



August 15, 2017

Nic Sparacio
Community Development Director
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220-4543

Re: Agreement for Professional Consulting Services
Downtown Master Plan
Manitowoc, Wisconsin

Dear Nic:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Professional Services Agreement (the "Agreement") to the City of Manitowoc ("Client") for the preparation of a downtown master plan for the City.

Based on the City's request for proposals and further discussion and refinement with City staff, Kimley-Horn presents the following Scope of Services.

Scope of Services

Project Management and Organization

- a) Conduct Internal Team Kick-off to organize roles and responsibilities
- b) Conduct a conference or video call with City staff
 - i) Team Project Manager will attend in person to help conduct meeting
 - ii) Team introductions and roles
 - iii) Review of scope
 - iv) Prepare for first immersion visit.
 - (1) Discuss potential stakeholders – City staff responsible for providing names and contact information
 - (2) Identify potential locations for stakeholder interviews
 - (3) Discuss goals of first workshop
 - (4) Identify potential location of the workshop – City staff responsible for securing venue of workshop
 - (5) Discuss content of web-based collaboration tool

- c) Issue data request
 - i) Team to generate full data request of materials for City to provide
 - d) Establish project website
 - i) Website will be WordPress based website with project information, links to project deliverables, link to survey when active, and interactive collaboration tools.
 - ii) City staff responsible for providing link to project website from City web page
 - iii) City staff responsible for providing any desired social media links
 - iv) Kimley-Horn to develop short (1 to 2 minute) video made up of interviews with City staff, elected officials and downtown leaders to convey importance of downtown master plan. Video will be placed on project website and be made available to City for use.
- 2) Initial Data Gathering and Analysis
- a) Existing land use
 - i) City staff will be responsible for collecting and organizing the existing land use and building utilization and occupancy/vacancy data for the study area and providing to Kimley-Horn team in GIS format.
 - ii) Kimley-Horn staff will review data, provide analysis of impacts on downtown master plan and prepare graphic for land use/vacancy.
 - b) Preliminary Market Research
 - i) Working with staff, S.B. Friedman will gather data on recent building permit activity in downtown and in the City
 - ii) Team will conduct preliminary demographic research on the City (growth in population by age and income, etc.)
 - iii) Team will conduct preliminary research on recent investments/newer competitive product (rents, occupancy levels, etc.) to orient ourselves in advance of the first immersion visit
 - c) Zoning analysis
 - i) Review zoning ordinance and downtown zoning districts
 - ii) Identify potential issues or barriers that may be constraining redevelopment
 - iii) Identify opportunities for changes, including increased flexibility, additional or alternate land uses, changes to bull regulations, etc.
 - d) Transit/transportation analysis
 - i) City staff will be responsible for providing existing data and reports for the team's review and use including:

- (1) Existing transportation-related policies and procedures
- (2) Recent transportation enhancements (e.g. sharrows) and community feedback
- (3) Conceptual or programmed capital improvements planned for the study area
- (4) Maritime Metro Transit ridership data for downtown destinations
- (5) Key findings or implementation status updates for existing plans (e.g., Bicycle Facilities Plan, Downtown and River Corridor Master Plan)
- (6) Results to date on Downtown Parking Analysis
- ii) Kimley-Horn will conduct outreach to Wisconsin DOT regarding State controlled roadways in the downtown
- iii) Kimley-Horn will review the data to initially identify opportunities to enhance pedestrian, bicycle, vehicle, and transit accessibility and mobility downtown
- 3) First Immersion Visit
 - a) Staff kick-off and work session (Day 1 – Afternoon)
 - i) Kimley-Horn will lead a half-day working session with City staff to talk through issues, gain better understanding of the downtown history and previous or on-going efforts in the downtown.
 - ii) Conduct a walking tour with staff.
 - b) Citizen Steering Committee (Day 1 – Evening or Day 2 – Morning) (CSC Meeting #1)
 - i) Kimley-Horn will lead a two-hour meeting with the Citizen Steering Committee to introduce the team, provide an overview of the process, and conduct a small group stakeholder session with the committee to understand their priorities and issues.
 - ii) Conduct a separate walking tour with the committee if desired. Could be combined with staff walking tour.
 - c) Stakeholder interviews (Day 2 – Midday and Day 3 Morning)
 - i) Kimley-Horn to provide schedule of team’s open times to City once other meeting times have been finalized
 - ii) City staff to schedule one-on-one and small group sessions based on Kimley-Horn and SB Friedman availability.
 - (1) Property owner/broker interviews to be 30 to 45 minutes in length
 - (2) One-on-one sessions to be 45 to 60 minutes in length
 - (3) Small group sessions to be up to eight people and 90 minutes in length
 - (4) Kimley-Horn team will provide up to 15 hours of available interview time, to be divided up between the various parallel sessions

