

TRI-VALLEY TRANSPORTATION COUNCIL

Item 5c

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City of Dublin
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Kristie Wang
Vice Mayor
City of Livermore
(925) 960-4019

Julie Testa
Councilmember
City of Pleasanton
(925) 931-5001

Marisol Rubio
Vice Mayor
City of San Ramon
(925) 964-5946

To: Tri Valley Transportation Council (TVTC)

From: Technical Advisory Committee (TAC)

Date: February 9, 2026

Subject: Approve and Adopt Proposed Adjustment appropriating an additional \$5,000 to the FY26 Budget for Professional Services for a Study to Analyze Impacts of AB 3177

BACKGROUND

The TVTC Joint Exercise of Powers Agreement (JEPA) requires the TVTC to prepare and adopt an operating budget (Section 5.b.iii.). The TVTC Administrator prepares the budget with input from the Treasurer and the TVTC Finance Subcommittee for review and approval by the Board.

TVTC's Bylaws require TVTC to adopt an annual budget prior to July 1st each year for administrative costs. The annual budget includes costs for stipends, administration, legal counsel, accounting, treasurer, auditor, and insurance. The Bylaws also state TVTC may revise the budget from time to time within a fiscal year to account for additional costs. The adoption of the annual administrative budget, or any revisions requires a vote of a supermajority of five.

In January 2018, the TVTC adopted an Administrative Expenses policy to ensure sufficient annual funding for administrative and non-project specific expenses. Pursuant to this policy, the TVTC shall:

1. Create and adopt an annual administrative budget per the TVTC Bylaws based on anticipated need, not based on a specific percentage of anticipated or actual Tri-Valley Transportation Development Fee (TVTDF) revenue.
2. The annual administrative budget shall identify the percentage of anticipated TVTDF funds allocated to administrative expenses.
3. The annual administrative budget shall report the final dollar amount of administrative expenditure budgeted and spent in the prior fiscal year.
4. The annual administrative budget shall include expenses for special studies and efforts. This allows the TVTC to allocate funds to non-project specific

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administrative expenses on an annual basis, as necessary to carry out the purpose for which the fee was collected.

5. Subsequent Strategic Expenditure Plans and Nexus Studies shall calculate and set-aside an average 1% of anticipated impact fee revenue as a relative guide to reserve funds for administrative expenses. The administrative budget is not required to be at or less than the 1% set-aside.

DISCUSSION

The TVTC Technical Advisory Committee (TAC) recommends an additional \$5,000 appropriation to the FY26 budget for professional services to conduct a compliance study analyzing the impacts of AB 3177 (effective January 1, 2025), which amends the Mitigation Fee Act to require lower vehicular traffic mitigation fees for qualifying housing developments located within transit priority areas (TPAs) near major transit stops. This study will evaluate necessary adjustments to the Tri-Valley Transportation Development Fee (TVTDF) schedule, including the likely addition of two new categories, Single Family Residential in TPA and Multi-Family Residential in TPA, with corresponding fee reductions to reflect lower automobile trip generation rates consistent with state law. The requested funds will enable expert analysis to ensure the TVTDF program remains legally compliant, defensible, and aligned with regional housing and transportation goals without affecting other budgeted line items.

RECOMMENDATION

The TVTC TAC recommends that the TVTC Finance Committee recommend the Board adopt the proposed \$5,000 increase to the FY26 budget to pay for professional services to analyze the impacts of AB3177 and recommend adjustments required by law to the TVTDF schedule.

ATTACHMENTS:

- A- Resolution 2026-03: A Resolution Adopting the Tri-Valley Transportation Council Proposed increase to the FY26 Operating Budget
- B- Proposed FY26 Operating Budget
- C- AB3177 Fee Reduction Evaluation Professional Services Agreement Letter from Kimley Horn

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TRI-VALLEY TRANSPORTATION COUNCIL RESOLUTION NO. 2026-04

A RESOLUTION ADOPTING AN INCREASE TO THE TRI-VALLEY TRANSPORTATION COUNCIL FY26 ADMINISTRATIVE OPERATING BUDGET

WHEREAS, on October 18, 2013 the Tri-Valley Transportation Council (“TVTC”), consisting of the County of Alameda, the County of Contra Costa, the Town of Danville, the City of Dublin, the City of Livermore, the City of Pleasanton, and the City of San Ramon, entered into a Joint Exercise of Powers Agreement (“JEPA”) effectively establishing TVTC as a separate public entity duly organized and existing under the Constitution and other laws of the State of California; and

