

RESOLUTION 15-107

A RESOLUTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY HORN TO PROVIDE A DOWNTOWN SPRING HILL MARKET STUDY AND ABSORPTION ANALYSIS

WHEREAS, the City of Spring Hill desires to provide for the health, safety, and welfare of its citizens; and

WHEREAS, the City of Spring Hill, Board of Mayor and Alderman desires to evaluate the economic viability of the proposed downtown Spring Hill concept plan for the Tennessee Children's Home property; and

WHEREAS, staff is recommending Kimley Horn to perform market study and absorption analysis based on their previous experience performing market studies and economic analysis for mixed-use projects incorporating residential, office, retail and civic uses; and

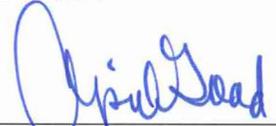
NOW, THEREFORE BE IT RESOLVED, that the City of Spring Hill, Board of Mayor and Aldermen authorizes Kimley Horn to provide a downtown Spring Hill market study and absorption analysis for the Tennessee Children's Home property in the amount of \$20,900.00.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 21st day of September, 2015.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney

Real Estate and Economic Development Advisory Services

Kimley-Horn's Jessica Rossi offers real estate and economic development consulting to a broad spectrum of public, private, and nonprofit clients. She specializes in identifying and quantifying market opportunities for real estate developments and acquisitions, forecasting land demand for comprehensive planning initiatives, and conducting cost/benefit analyses for local governments. As a part of Kimley-Horn's larger planning practice, Jessica offers clients the opportunity for a fully integrated approach to planning that includes land use, transportation, and *economics*: three elements necessary for successful planning.

Market Analysis and Investment Advisory

Kimley-Horn provides market analysis for planned residential, office, retail, industrial, and mixed-use developments. We also estimate current and future market conditions as part of income property investment due diligence. For public sector clients, we bring market reality to the land use planning process.

Economic Development

Kimley-Horn recommends policies and investments to improve economic competitiveness for any community. Site-specific development incentives also are identified to offset project funding gaps, including public-private partnerships.

Fiscal Impact Analysis

Kimley-Horn has extensive experience in fiscal impact analysis, providing public sector revenue and expenditure forecasts for proposed real estate projects and major infrastructure investments. The goal is long-term fiscal sustainability for local governments.



Jessica Rossi has 10 years of experience in planning, economic development, land use analysis, and real estate. She has completed assignments throughout the Southeast and brings a comprehensive perspective to all consulting assignments. Jessica works for a variety of clients, including developers, investors, lenders, and local governments. Her knowledge of GIS mapping provides detailed insights into demographics and development trends.

Jessica Rossi

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jessica.rossi@kimley-horn.com

www.kimley-horn.com/real-estate-advisory

Kimley»Horn



September 3, 2015

Mr. Dan Allen
Assistant City Administrator & Infrastructure Director
City of Spring Hill
P.O. Box 789
Spring Hill, TN 37174

RE: *Tennessee Children's Home Site Market Analysis, Spring Hill, TN*

Dan:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Spring Hill ("Client") to prepare a market analysis for a property encompassing approximately 103 acres in the northeast quadrant of Main Street (US 31) and Kedron Road in Spring Hill, TN ("Project"). The Project Understanding, Scope of Services, and Fee Estimate for this Project are outlined below.

PROJECT UNDERSTANDING

A mixed-use development was recently presented to the Spring Hill Board of Mayor & Alderman (BOMA) for the 103-acre Tennessee Children's Home site. As planned, the development would contain single- and multi-family residential, retail, office, and civic/public uses in a mixed-use design. Civic uses could include new City Hall and Public Library facilities, with 40% of the property reserved for open space.

The City is seeking a third-party analysis of the real estate market potential for the site, including demand forecasts and recommended price points for residential, retail, and office uses. The results of this analysis will help inform the City of Spring Hill to the market forces that could impact development, the forecasted demand for various product types, and estimated absorption for the Project.