- d) Community Vision Workshop (Day 2 – Evening)
 - i) Kimley-Horn will organize and conduct a Community Input Workshop
 - (1) Kimley-Horn and SB Friedman will provide an outline of the proposed content for the workshop to City staff for review and comment. The team will refine the approach and content based on input.
 - (2) The content of the workshop will include several interactive stations where participants can provide feedback on a variety of downtown related topics (e.g., favorite locations, what is missing from the downtown, mobility issues).
 - (3) The consultant team will provide a up to three of three members to staff the meeting
 - (4) City staff and/or Bay-Lake Regional Planning Commission with provide a minimum of two additional people to manage the room.
 - (5) Kimley-Horn will provide public notice in the form of a flyer or poster. City staff will be responsible for distribution of the notice
 - (6) Kimley-Horn will update the project website with the time and location of the workshop
 - (7) City staff will be responsible for securing the venue for the workshop
 - (8) Kimley-Horn will provide light refreshments for the workshop
 - (9) Following the workshop, Kimley-Horn will update the project website with materials from the workshop and create a survey or complementary interactive component to collect input from other participants not able to attend the workshop.
 - e) Fieldwork
 - i) Kimley-Horn team will conduct fieldwork throughout the visit to observe conditions first hand and collect additional observations.
 - f) Document
 - i) Prepare a brief memo to City staff and the Citizen Steering Committee summarizing the outcomes of the first visit.
- 4) Detailed Data Gathering and Analysis
- a) Market analysis — Conduct supplemental market research and analysis on specific sites and/or real estate products. Products to be analyzed include: market rate rental apartments, retail, medical office, for sale condominiums and/or townhomes.
 - i) Site analyses – access, adjacencies
 - ii) Competitive Supply research – Using CoStar, REIS and other sources, we will gather data on the locations, pricing and performance of newer product

- iii) Demand research
 - (1) Building on the preliminary demographic research, SB Friedman will identify growth cohorts that may support additional downtown housing
 - (2) Based on interviews with brokers and/or potential tenants, SB Friedman will identify potential demand for additional medical office and/or retail downtown
 - b) Redevelopment opportunity analysis
 - i) Develop methodology for identifying properties susceptible to change within the downtown.
 - ii) Based on methodology, create graphic map identifying sites susceptible to change
 - iii) Land use demand projection
 - (1) Prepare a table that identifies a range of potential land use demand quantities for each of the sites susceptible to change.
 - (2) Table will identify potential land uses, and reasonable development levels based on zoning and stakeholder input and compare them to existing development.
 - c) Urban design analysis
 - i) Create graphics and analysis of the following conditions:
 - (1) Building heights – using City provided GIS data
 - (2) Grid and block patterns – using City provided GIS data
 - (3) Locations of surface parking – using City provided GIS data
 - (4) Quality and consistency of urban street walls – using City provided GIS data and team field analysis
 - d) Multimodal transportation analysis
 - i) Synthesize input collected from stakeholders and community at large regarding mobility and user experience
 - ii) Update initial understanding of downtown mobility opportunities and constraints
 - iii) Develop list and graphic map of potential improvements to enhance connectivity, accessibility, and mobility.
 - e) Prepare briefing book of graphics, findings and analysis for City staff and Citizen Advisory Committee review and use in informing future tasks.
 - f) Participate in a video conference with the Citizen Steering Committee to discuss progress (CSC Meeting #2)
- 5) Alternative Scenarios Development