WHEREAS, the JEPA establishes: 1) a framework for TVTC to enact a development fee necessary for implementation of transportation improvements; 2) funding goals for transportation improvements; 3) mechanisms for collecting, managing and disbursing development fees for implementation of transportation improvements; and 4) facilitation of cooperative regional planning efforts through adoption and implementation of regional transportation action plans, the Strategic Expenditure Plan and fee program; and

WHEREAS, the JEPA under section 5(b)(iii) authorizes TVTC to prepare and adopt a budget for TVTC’s administrative functions; and

WHEREAS, the annual budget includes costs for ongoing administrative functions, including administrative staff support, accounting services, audit services, legal services, treasurer oversight, insurance, website services, and banking services; and

WHEREAS, on January 27, 2025, TVTC Board approved the FY26 budget of \$85,700; and

WHEREAS, TVTC TAC recommended an addition of \$5,000 in professional services to the FY26 budget to appropriate for a study to bring the TVTDF into compliance with the fee reduction required by AB3177 for housing developments in “Transit Priority Areas”; and

WHEREAS, the TVTC Finance Subcommittee reviewed and recommended approval of the proposed increase to the FY26 budget;

NOW THEREFORE BE IT RESOLVED THAT: the TVTC adopts the FY276 budget increase of \$5,000 for professional services, attached hereto and incorporated herein as Exhibit A.

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PASSED, APPROVED AND ADOPTED at the meeting of February 9, 2026, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Renee S. Morgan, Chair
Tri-Valley Transportation Council

ATTEST:

Allan Shields,
TVTC Administrator

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Attachment B

TVTC's FY26 Mid-Year Budget Request + FY27 Proposed Budget

Date: 2/13/2026

Expenses / Description	PREVIOUS YEAR		CURRENT YEAR				NEXT YEAR
	FY25 Budget	FY25 Actual Budget (used) provided by Krisch	FY26 Approved Budget-As of January 27, 2025	FY26 Remaining Budget	Mid-year budget request for FY26	Revised FY26 budget	FY27 Projected Budget
TVTC Administrator (a)	\$20,000.00	\$20,000.00	\$20,000.00	\$0.00		\$20,000.00	\$20,000.00
Accounting Services (b)	\$15,000.00	\$12,694.00	\$20,000.00	\$9,166.00		\$20,000.00	\$17,500.00
Audit Services (c)	\$10,000.00	\$5,000.00	\$10,000.00	\$10,000.00		\$10,000.00	\$10,000.00
Legal Services (d)	\$20,000.00	\$12,445.00	\$20,000.00	\$9,702.54		\$20,000.00	\$17,500.00
Treasurer Oversight (e)	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00		\$1,200.00	\$1,200.00
Insurance (f)	\$6,000.00	\$4,729.40	\$6,000.00	\$2,329.62		\$6,000.00	\$6,000.00
Banking/Service Charges (g)	\$500.00	\$110.00	\$500.00	\$480.00		\$500.00	\$500.00
Website Monthly/Annual Maintenance (h)	\$3,000.00	\$1,424.00	\$3,000.00	\$2,250.00		\$3,000.00	\$3,000.00
Board Member Stipends (i)	\$5,000.00	\$2,700.00	\$5,000.00	\$3,300.00		\$5,000.00	\$5,000.00
Professional Services (j)	\$0.00	\$0.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$5,000.00
Operating Budget Expenses Subtotal	\$80,700.00	\$60,302.40	\$85,700.00	\$38,428.16	\$5,000.00	\$90,700.00	\$85,700.00
Special Studies and Efforts (Non-Project Specific Admin Expenses)							
Development Fee Manual + Amendment to SEP (k)							
GRAND TOTAL EXPENSES	80,700.00	60,302.40	85,700.00	38,428.16	5,000.00	90,700.00	85,700.00

Notes:

