



September 26, 2018

Kimberlee McKee  
Longmont Downtown Development Authority  
528 Main Street  
Longmont, CO 80501

Re: **Professional Services Agreement for Parking Study and Comparative Analysis**

Dear Ms. McKee:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the Longmont Downtown Development Authority (“LDDA” or “Client”) for providing professional parking planning services to update the 2016 Longmont Parking and Access Study.

## **PROJECT UNDERSTANDING**

Kimley-Horn understands the Client intends to perform a follow up parking study of the Downtown area as included in the 2016 Longmont Parking and Access Study. This follow up study is intended to provide a comparative analysis of occupancy, duration, and turnover of current conditions against the observations recorded in the 2016 study.

At this time, the Client is requesting a proposal to provide license plate recognition (LPR) based data collection, analysis of collected data against 2016 results, with collection efforts and a comparative analysis summarized in a technical memorandum. Based upon our Project Understanding the following is our anticipated Scope of Services.

## **SCOPE OF SERVICES**

### **Task 1. Project Start-Up, Meetings & Coordination**

This task consists of coordination and meetings with the Client, the Project Team, the City and/or other consultants and subconsultants throughout the Project, as well as in conjunction with the data collection plan and efforts, and development of the technical memo.

- Meeting #1 – A kickoff webinar will be held to discuss project goals, schedule, and expectations for the study.
- Meeting #2 – an interim meeting will be held after data collection is completed and preliminary results are analyzed. This meeting is anticipated to be conducted via webinar. The intent of this meeting will be to discuss preliminary results and findings and obtain feedback from the Client.
- Meeting #3 – A final meeting will be held via webinar to present the findings of the study.

*Deliverable: Project schedule*

## Task 2. LPR Data Collection

Kimley-Horn will collect parking occupancy, duration, and turnover data for Downtown Longmont consistent with the on-street and off-street facilities studied in the Longmont Parking and Access Study completed in 2016, as outlined in Exhibit 1. The study area will be expanded to include the addition of the Roosevelt Park Apartments garage. Kimley-Horn will utilize the inventory developed as part of the 2016 study as a base, and will work with LDDA to incorporate updates to the inventory that have occurred since the 2016 study. One such change that will be incorporated is the recent on-street time restrictions implemented in September 2017.

Data will be collected on a typical Thursday and a Saturday occurring in the same week. Data collection is anticipated to occur in late October or early November with specific dates to be coordinated with LDDA staff and scheduled upon receipt of Notice to Proceed. One (1) Kimley-Horn staff member will perform the data collection using License Plate Recognition (LPR) technology. The data will be collected between 8:00am and approximately 3:00pm. These times are selected to remain consistent with the 2016 study peak hours of observed utilization.

*Deliverable: Not applicable. Data collected in Task 2 will be analyzed and presented in Task 3 as described below.*

## Task 3. Analysis and Draft Technical Memorandum of Study Results

Kimley-Horn will develop a technical memorandum that includes the results of the LPR data collected in Task 2 with comparative analysis against data collected by Kimley-Horn in the 2016 Study. The technical memorandum will include:

- Occupancy map for each completed run for a total of up to six (6) occupancy maps
- Tabular summary of 2018 versus 2016 observed occupancy by facility
- Graphical summary of 2018 versus 2016 observed occupancy by time of day
- Comparative summary of 2018 versus 2016 observed average duration of stay by facility

*Deliverable: Draft technical memo of study observations and results of analysis in Word format.*

## Task 4. Final Technical Memorandum of Study Results

Kimley-Horn will incorporate one (1) round of minor comments to the draft Technical Memorandum delivered in Task 3 in development of the Final Technical Memorandum of study results. Additional rounds of comments may be provided as an Additional Service at our then current hourly rates.

*Deliverable: Final technical memo of study observation and results of analysis in pdf format*

## ADDITIONAL SERVICES

Kimley-Horn may, upon request and authorization from the Client, provide services in addition to those identified herein. Any items requested that are not specifically outlined in the Scope of Services will be considered additional services and may be provided based on a mutually agreed upon scope, fee and

schedule as authorized by the Client. Additional services we can provide include, but are not limited to, the following:

- Additional data collection days or expansion of the study area
- Movement analysis to identify frequency and potential patterns of vehicles that relocate throughout the day to avoid citation for time limited parking areas
- Transportation Demand Management and multimodal strategy development to reduce parking demand in the Downtown study area
- Recommended parking standards and policies including analysis of residential and commercial parking needs
- Future modeling of parking demands based on land use changes and/or impacts of parking demand management strategies

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

- Updated parking system inventories included in the 2016 Downtown Longmont Parking and Access Study noting where and what changes have occurred within the system
- Updated parking restrictions implemented after the 2016 Study

## SCHEDULE

Kimley-Horn will provide the services as expeditiously as practicable to meet a schedule to be mutually agreed upon.

Notwithstanding any other provision of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the Client, third parties, or governmental agencies.

## FEE AND EXPENSES

Kimley-Horn will perform the services in Tasks 1 - 4 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as LPR equipment rentals, applicable fees, mileage, air travel, and other direct expenses will be billed at 1.10 times cost. All permitting, application, and similar project fees will be paid directly by the Client, as applicable; 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 ten percent (10%) markup, will be immediately issued to and paid by the Client.