SCOPE OF SERVICES

This analysis will provide an overview of general market dynamics and economic drivers, estimate the amount of residential units and retail and office square footage that could be supported at the Project over the next ten years, and forecast potential price points for the various product types.

TASK 1. KICK-OFF MEETING AND INTERVIEWS

Kimley-Horn will hold a kick-off meeting with the City of Spring Hill to refine the scope and set expectations for project delivery. During this trip we will also tour the site and surrounding market area and interview planners, economic developers, and real estate professionals to gain local insight. The City of Spring Hill will be responsible for identifying and scheduling the interviews.

TASK 2. SUBMARKET DEFINITION

With input from the Client, Kimley-Horn will define a competitive Submarket for the site. The Submarket, which will be shown on a map, will include portions of both Williamson and Maury counties. Drive times from the site and natural and man-made barriers will be considered in the creation of the Submarket.

TASK 3. MARKET DYNAMICS AND DEMAND DRIVERS

Kimley-Horn will conduct research to establish a baseline of information on market dynamics and demand drivers that could impact the competitiveness of the Project.

3.1 Economic Anchors and Investments

Kimley-Horn will conduct research to identify existing economic and market anchors, and major public and private investments that could impact the potential of the Project. These investments could include road improvements, public utility expansions, schools and other civic or cultural facilities, employment centers, and real estate developments.

3.2 Employment

Kimley-Horn will analyze annual at-place employment trends by industry for Maury and Williamson counties and the 14-county Nashville-Davidson-Murfreesboro Metropolitan Statistical Area (MSA), describing overall growth as well as shifts between sectors. Average wage trends by industry will also be analyzed. As available, we will include the most recent 12-month employment and wage trends for both geographies. Kimley-Horn will also provide place-of work employment by sector for the City of Spring Hill, noting job concentrations in close proximity to the site.

Kimley-Horn will provide five-year employment forecasts for Maury and Williams counties and the Nashville-Davidson-Murfreesboro MSA by sector. These forecasts will inform the office demand for the Project.

3.3 Demographics

Population. Kimley-Horn will analyze population trends by age for the Submarket, and compare that performance to the 14-county Nashville-Davidson-Murfreesboro MSA from 2010 to 2015. Ten-year forecasts will also be provided.

Households. Kimley-Horn will analyze household trends by size, income and tenure for the Submarket, and compare that performance to the Nashville-Davidson-Murfreesboro MSA from 2010 to 2015. Ten-year household forecasts will also be provided.

Tapestry Segmentation. Kimley-Horn will supplement the demographic data with an analysis of the trade area's Tapestry segmentation from ESRI, which divides households into 65 groups based on consumer spending patterns and lifestyle attributes. This type of analysis provides insight into the purchasing preferences for housing and other goods, and is being used increasingly by developers, builders, and retail tenants in the site selection and due diligence process.

Building Permits. Kimley-Horn will analyze annual building permit trends by type for Williamson and Maury counties from 2005 to 2015. The permits will be used to validate the household estimates and forecasts, and illustrate recent residential market preferences.

TASK 4. RESIDENTIAL

4.1 Single-Family Performance Review

Kimley-Horn will analyze for-sale closing trends for Spring Hill and the larger Nashville market. We will rely on multiple listing service (MLS) data for the basis of this analysis. The City of Spring Hill will assist Kimley-Horn in identifying local realtors that could help provide the data. We will compare aggregate annual absorption to employment growth as a demand metric.

KHA will profile up to three comparable for-sale residential communities currently being developed in the Submarket. We will provide the total units, remaining unsold units, price and size ranges, and community amenities. Based on available data, we will identify the product type(s) that are selling most successfully, and the corresponding lot sizes. All comparable projects will be shown on a map.

4.2 Multi-Family Performance Review

Kimley-Horn will analyze multi-family inventory, construction, absorption, vacancy rates, and rent performance measures for Williamson County. There is limited third-party data available

for Maury County. As available, Kimley-Horn will provide trends demonstrating shifts in demand or rent performance over the last five years.

