construction Details (10)

C. Kimley-Horn will prepare technical specifications and an engineering calculations report for the proposed improvements.

D. Kimley-Horn will prepare an Opinion of Probable Construction Cost (OPCC) for the improvements. Kimley-Horn has no control over the cost of labor, materials, equipment, or over the selected Contractor's methods of determining prices or market conditions. The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or market conditions. Opinions of probable costs provided will be based on the information known to the Engineer at the time of preparation and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that actual construction costs will not vary from its opinions of probable costs provided.

E. Kimley-Horn will prepare design documents for the proposed improvements. Design documents will consist of construction plans, technical specifications, and OPCC. Design document deliverables will be prepared and submitted at 60%, 90%, and 100% (Ready for Bid and Permitting) intervals.

F. Kimley-Horn will attend up to two (2) virtual review meetings to review the 60% and 90% set of deliverables with the Town to collect comments and address questions.

G. Kimley-Horn will incorporate Town review comments into the design documents and submit deliverables to the Town as 100% Ready for Bid and Permit Documents for NCDEQ-PWSS and NCDEQ-DWI permitting submission and approval.

TASK 4 – PERMITTING SERVICES

A. Kimley-Horn will prepare an Authorization to Construct (ATC) permit application package to submit to NCDEQ-PWSS in accordance with the 'Engineering, Planning and Development Guidance Document (EPD)' inclusive of the following items:
   1. Application for Approval of Engineering Plans and Specifications for Water Supply Systems Form (three hard copies)
   2. 100% Design Plans (three hard copy 24" x 36" plan sets)
   3. 100% Design Specifications Booklet (three hard copies)
   4. Engineering Report (three hard copies)

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5. Water System Management Plan (WSMP) (three hard copies)
6. WSMP Review Fee Check for $158 in accordance with 130A-328(c)
7. Engineering Plan Review Fee Check for $300 in accordance with 130A-328(c)

B. Kimley-Horn assumes up to two (2) requests for additional information will be issued from NCDEQ-PWSS and will require formal responses.

C. Kimley-Horn will prepare and submit the NCDEQ Design and Bid Document Submittal Package in accordance with NCDEQ-DWI Form PS-SUBMITTAL-01/2026, including 100% (ready for bid) plans, specifications, calculations, cost estimates, and supporting documents.

D. Kimley-Horn assumes up to two (2) requests for additional information will be issued from NCDEQ-DWI and will require formal responses.

E. Kimley-Horn will prepare and submit a Commercial Building Project Review to the Town's Planning and Inspections Department - Building Code Compliance Inspections Division. Up to two (2) submittals have been included with this scope of work. Following comments received from the Town, Kimley-Horn will prepare written responses to each comment and update the construction documents in preparation for the 100% (ready for bid) submittal.

TASK 5 – BID PHASE SERVICES

A. Kimley-Horn will prepare applicable standard EJCDC front-end contract documentation and submit to the Town for review and comment prior to bid issuance by the Town. It is assumed the Town will advertise and administer the procurement of the bidding and respond to potential bidder questions. Kimley-Horn will provide up to three (3) hard, bound copies provided after review, comment, and approval by the Town.

B. Kimley-Horn will attend up to one (1) pre-bid meeting, respond to contractor or supplier questions and prepare addendum(s), if required, which will be distributed to all the contract document holders by the Town.

C. Kimley-Horn will review bids, provide a summary of comments, and a letter that identifies the lowest responsive, responsible bidder.

D. Kimley-Horn will complete the NCDEQ Project Bid Information Form and submit it to the Town to obtain an Authority to Award (ATA) letter from NCDEQ.

E. Kimley-Horn will prepare updated 'Conformed' Contract Documents to include all Addenda issued during the Bid phase to submit to the Town and the selected construction contractor.