- a) Downtown-wide Alternatives
 - i) Vision statement
 - (1) Using input collected during the first visit, develop a list of stated key goals and values for the downtown
 - (2) Prepare a draft vision statement encapsulating the goals and values.
 - ii) Proposed land use
 - (1) Develop up to three proposed overall land use strategies for downtown
 - (2) Strategies will be conveyed through land use “bubble” diagrams and a supporting narrative
 - (3) Strategies will test alternate options for adjusting zoning and land use policy within the downtown
 - iii) Catalytic site exhibit
 - (1) Prepare an exhibit identifying and recommended ranking of the sites susceptible to change
 - iv) Connectivity
 - (1) Develop a connectivity plan that addresses opportunities to enhance the existing road network, bike facilities, and pedestrian routes.
 - v) Branding and signage concepts
 - (1) Develop a minimum of two concepts for downtown branding, expressed through a combination of typeface, color and graphic elements
 - (2) Using the downtown branding concepts, develop a minimum of two concepts for:
 - (a) Downtown entry signage or monuments
 - (b) Typical vehicular wayfinding signage
- b) Detailed Alternatives Development
 - i) Catalytic Sites
 - (1) SB Friedman, using market research, site research and analyses, and community input, will identify potential supportable site programs and provide input on the most appropriate sites.
 - (2) Kimley-Horn will prepare alternative development concepts for the three to five highest-ranked catalytic sites, using input from SB Friedman. Initial site diagrams and site data for each concept will be prepared.
 - (3) SB Friedman will provide insight on potential sequencing of near-term and short-term projects for the catalytic sites.

- (4) Conduct a video conference with City staff to present draft vision statement, analysis to date, review the initial concepts, and collect input and suggestions on refinement of concepts
 - (5) Refine concepts based on staff input.
 - (6) Conduct a meeting with the Citizen Steering Committee to present draft vision statement, analysis to date, review the refined concepts, and collect feedback (CSC Meeting #3)
 - (7) Finalize the concepts based on input received from City staff and the Citizen Steering Committee. Prepare one three-dimensional graphic for each of the sites.
- 6) Second Immersion Visit
- a) In advance of the team's visit
 - i) Kimley-Horn and SB Friedman will provide an outline of the proposed content for the workshop to City staff for review and comment.
 - ii) Conduct a video conference with City staff to review the draft Powerpoint and workshop materials, confirm venue, and discuss announcements and notices.
 - b) Community Workshop (Day 1 – Evening)
 - i) Kimley-Horn will organize and conduct a Community Visioning Workshop
 - ii) Workshop will include a presentation of work to date, analysis, findings and recommendations
 - iii) Workshop will include either break-out tables or interactive stations, as decided by discussions between consultant team and City staff
 - (1) Break-out table activities or interactive stations will be designed to collect feedback on:
 - (a) The vision statement
 - (b) Downtown-wide alternatives
 - (c) Presentation of catalytic sites selection process
 - (d) Review of preferred catalytic sites
 - (e) Collection of input on prioritization and phasing of recommendations
 - iv) The consultant team will provide up to three members to staff the meeting
 - v) City staff and/or Bay-Lake Regional Planning Commission will provide a minimum of two additional people to manage the room and help facilitate table discussions.
 - vi) Kimley-Horn will provide public notice in the form of a flyer or poster. City staff will be responsible for distribution of the notice