- (a) TVTC Administration Annual Stipend
- (b) Franklin Management + Transition Service
- (c) Annual Audit/Cropper Rowe LLP - budget includes \$6,000 approved on April 18,2023 + rollover unbilled approved amount from 2021/22 of \$2,500
- (d) General Counsel/Meyers Nave
- (e) Treasurer
- (f) General Liability+Crime Insurance/Alliant
- (g) Mechanics Bank
- (h) Tech Support,annual domain renewal&Security Certificate - \$1,999/year/contract
- (i) Board member stipends for board and sub-committee meetings
- (k) Wrapping up Development Fee Manual + SEP 2022 Amendment

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Attachment C



December 3, 2025

Allan Shields
TVTC Administrator
500 La Gonda Way
Danville, CA 94526

Re: Letter Agreement for Professional Services for
AB 3177 Fee Reduction Evaluation

Dear Mr. Shields:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement ("Agreement") to Tri-Valley Transportation Council (TVTC) ("Client") for providing preliminary analysis to determine Tri-Valley Transportation Development Fee (TVTDF) reduction for transit priority areas (TPA).

Project Understanding

California Assembly Bill (AB) 3177 was adopted September 2024. This bill amends the Mitigation Fee Act to requires agencies with traffic impact fees to include a lower rate for qualified residential developments within "transit priority area" (TPA), areas within ½ mile of major transit stop. The Client has asked Kimley-Horn to assist with a preliminary evaluation to determine the lower rate for TPA residential developments and its impact on revenue.

Assumptions

Kimley-Horn's scope and fee are based on the following assumptions:

- This evaluation will be based on existing transit facilities and schedules.
- No amendment to the Nexus study or Strategic Expenditure Plan (SEP) will be complete as part of this task.
- Kimley-Horn has assumed no attendance at TVTC board public hearings. If requested, Kimley-Horn can prepare and present at these meetings as an additional service. It is assumed that all other coordination will occur either by phone, email, or video conference.

If any of these assumptions are not correct, then the scope and fee will change.

Scope of Services

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

Task 1 – AB 3177 Fee Reduction Evaluation

Kimley-Horn will estimate trip generation estimate for residential development located within and out of a TPA. The fee reduction will be determined based on average reduction in trips between these two trip generations. Kimley-Horn will also estimate the reduction in fee revenue based on the reduced TPA fee, based on a GIS-based review of transit facilities and schedules, average coverage of the TAZ, and

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925 398 4840

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model growth. Kimley-Horn will summarize findings in a technical memorandum. Kimley-Horn will attend one (1) TVTC technical advisory committee meeting (TAC) to explain the results of the evaluation.

Deliverables:

- One (1) electronic copy of the AB 3177 Fee Reduction Technical Memorandum.

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. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Amendment to current nexus study or SEP plan
- Meetings not listed in scope

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 **Task 1** for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a 15% markup, will be immediately issued to and paid by the Client.

Task Number & Name		Fee	Type
1	AB 3177 Fee Reduction Evaluation	\$5,000	Lump Sum
Total		\$5,000	

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 30 days of your receipt of the invoice.

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 Tri-Valley Transportation Council.

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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.

Elizabeth Chau, P.E.
Project Manager
CA PE #C86622

Michael C. Mowery, P.E.
Principal
CA PE #C66353

TRI-VALLEY TRANSPORTATION COUNCIL



Tri-Valley Transportation Council

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions

TRI-VALLEY TRANSPORTATION COUNCIL



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						
Mailing Address for Invoices						
Contact for Billing Inquiries						
Contact's Phone and e-mail						
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner	<input type="checkbox"/>

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

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

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KIMLEY-HORN AND ASSOCIATES, INC. STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("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. Invoices are due and payable upon presentation. Client shall pay Kimley-Horn a time price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. 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 presentation, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid, and may commence legal proceedings including filing liens to secure payment.
 - 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 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. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

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Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- 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,

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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 twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Professional Liability Insurance.** Kimley-Horn will maintain a professional liability insurance policy for the services provided by Kimley-Horn during the course of this Agreement.
- 13) **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.
- 14) **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.
- 15) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 16) **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.
- 17) **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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- 18) **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.
- 19) **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.
- 20) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of California. 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.