

RESOLUTION 13-57

**A RESOLUTION TO APPROVE PROFESSIONAL SERVICES AGREEMENT
WITH KIMLEY-HORN AND ASSOCIATES, INC FOR THE
PORT ROYAL PARK MASTER PLAN**

WHEREAS, the City of Spring Hill acquired property on Port Royal Road adjacent to Deerfield Subdivision for the purpose of creating a city park; and

WHEREAS, in addition to a Fire Hall being built on this property, the City has determined that this park should contain league football fields, splash pad, etc.; and

WHEREAS, the City advertised and received proposals for a Port Royal Park Master plan on March 20, 2013; and

WHEREAS, City staff and the Parks and Recreation Commission has reviewed all proposals and has made a recommendation to approve a Professional Services Agreement with Kimley-Horn and Associates Inc. for the Port Royal Park Master Plan;

WHEREAS, Kimley-Horn and Associates, Inc. has proposed a two phase, five task planning and design process for the completion of this project;

NOW, THEREFORE BE IT RESOLVED that the City of Spring Hill Board of Mayor and Aldermen approves the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Port Royal Park Master Plan, as described in the attached proposal of services and fee schedule (Tasks 1-5) in an amount not to exceed \$66,300.00.

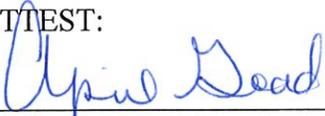
BE IT FURTHER RESOLVED that the City of Spring Hill Board of Mayor and Aldermen authorizes the Mayor is to enter into an agreement with Kimley-Horn and Associates, Inc.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on this 17th day of June, 2013.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

APPROVED AS TO FORM:



Timothy P. Underwood, City Attorney



Kimley-Horn
and Associates, Inc.

June 4, 2013

■
Suite 501
209 Tenth Avenue South
Nashville, Tennessee
37203

City of Spring Hill
Attn: Mr. Victor Lay, City Administrator
199 Town Center Parkway
Spring Hill, Tennessee 37174

Re: Professional Services Agreement
Port Royal Park Master Plan

Dear Mr. Lay:

Kimley-Horn and Associates, Inc. ("KHA" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Spring Hill ("Client") for providing park master planning services for the proposed Port Royal Park.

PROJECT UNDERSTANDING

The City of Spring Hill has acquired property along Port Royal Road adjacent to the Deerfield Subdivision in which they intend to locate a City park. City staff and the Parks and Recreation Commission have identified the need for league football fields, a splash pad, and other general park elements at this location. We understand that a City Fire Hall will also be located on this site and should be considered and coordinated with during the master planning and design phases (as design and ultimately construction of the fire hall will occur in parallel with the park).

We further understand the City's desire to move from the master planning phase directly into design phase services. These two phases will ultimately progress into producing Construction Documents after the completion of the master planning phase in an effort to meet the preferred schedule of opening Port Royal Park in the fall of 2014. To accommodate your project outline and schedule, we have scoped Tasks 1-3 to complete the park concept and master plan process. Tasks 4-6 will transition from master planning into the design phase and ultimately the development of construction plans and bid phase services. This contract, if desired by the City can be amended to provide these services as the master planning process is nearing completion.

SCOPE OF SERVICES

KHA will provide the services specifically set forth below.



Task 1 – Project Coordination Services

Task 1.1– City Staff Kickoff Meeting and Site Visit

The Consultant will conduct up to two meetings with the City Departments to discuss the opportunities and constraints of the site as well as any other key issues for this project (i.e. Fire Hall coordination, utilities, etc.). In this task, the Consultant will also visit the site with City staff to prepare a photo inventory of the observable, current conditions. General notes and topics of discussion will be documented. These meetings are assumed to take place in one day. This task represents Trip number 1 of the project.

Task 1.2– Parks and Recreation Commission Kickoff Meeting

After meeting with City staff, the Consultant will conduct a meeting with the City's Parks and Recreation Commission to discuss the site, to program park elements, and to create the goals for the project. The final outcome of this meeting will be a list of park features that the Consultant will incorporate into the master plan and locate as a part of this Port Royal Park project. This task represents Trip number 2.

Task 1.3 – Deerfield Homeowner's Association (HOA) Meeting

The Consultant will conduct a meeting with the Deerfield Subdivision HOA to listen to the concerns and priorities of the property owners. The City will provide the Consultant with contact information for the leadership (i.e. President and/or Board member) of the HOA organization and provide a venue for the meeting. The Consultant will then notify the HOA representative of the meeting; it will be responsibility of the HOA representative to notify the property owners of the meeting, as the Consultant will not individually notify each of the property owners. General notes and topics of discussion will be documented. This task represents Trip number 3.