- vii) Kimley-Horn will update the project website with the time and location of the workshop
 - viii) City staff will be responsible for securing the venue for the workshop
 - ix) Kimley-Horn will provide light refreshments for the workshop
 - x) Following the workshop, Kimley-Horn will update the project website with materials from the workshop and create a survey or complementary interactive component to collect input from other participants not able to attend the workshop and collected additional follow-up input on the prioritization and phasing of recommendations.
- c) Staff work session (Day 2 – Morning)
 - i) Conduct a meeting with staff to debrief and discuss the results of the workshop. Develop a recommended approach to next steps. Focus on discussion and refinement of the approach to catalytic sites.
 - d) Drop-in Input Time (Day 2 – Midday)
 - i) In the lobby of City Hall, vacant storefront in the downtown, or other venue secured by the City, the consultant team will display materials from the workshop and provide staff to answer questions and collect feedback from participants.
 - e) Citizen Steering Committee (Day 2 – Afternoon) (CSC Meeting #4)
 - i) Meet with the steering committee to discuss the results of the workshop, solicit feedback and reaction to the event, and discuss next steps.
 - f) Document
 - i) Prepare a brief memo to City staff and the Citizen Steering Committee summarizing the outcomes of the second visit.
- 7) Implementation Strategies
- a) Prepare a final vision statement for the downtown including photos and images to help illustrate the overall desired vision.
 - b) Develop a series of draft recommendations covering the overall downtown, specific catalytic sites, and other initiatives developed. Incorporate recommended parking strategies identified through the ongoing downtown parking study where appropriate.
 - c) Organize the draft recommendations into a 10-year action plan that will include the following:
 - i) A matrix defining priority/sequencing, timeline, roles and responsibilities, potential partnerships, and other pertinent details for each recommendation.
 - ii) A graphic identifying the locations of the top recommendations
 - iii) A list organizing the key initial implementation strategies for immediate attention, mid-range, and long-term action.

- d) Kimley-Horn team will develop a list of potential funding mechanisms and finance strategies and identify which recommendations they are applicable to.
 - e) Participate in a video conference with the Citizen Steering Committee to discuss progress (CSC Meeting #5)
- 8) Final document Preparation
- a) Collect final downtown-wide and site-specific strategy and recommendations into a draft document that conveys and illustrates the vision and approach to the downtown.
 - b) Prepare three to five stand-alone marketing pieces for the key catalytic sites, which will include plan and perspective graphics, and key site data
 - c) Provide the documents to City staff and conduct a video conference to review and discuss
 - d) Refine the draft deliverables based on City staff input.
 - e) Provide refined deliverables to City staff for distribution to the Citizen Steering Committee. Conduct a video conference with the committee to collect input on the final deliverables. (CSC Meeting #6) Staff will be responsible for providing final direction on which committee comments should be incorporated into the final documents.
 - f) Make final revisions and provide final digital files (including GIS files) to City staff.
 - g) Present the plan at a Committee of the Whole meeting. Prior to the presentation, on the same day, create a display in the lobby of City Hall or in the Council Chambers with display boards highlighting key elements of the plan and be present to answer any questions from the public.

Additional Services

Additional meetings or revisions beyond those listed above, major site plan changes, and/or additional renderings or photo-simulations will be completed as Additional Services.

Any services not specifically provided for herein, as well as changes in the scope of proposed services and revisions requested by the Client after substantial completion of the proposed services, will be considered Additional Services and will be performed at our then current hourly rates. Potential services not addressed in this Agreement, but are not limited to:

1. Preliminary and Final Engineering Design Services
2. Landscape & Landscape Restoration Plans
3. Lighting or Electrical Plans
4. Irrigation Services
5. Environmental Engineering Services

6. Geotechnical Engineering Services
7. Storm Water Management Design
8. Operation and Maintenance Plan for BMP's
9. Easement Documents and/or Coordination
10. Platting, Construction Staking or Survey Services
11. Tree Survey and/or Tree Protection Plan
12. Dry Utility Design
13. Sanitary Pump Station or Water Booster Pump Design
14. SWPPP Monitoring and/or Observation Logs
15. Detailed traffic and/or Parking Study
16. Automobile, bicycle or pedestrian counts
17. Pad Certification Assistance
18. Pump Station or Retaining Wall Design
19. Any services not specifically mentioned in the Scope of Services above

Fees and Invoicing

Kimley-Horn will perform the services in Tasks 1 – 8 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