TASK 6 – CONSTRUCTION PHASE SERVICES

A. Kimley-Horn will attend one (1) in person pre-construction meeting with Town staff and the selected Contractor.

B. Kimley-Horn will review shop drawings for the proposed improvements. Kimley-Horn anticipates a total of thirty (30) shop drawings will be submitted. Kimley-Horn anticipates ten (10) of these shop drawings will require re-submittal and second review, resulting in forty (40) total shop drawing reviews. Additional shop drawing reviews will be considered additional

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services. Kimley-Horn will review and/or take other appropriate action with respect to Shop Drawings and Samples and other data which the selected Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Kimley-Horn may recommend special inspections or materials testing services of the Contractor's work, and may receive and review certificates of inspections or testing reports within Kimley-Horn's area of expertise. Kimley-Horn's review will be solely to determine that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Consultant is entitled to rely on the results of such tests.

C. Kimley-Horn will respond to a reasonable amount of Contractor RFI's and issue necessary clarifications and interpretations of the Contract Documents to the Town as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents must be approved by the design engineer and authorized by the Town. Requests for alternate or substitute materials, products, or member sizes or requests for the design of corrective measures during construction will constitute additional services.

D. Kimley-Horn may recommend Work Change Directives or Change Orders to the Town and will review and make recommendations related to Change Orders submitted or proposed by the selected Contractor. Kimley-Horn will submit final Change Orders for approval by the Town and Contractor.

E. Kimley-Horn will review applications for payment from the Contractor. Kimley-Horn anticipates twelve (12) reviews. Based on its observations and on review of applications for payment and accompanying supporting documentation, Kimley-Horn will review the amounts recommended by selected Contractor to be paid. Such recommendations of payment will be in writing and will constitute Kimley-Horn's representation to the Town, based on such observations and review, that, to the best of Kimley-Horn's knowledge, information and belief, the selected Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents.

F. Kimley-Horn assumes construction schedule to be approximately twelve (12) months with approximately eight (8) months of active construction. Kimley-Horn assumes no progress meeting will be held until construction commences. Kimley-Horn assumes there will be eight (8) virtual progress meetings that will occur throughout the duration of the construction project. Kimley-Horn assumes the Town's Contractor will prepare agenda and distribute meeting minutes.

G. Kimley-Horn will visit the site periodically throughout construction and generate field reports for each site visit for Town review. Kimley-Horn assumes up to eight (8) site visits will be necessary for construction oversight. Construction oversight visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Kimley-Horn's exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether the selected Contractor's work is generally proceeding in accordance with the final construction documents.

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H. Kimley-Horn will, after notice from the selected Contractor that it considers the entire Work ready for its intended use, in company with the Town and Contractor, conduct one (1) substantial completion site visit to determine if the work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections from the Town, Kimley-Horn considers the Work substantially complete, Kimley-Horn will notify the Town and Contractor.

I. Kimley-Horn will prepare a punch list of outstanding items following the substantial completion walk through for the Town for Contractor to address prior to project final completion. Kimley-Horn will perform one (1) site visit to confirm completion of punch list items following notification by the Contractor.

J. Kimley-Horn will review Contractor furnished redlined as-built drawing information and operation and maintenance manuals (O&M) as required. Kimley-Horn will review and provide comments on the operation and maintenance manuals and redlined as-built drawing information submitted by the selected Contractor.

K. Kimley-Horn will prepare record drawings based on information received through the approved redlined as-built drawing information. Digital drawing files will be provided in .PDF and .DWG file formats in ANSI-D 22" x 34" sizes. Two (2) hard copy 24” x 36” record drawing sets will also be provided to the Town.