We will survey and profile up to three comparable apartment communities, based on location, age, and construction type. We will focus on communities in the defined Submarket, but may need to expand north towards Franklin to capture the newest competitive communities.

As available, we will provide the following information:

- Unit mix by bedroom type
- Current vacancy
- Quoted base rent by type (1-, 2-, and 3-bedroom)
- Rent from additional sources including washer/dryer units, cable, internet, pets
- Interior unit features
- Community amenities

4.3 Development Pipeline

Under Construction and Proposed Projects. Kimley-Horn will describe single-family and multi-family projects that are under construction or proposed in the Submarket. Single-family developments will be limited to those larger than 50 units. These developments will be shown on a map with the Project.

Development Pipeline. The identified current and planned development activity will be included in a construction timeline to determine the potential increase in new residential supply in the Submarket through 2025.

4.4 Residential Demand Forecast

Based on the population and household forecasts, Kimley-Horn will forecast the number of new residential units that could be supported in the Submarket over the next ten years. A review of demographic trends will determine the likely mix of single- and multi-family units. We will estimate a capture rate for the Tennessee Children's Home site and forecast the likely absorption period that would be required for the site to reach stabilized occupancy.

4.5 Residential Price Point Projections

Price point recommendations will be determined in part through a regression analysis of the comparable single- and multi-family communities. Price points will be communicated in ranges to allow for flexibility to apply the findings as the Project is further refined.

TASK 5. RETAIL**5.1 Retail Trends**

Kimley-Horn will analyze multi-tenant retail trends for Williamson County, including construction, net absorption, vacancy rates, and rents. Similar to multi-family, there is limited third-party data available for Maury County.

5.2 Competitive Retail Framework

Kimley-Horn will identify and profile completed retail developments over 25,000 square feet that serve the Submarket. Based on input from real estate brokers, developers, planners, and published sources, Kimley-Horn will document the year built, gross leasable area, vacancy rate, quoted rent and anchor tenants for each center. Anchor and small shop vacancy rates will be analyzed separately. The competitive developments will be shown on a map. An inventory of other free-standing big-box retailers, grocery stores, and pharmacies will also be added to the map.

5.3 Development Activity

Kimley-Horn will obtain information through local jurisdictions on multi-tenant retail projects that are under construction or planned in the Submarket. Planned projects are defined as having approved entitlement or an active rezoning/site planning application. As available, Kimley-Horn will provide the developer, total square feet, pre-leasing activity, timing, and quoted rent. These developments will be shown on a map.

5.4 Project Demand and Lease Rate Recommendations

Kimley-Horn will use sales data from the State of Tennessee to identify potential supply gaps for the Submarket by store category. Current and ten-year forecasts for expenditure potential and supportable square footage will be determined by category from household and income growth, as provided in Task 3.3.

A site capture will be applied to the Project for the incremental ten-year Submarket demand by category. The capture will be based on the Project's access and visibility, and the existing and future competitive framework. Potential retail rents will be estimated in 2015 dollars, based on current quoted rates at competitive projects in the Submarket.

TASK 6. OFFICE**6.1 Multi-Tenant Trends**

Kimley-Horn will analyze multi-tenant office trends for a pre-defined Submarket provided by REIS, a third-party data source, which includes portions of Spring Hill and Williamson County. Analyzed trends will include construction, net absorption, vacancy rates, and rents.

6.2 Comparable Developments

Kimley-Horn will select and profile up to three comparable office developments. The comparables will be selected on the basis of size and proximity to the Project. As available, Kimley-Horn will provide the year built, total square feet, vacancy, minimum and maximum square feet available, quoted rent, anchor tenants, and amenities for each property. The comparable developments will be shown on a map.