1. Project Management & Organization	\$8,810.00
2. Initial Data Gathering & Analysis	\$5,330.00
3. First Immersion Visit	\$24,940.00
4. Detailed Data Gathering & Analysis	\$4,500.00
5. Alternative Scenarios Development	\$13,750.00
6. Second Immersion Visit	\$12,230.00
7. Implementation Strategies	\$3,540.00
8. Final document Preparation	\$6,860.00
 Total Lump Sum Fee	 \$79,960.00

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

Closure

In addition to the matters set forth herein, our agreement shall include, and shall be subject to the Standard Provisions attached hereto and hereby incorporated herein. As used in the Standard Provisions, the term “the Consultant” refers to Kimley-Horn and Associates, Inc. The term “the Client” shall refer to City of Manitowoc

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 _____

_____ Please copy _____

If you concur in the foregoing and wish to direct us to proceed with the aforementioned services, please execute of this letter Agreement in the space provided, and return a copy to us. Execution of this Agreement formalizes our working arrangement.

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.

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

Very truly yours,

Kimley-Horn and Associates, Inc.



Senior Project Manager



Tim Sjogren, P.E., PTOE
Associate

Attachments: Standard Provisions

ACCEPTED:

City of Manitowoc

A Municipality

By:

(Date)

(Print or Type Name)



(Email Address)

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 in Client's possession 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 30 days of receipt. The Client shall also pay any applicable sales tax. Interest will be added to accounts not paid within 30 days at 4% over the prime rate of U.S. Bank N.A. 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 30 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 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 from such reuse. 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.

Consultant shall purchase and maintain the following insurance policies: (i) commercial general liability insurance policy with a minimum combined single limit of One Million Dollars (\$1,000,000); (ii) automobile liability insurance policy for all owned, non-owned, and hired vehicles with a minimum combined single limit per occurrence of One Million Dollars (\$1,000,000); and (iii) a workers' compensation insurance policy providing statutory benefits. Consultant shall supply Client with a Certificate of Insurance listing the Chicago Bears Football Club, Inc. (1920 Football Drive, Lake Forest, IL 60045) as an Additional Insured on each of these policies within ten (10) days of execution of this Agreement. Consultant will be obligated to provide written notice to Client of any material change to these policies of insurance within ten (10) days of such change. Each policy endorsement shall waive all rights of subrogation that the insurer may have against Client and the entities identified by Client. In the event that Consultant elects to perform a portion of the Services through the use of a subcontractor, Consultant shall require Subcontractor to comply with all insurance requirements contained in this paragraph.

(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.

In addition, the total liability, in the aggregate, of the Client and the Client's officers, directors, employees, and agents to the Consultant or to anyone claiming by, through or under the Consultant, for any and all claims, losses, costs or damages whatsoever arising out of this Agreement from any cause or causes, including but not limited to breach of contract or any warranty, express or implied, of the Client or the Client's officers, directors, employees and agents, shall not exceed the total unpaid balance in fees owed to the Consultant under this Agreement.

(11) Mutual Waiver of Consequential Damages/and Indemnification. In no event shall either party be liable

to the other for any punitive or indirect damages. Each party shall indemnify, defend and hold the other party harmless from their negligent and intentional acts causing damages, injuries, or losses to the other party or third party.

(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 nonbinding mediation in accordance with the Mediation Procedures of a mediator mutually selected by the parties as a condition precedent to litigation. Any mediation or civil action by Client/or Consultant 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 except to an assignee which is controlled by Client and takes title to the subject property. 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 and insurance identified in the contract, regardless of whether the services are provided by in-house employees,

contract employees, or independent subconsultants.

(17) **Confidentiality.** In connection with the performance of this Agreement, Consultant understands that it may be exposed to confidential information, material and data including but not limited to design plans, construction plans, traffic studies, parking studies, photographs, drawings, blue prints, notes, as well as meeting discussions relating to the planned Museum and 18th Street Garage. The Client consents to the use 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. Consultant agrees to otherwise keep such information strictly confidential and, except as required by law, shall not release or divulge such information or any of the terms or conditions of this Agreement without the prior written consent of Client.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Illinois. 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.