Task 1	Project Start-Up, Meetings & Coordination	\$ 1,000
Task 2	LPR Data Collection	\$ 8,500
Task 3	Analysis and Draft Technical Memorandum of Study Results	\$ 5,000
Task 4	Final Technical Memorandum of Study Results	\$ 1,500

Total Lump Sum Labor Fee	\$ 16,000
Estimated Reimbursable Expenses	\$ 5,000
Total Project Fee	\$21,000

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

## CLOSURE

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

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 include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

\_\_\_\_ Please email all invoices to [Kimberlee.McKee@longmontcolorado.gov](mailto:Kimberlee.McKee@longmontcolorado.gov)

\_\_\_\_ 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.

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 your project.

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We appreciate the opportunity to provide these services to you. Please contact me at (719) 284-7274 or [christina.jones@kimley-horn.com](mailto:christina.jones@kimley-horn.com) if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



By: Christina Jones  
Project Manager



Matthew C. Steder, PE  
Vice President

KHAMT  
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**LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY**  
**A Professional Association or Corporation**

\_\_\_\_\_, President/Vice President

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Email Address)

Attest:

\_\_\_\_\_, Secretary/Assistant Secretary

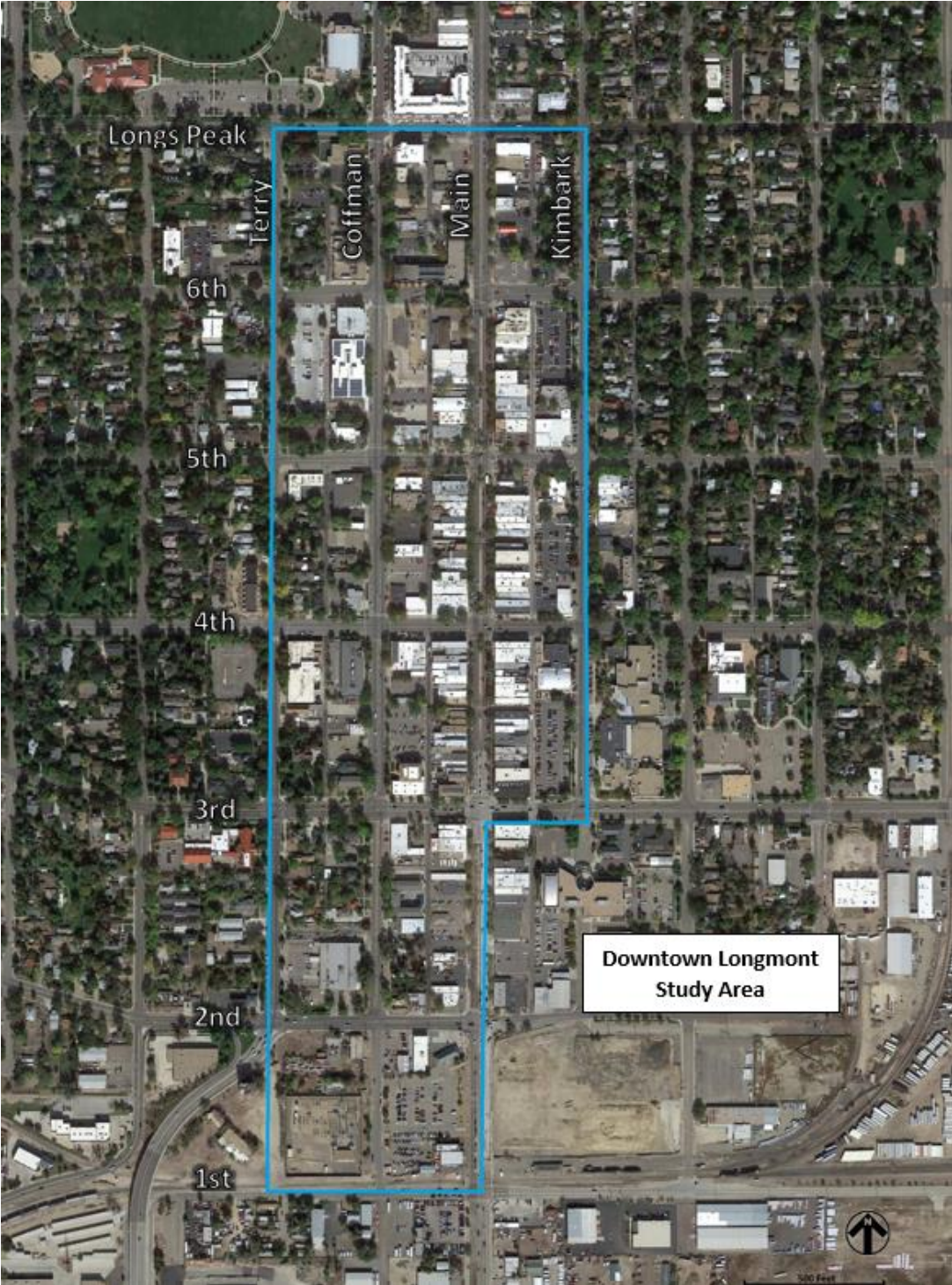
Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_

- Attachment – Exhibit 1
- Attachment – Request for Information
- Attachment – Standard Provisions

Exhibit 1



### 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

#### 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

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

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. 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 1.10 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 the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay 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.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant 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 the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant 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 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.
- (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 and data 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 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 the Consultant's documents, or any reuse of the documents without written authorization 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 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.

(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 the costs of construction and materials, are made solely based on its judgment as a 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, or upon thirty days' written notice for the convenience of the terminating party. 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.

(8) **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 performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, 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 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 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 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. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **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.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant 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.

(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 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.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. 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 prepares construction documents 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) 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 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 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 where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by 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.