6.3 Development Activity

Kimley-Horn will conduct research to identify competitive multi-tenant office developments that are either under construction or proposed in the Submarket. Proposed developments are defined as having approved entitlements or an active application or rezoning or site plan approval. As available, Kimley-Horn will provide the developer, location, square feet, quoted rent, and expected completion date for each project. A timeline of annual completions will be created by project for the next ten years to estimate the amount of competition for the Project. All under construction and proposed projects will be shown on a map.

6.4 Demand Forecasts and Lease Rate Recommendations

Kimley-Horn will forecast the amount of office space that could be occupied in the Nashville-Davidson-Murfreesboro MSA over the next ten years, based on market trends and employment forecasts prepared under Task 3.2. We will apply a capture rate for the Submarket, considering planned public and private investments that will impact the distribution of office growth in the region.

Kimley-Horn will then forecast the amount of Submarket demand that could be absorbed at the Project, based on existing and potential future competition. Potential multi-tenant office rents will be estimated in 2015 dollars, based on current quoted rates at competitive projects in the Submarket.

TASK 7. COST TO SERVE (OPTIONAL)

As directed by the City of Spring Hill, Kimley-Horn will assist in forecasting the potential impact to service provision by the City of Spring Hill based on development of the project.

Exact scope for this task will be negotiated when initiated, but specific services that could be investigated include costs attributable to the project for administration, transportation, emergency services, utilities, maintenance of parks and recreation facilities, or schools. Cost to serve estimates will be based on reviews of the City of Spring Hill budgets and interviews with department heads.

TASK 8. REPORT AND MEETING

Kimley-Horn will prepare a draft report based on the Scope of Services described above. Kimley-Horn will host a meeting with the Client via conference call to review the findings. A final report will be prepared based on one set of revisions to the draft.

ADDITIONAL SERVICES

Any services not specifically provided for in the above Scope of Services, as well as any changes in the Scope of Services that the Client requests will be considered additional services and will be performed at our then current hourly rates. These services include time to revise forecasts and recommendations due to changes in the development assumptions provided by the Client for site design, unit count or square footage, mix of other land uses on the site, or parking ratios. Out-of-scope meetings will also be considered additional services. A listing of current hourly rates will be supplied upon request.

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. Kimley-Horn cannot be held responsible for the accuracy of information provided by others while conducting research for this assignment.

RESPONSIBILITIES OF CLIENT

In addition to other responsibilities set out in this Agreement, the Client shall provide site and project information needed to complete the analysis.

FEE AND BILLING

Kimley-Horn will perform the services outlined above for \$20,900, inclusive of data and mileage expenses. Optional Task 7 will be negotiated upon the request of the City of Spring Hill but is estimated at \$7,500 to \$12,500, depending on the number of services investigated. Fees by task are as follows:

Task	Description	Fee
1	Kick-Off Meeting and Interviews	\$2,200
2	Submarket Definition	\$200
3	Market Dynamics and Demand Drivers	\$2,500
4	Residential	\$5,000
5	Retail	\$4,000
6	Office	\$4,000
7	<i>Cost to Serve (Optional)</i>	<i>\$7,500 - \$12,500</i>
8	Report and Meeting	\$2,000
	Expenses (Data, Travel for One Trip)	\$1,000
	Total (Excluding Optional Task 7)	\$20,900

The fee is payable in full upon delivery of the draft report. Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Payment will be due within 25 days of your receipt of the invoice.

SCHEDULE

Kimley-Horn will complete the Scope of Services as expeditiously as practicable with the goal of delivering a draft report within 60 days of notification to proceed. Kimley-Horn will start work after receipt of a signed agreement.

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, TN.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute two copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Jessica S. Rossi, AICP
Project Manager / Associate



Matt Edwards, PE
Vice President

Attachments: Standard Provisions

(CITY OF SPRING HILL, TN)

A Municipality

9/25/15

(Date)

Rick Graham, Mayor

(Print or Type Name and Title)

Rgraham@springhilltn.org

(Email Address)

Missy Stahl, Witness

Missy Stahl

(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: 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 North Carolina. 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.