Task 1 Deliverables: Meeting minutes provided in Adobe (*.pdf) format

Task 2 – Preliminary Concept Development

Task 2.1 – Development of Two Alternative Concepts

Following the initial kickoff meetings and site visit, the Consultant will prepare two park concepts that will consist of the programmed elements identified in Task 1.2. The format of these two concepts will be 30" x 42" computer-generated graphic renderings in plan view.

Task 2.2 – Review of Concepts

The Consultant will conduct a public open house meeting where the public can review the two concepts and provide feedback via comment cards. From this meeting, City staff will be given the comment cards and will provide the Consultant with a compiled list of edits to be made for the final concept. It will be the City's responsibility to determine which public comments are to be incorporated into the final master plan and to provide the Consultant with a chosen concept. This task represents Trip number 4.



Task 2 Deliverables: Two preliminary concept plans
Blank comment cards for public meeting

Task 3 – Final Master Plan

Task 3.1 – Refine Final Concept

Following Task 2 efforts, the Consultant will make edits from the list provided in Task 2.2 and prepare a single, final park concept. This will also be formatted as a 30" x 42" computer-generated graphic rendering in plan view.

Task 3.2 – Prepare Opinion of Probable Cost

The Consultant will prepare an opinion of probable cost for construction of the final park concept. This cost will consist of quantities and unit costs for each of the proposed elements from the final park concept.

Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others; methods of determining prices; competitive bidding; or market conditions, all opinions rendered as to costs shall be made on the basis of its experience and represent its judgment and does not guarantee that proposals, bids, or actual costs will not vary from opinions of cost prepared. If at any time the City wishes greater assurance to the amount of any cost, it shall employ an independent cost estimator for such efforts.

Task 3.3 – Prepare Final Report

The Consultant will prepare a final report of up to 15 pages documenting the process completed for this project. This report will summarize the meetings held, both preliminary concepts, as well as the approved final concept. In addition to park amenities chosen, this report will also address the coordination efforts associated with the future fire hall and any recommended transportation improvements (emergency fire hall traffic signal, turn lanes, etc.) deemed necessary along Port Royal Road associated with the park and/or fire hall. The final report will consist of text, tables, graphics and photographs deemed necessary to summarize the master planning effort.

Task 3.4 – Final Presentations

The Consultant will facilitate one presentation to the Board of Mayor and Alderman and one presentation to the Parks and Recreation Commission. At these presentations, the Consultant will present the final park concept. This task represents Trip number 5.

Task 3 Deliverables: 30" x 42" final park concept plan (one hard copy mounted on presentation board)
Adobe (*.pdf) version of the Opinion of Probable Cost
Five printed copies and Adobe .pdf version of final report



Kimley-Horn
and Associates, Inc.

June 4, 2013

■
Suite 501
209 Tenth Avenue South
Nashville, Tennessee
37203

City of Spring Hill
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Five printed copies and Adobe .pdf version of final report



Task 4 – Boundary and Topographic Survey

The Consultant – utilizing our surveying subconsultant, Sawyer Land Surveying, LLC – will complete a boundary and topographic survey to locate site utilities consisting of water, sewer, and electric lines as well as the floodway and floodplain boundaries. The survey will further consist of property boundaries and right-of-way limits for Port Royal Road. This task is necessary to have accurate site data and is required prior to beginning design phase services. Sawyer Land Surveying will request that the City mow the property so that the survey crew can see the existing ground elevation during data collection efforts.

Task 4 Deliverables: Boundary and Topographic Survey in electronic format

Task 5 – Design Development of Park Building

The Consultant – utilizing our architectural subconsultant, Johnson + Bailey, P.C. – will design a schematic building floor plan and elevation for the single structure housing the concession, restroom, and maintenance facilities. The final format of these images will be color computer-generated graphics on a single 30” x 42” board. The Consultant will also provide an opinion of probable cost for this building.

Task 5 Deliverables: 30” x 42” building concept plan (one (1) hard copies mounted on presentation board)
Adobe (*.pdf) version of the Opinion of Probable Cost

Task 6 – Regional Park Tour (Optional Task)

If requested, the Consultant will conduct a one day field trip to a maximum of three (3) comparable parks in the greater Nashville region in order to introduce City staff to various park solutions and design details. During this trip, KHA staff will photograph elements of these parks to reference during the design development of this project. Up to five City representatives can be accommodated. The Consultant will provide transportation to/from City of Spring Hill City Hall for the tour.