L. Kimley-Horn will prepare and submit the required NCDEQ-PWSS Engineer’s Certification form confirming the project was completed in accordance with the approved plans and specifications to support issuance of Final Approval. Kimley-Horn assumes the Town will provide the Applicant’s Certification forms indicating that the current Operations and Maintenance Plan and Emergency Response Plan are complete and available on site. Kimley-Horn further assumes no updates or revisions are required to the Town’s existing plans for NCDEQ-PWSS issuance of Final Approval.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

A. NCDEQ Erosion and Sediment Control Permitting Application Services. It is assumed that the total site disturbance area will be less than 1 acre.
B. NCDEQ Stormwater Management Plan Permitting Application Services. It is assumed that the total site disturbance area will be less than 1 acre.
C. Construction Easement Acquisition Coordination Services
D. Wetland Delineation
E. Meetings and workshops beyond those described above
F. Public Engagement Meetings
G. Subsurface Utility Exploration (SUE)
H. Nationwide 401/404 Permitting
I. Building or Electrical Permitting Application Services
J. Water Quality Testing
K. Multiple Bidding Services, Preparation of Split Contract Documents, or early bidding packages
L. Architectural design services
M. Surveying services
N. Special inspection or materials testing services
O. Design of specialty foundation or specialty structural systems including, but not limited to, deep

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foundation systems, stairs, and handrails / guardrails.

Additional Services
Any services not specifically provided for in the above scope, as well as any changes in the scope requested by the Client, will be considered additional services to this Agreement and performed at our then current hourly rates. Kimley-Horn will develop an amendment to this Agreement or will develop a new Agreement prior to performance of any additional services.

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. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

A. Access to the Site
B. Available Facility Record Drawings and AutoCAD files
C. Most Recent WSMP and Emergency Response Plan
D. Equipment product data and special loading conditions resulting from the equipment.

Responsibilities of Client
In addition to other responsibilities set out in this Agreement, the Client shall:

A. Provide information noted above
B. Attend Meetings and Workshops and Provide Design Input
C. Review Deliverables and Provide Review Comments in a timely manner

Schedule
Kimley-Horn will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

Fee and Expenses
Kimley-Horn will perform the services in Tasks 1 - 6 for the total lump sum fee below. Individual task amounts are informational only. It is assumed that all permitting, application, testing, and similar project fees, other than those stated in the above tasks, will be paid directly by the Town. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen (15%) markup, will be immediately issued to and paid by the Client.

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Task Number & Name		Kimley-Horn Fee	Howard Electrical Engineering Fee	Spatial Data Consultants Fee	Terracon Fee	Task Total	Type
1	PROJECT MANAGEMENT	$4,280	-	-	-	$4,280	Lump Sum
2	ER/EID	$32,920	-	-	-	$32,920	Lump Sum
3	DESIGN PHASE SERVICES	$121,170	$28,000	$10,950	$13,900	$174,020	Lump Sum
4	PERMITTING SERVICES	$20,058	-	-	-	$20,058	Lump Sum
5	BID PHASE SERVICES	$18,990	-	-	-	$18,990	Lump Sum
6	CONSTRUCTION PHASE SERVICES	$50,300	$7,000	-	-	$57,300	Lump Sum
	Fee Total	$247,718	$35,000	$10,950	$13,900	-	-
					Total	**$307,568**	**Lump Sum**

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 Town of Spindale.

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: josh.eller@boonenc.gov

Please copy: todd.moody@boonenc.gov

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.

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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 by:
Seth Denney
E8EB154CC9ED410...

Seth Denney, P.E.
Vice President

TOWN OF BOONE

SIGNED: _____

PRINTED NAME: Dale Presnell

TITLE: Boone Interim Town Manager

DATE: _____

Client's Federal Tax ID: 56-6001185

Client's Business License No.: NA

Client's Street Address: 567 W King St

Boone, NC 28607

Attachment – Request for Information
Attachment – Modified Standard Provisions

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Kimley»Horn

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client	Town of Boone, NC					
Mailing Address for Invoices	567 W King St, Boone, NC 28607					
Contact for Billing Inquiries	Joshua Eller					
Contact's Phone and e-mail						
Client is (check one)	Owner		Agent for Owner		Unrelated to Owner	

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address	400 Hunting Hills Ln, Boone, NC 28607			
County in which Property is Located	Watauga			
Tax Assessor's Number(s)	2910-83-2776-000			

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name	Town of Boone			
Owner(s) Mailing Address	567 W King St, Boone, NC 28607			
Owner's Phone No.	828-268-6200			
Owner of Which Parcel #?	All			

Project Funding Identification – List Funding Sources for the Project

NCDEQ-DWI SFR-D-HEL-0036

Attach additional sheets if there are more than 4 parcels or more than 4 owners

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KIMLEY-HORN AND ASSOCIATES, INC.
MODIFIED STANDARD PROVISIONS

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. Interest will be added to accounts not paid within 25 days at the rate of ½% per month. 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 payments@kimley-horn.com 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 is aware of grounds to object and so objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 20 days of receipt of the invoice or such objections will be waived, and the invoice shall be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
   f. If Kimley-Horn initiates and prevails in legal proceedings to collect payment, it shall recover, in addition to all amounts found to be due, its reasonable attorneys' fees, reasonable experts' fees, and other direct expenses and court costs related to the proceedings.

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-

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Horn's officers, directors, employees, agents, and subconsultants, shall not exceed $2,000,000.00 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.

11) **Indemnification; Mutual Waiver of Consequential Damages.**

a. To the extent enforceable under applicable law, Kimley-Horn hereby agrees to indemnify and hold harmless Client, its officers, elected officials, employees (each an "Indemnified Party") against any and all liabilities, suits, judgments, settlements, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, all reasonable legal fees and direct costs, arising from or in connection with, or caused by any intentionally wrongful act, omission, or negligence of Kimley-Horn or its employees, contractors, or subcontractors. This indemnity provision survives the Agreement.

b. 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.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with NC Rules Implementing Mediated Settlement Conferences In North Carolina Public Construction Projects as a condition precedent to litigation. The exclusive venue for any claim arising out of this Agreement or its breach are the courts having jurisdiction in Watauga County, NC. Any mediation or civil action by either party 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 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.

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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) **Insurance requirements.** The insurance required under this Agreement includes:

1.. By Engineer:

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
l) Each Accident:	$ 500,000
2) Disease, Policy Limit:	$ 500,000
3) Disease, Each Employee:	$ 500,000
c. General Liability -	
I) Each Occurrence (Bodily Injury and Property Damage):	$ 1,000,000
2) General Aggregate:	$ 2,000,000
d. Excess or Umbrella Liability --	
l) Each Occurrence:	$ 2,000,000
2) General Aggregate:	$ 2,000,000
e. Automobile Liability -	
l) Bodily Injury:	
Each Accident	$ 1,000,000
2) Property Damage:	

Each Accident	$ 1,000,000
or	
I) Combined Single Limit	
(Bodily Injury and Property Damage):	
Each Accident	$1,000,000
f. Professional Liability -	
l) Each Occurrence:	$1,000,000
2) General Aggregate:	$3,000,000
2. By Owner:	
a. Workers' Compensation:	Statutory
b. Employers' Liability -	
l) Each Accident	$500,000.00
2) Disease, Policy Limit	$500,000.00
3) Disease, Each Employee	$500,000.00
c. General Liability -	
I) General Aggregate:	$1,000,000
2) Each Occurrence (Bodily Injury and Property Damage):	$2,000,000
d. Excess Umbrella Liability -	
l) Each Occurrence:	$2,000,000
2) General Aggregate:	$2,000,000
e. Automobile Liability -	
l) Bodily Injury;	
Each Accident	$1,000,000
2) Property Damage:	
Each Accident	$1,000,000
I) Combined Single Limit	
(Bodily Injury and Property Damage):	
Each Accident	$1,000,000

3. Each party shall cause the other to be listed as additional insureds on any applicable general liability policy or property insurance policy carried by that party specific to the Project.

4. Each party shall deliver to the other party certificates of insurance evidencing the above coverages on request by the other party.