Task 7 – Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Hydrological Assessment
- Wetland Delineation
- Design Phase Services
- Pre-Bid Services
- Bid Phase Service
- Construction Phase Services
- Others as requested by City staff

Once the park concept and master plan are complete, the Consultant will submit a detailed scope and fee for design phase services.

INFORMATION PROVIDED BY THE CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by KHA during the project, including but not limited to the following:

- LIDAR survey for the project site
- Access to public buildings for meeting space associated with Task 1 efforts
- Contact information for the Deerfield Subdivision HOA representative
- Mow the property so that the surveying crew can collect survey data

SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting a schedule of completing the master planning effort in four (4) months.

FEES AND EXPENSES

KHA will perform the services in Tasks 1 through 5 for the total lump sum fee below. Individual task amounts are informational only. Tasks 1 through 3 represent the master planning effort and Tasks 4 and 5 are transitional tasks which are required as the project moves into the design phase.

<i>Task 1 – Project Coordination Services</i>	<i>\$10,800</i>	
<i>Task 2 – Preliminary Concept Development</i>	<i>\$15,500</i>	
<i>Task 3 – Final Master Plan</i>	<i>\$19,200</i>	
<i>Master Planning Subtotal:</i>		<i>\$45,500</i>
<i>Task 4 – Boundary and Topographic Survey</i>	<i>\$16,800</i>	
<i>Task 5 – Design Development of Park Building</i>	<i>\$4,000</i>	
<i>Transitional Tasks 4/5 Subtotal:</i>		<i>\$20,800</i>
Total Lump Sum Fee (Tasks 1 through 5):		\$66,300

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.

KHA will perform the Services in Tasks 6 and 7 if / when requested by the City. Effort associated with Tasks 6 and 7 will not be performed without authorization



from the City. However, a total lump sum budget for optional Task 6 is summarized below and Task 7 services will be budgeted once the project moves into the design phase.

Task 6 – Regional Park Tour, Optional Task (total lump sum fee) \$3,500
Task 7 – Additional Services As Requested

We understand that the City may wish to authorize the services in a staged manner; therefore signature blanks with authorization dates are provided for the following phases.

We also understand that the Town may wish to authorize the services in a staged manner to coincide with Town budget cycles; therefore signature blanks with authorization dates are provided for each task below as well.

Table with 2 columns: Phase, Authorization Signature / Date. Rows include Master Planning (Tasks 1 through 3), Tasks 4 / 5, and Regional Park Tour (Optional Task 6) with handwritten signatures and dates.

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, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Spring Hill.

KHA, in an effort to expedite invoices and reduce paper waste, offers its clients the option to receive electronic invoices. These invoices come via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please select a billing method from the choices below:

- Checkmark: Please email all invoices to dloveless@springhilltn.org
Please email invoices to _____@_____
AND provide a hard copy to the address listed above to the attention of _____
(or provide alternative address).



Kimley-Horn
and Associates, Inc.

Mr. Victor Lay, June 4, 2013, Page 7

____ Please ONLY provide a hard copy invoice to the address listed above to the attention of _____ (or provide alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us.

<<< This Section Intentionally Left Blank >>>



We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Christopher D. Rhodes, P.E.
Vice President

Alisha Eley, RLA
Project Manager

Attachment – Standard Provisions

Agreed to this 21 day of June, 2013.

SPRING HILL, TENNESSEE
A Municipality

(Signature)

(Date)

6/21/13
(Print or Type Name and Title)

RICK GRAHAM - MAYOR
(Email Address)

mgraham@springhilltn.org
(Signature)

_____, Witness

Victor H. Lay
(Print or Type Name)

Official Seal:

**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant'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 described herein or imposed by law, the Client shall:
- (a) Designate in writing a person to act as its representative with respect to this Agreement, 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 including all numerical criteria that are to be met and all standards of development, design, or construction.
 - (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
 - (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
 - (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
 - (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
 - (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
 - (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
 - (i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of 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 the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

- (4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:
- (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 the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
 - (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - (c) If the Client objects to an invoice, it must advise the Consultant 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 within 25 days of receipt.
 - (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant 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 the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant 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, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant 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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant 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. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **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 through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** The standard of care applicable to Consultant'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 the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant 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 the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or 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 the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(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) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of 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.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant 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 the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant 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) The Consultant is not responsible for any duties assigned to the design professional 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 for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. 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 Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant 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.

(17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Tennessee. 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. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. 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.