

CLERK'S CONTRACT and AGREEMENT COVER PAGE

Legistar File ID#: 2013-0681

Innoprise Contract #: C13-0114

Year: 2014

Amount: \$50,000.00

Department: Kurt Corrigan - DS

Contract Type: Professional Engineering Services

Contractors Name: Kimley-Horn and Associates, Inc.

Contract Description: Main Street District Traffic/Parking Consultant
C14-0096 2014-0535 additional work \$4500
C15-0015 2015-0050 Amend#2 add'l work \$30,000
C15-0075 2015-0360 Amend #3 add'l work \$47,000
C15-0080 2015-0440 Addendum A UCMC Parking Deck \$85000
C15-0129 2015-0785 Add A.1 UCMC Parking Deck \$77000
C16-0055 2015-0785 Add B UCMC Parking Deck \$506,900
C18-0052 Add C MEP Engineering Study Vacant Space at
Parking Deck \$9450
C18-0080 Add D MEP Design Vacant Space at MST Parking
Deck \$18,000



Letter of Transmittal

Date: May 31, 2018

To: M. Anees Rahman, P.E.
Regional Vice President
Kimley-Horn
1001 Warrenville Road, Ste 350
Lisle, Illinois 60532
P: 630-487-5550
E: Anees.Rahman@kimley-horn.com

From: Denise Domalewski
Purchasing & Contract Administrator
Village of Orland Park
14700 S. Ravinia Ave.
Orland Park, IL 60462
P: 708-403-6173 | F: 708-403-9212
E: ddomalewski@orlandpark.org

Dear Mr. Rahman,

Enclosed is the signed proposal for MST Parking Structure MEP Design on the vacant space and Addendum D for the work. Please sign the addendum and return it to me at your earliest convenience. You may proceed with the work.

Regards,

Denise Domalewski

ADDENDUM D to
Main Street District Traffic/Parking Consultant Contract

Dated
December 4, 2013

Between
The Village of Orland Park, Illinois ("VILLAGE") and Kimley-Horn and Associates, Inc.
("CONTRACTOR")

WHEREAS, on December 4, 2013, a certain Agreement regarding Main Street District Traffic/Parking Consultant between the Village and the Contractor was executed (hereinafter referred to as the "Agreement"); and,

WHEREAS, on August 27, 2014, December 18, 2014 and June 5, 2015, a certain Agreement regarding Main Street District Traffic/Parking Consultant between the Village and the Contractor was amended (hereinafter referred to as "Amendments 1-3"); and

WHEREAS, on July 23, 2015 and December 9, 2015, a certain Agreement regarding Main Street District Traffic/Parking Consultant between the Village and the Contractor was amended (hereinafter referred to as Addendum A and A.1); and

WHEREAS, on April 21, 2016 a certain Agreement regarding Main Street District Traffic/Parking Consultant between the Village and the Contractor was amended (hereinafter referred to as Addendum B); and

WHEREAS, on April 17, 2018 a certain Agreement regarding Main Street District Traffic/Parking Consultant between the Village and the Contractor was amended (hereinafter referred to as Addendum C); and

WHEREAS, the Village wishes to modify the scope of the work.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. In the event of any conflict or inconsistency between the provisions of this Addendum and the Agreement and subsequent amendments and addenda, the provisions of this Addendum shall control.
2. **SECTION 1: THE CONTRACT DOCUMENTS** of said Agreement shall be amended to include "Amendment D dated May 31, 2018 (proposal dated May 18, 2018)".
3. All of the other terms, covenants, representations and conditions of said Agreement, Amendments 1-3, Addenda A and A.1, B and C not deleted or amended herein shall remain in full force and effect during the effective term of said Agreement.
4. This Addendum may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

ADDENDUM D to
Main Street District Traffic/Parking Consultant Contract

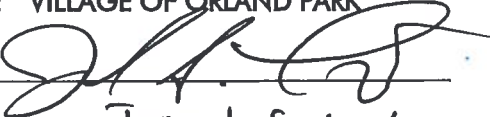
Dated
December 4, 2013

Between
The Village of Orland Park, Illinois ("VILLAGE") and Kimley-Horn and Associates, Inc.
("CONTRACTOR")

This Addendum, made and entered into effective the **31st day of May, 2018**, shall be attached to and form a part of the Agreement dated the 4th day of December, 2013 and shall take effect upon signature below by duly authorized agents of both parties.

AGREED AND ACCEPTED


FOR: VILLAGE OF ORLAND PARK

By: 
Print Name: Joseph S. LaMare

Title: Village Manager

Date: 6/4/18

FOR: KIMLEY-HORN AND ASSOCIATES, INC.

By: 
Print Name: M. Anees Rahman

Title: Project Manager

Date: 5/31/18



May 18, 2018

Mr. William Cunningham
Assistant to the Director
Public Works
Village of Orland Park
15655 S. Ravinia Avenue
Orland Park, IL. 60462

Re: Proposal for Main Street Triangle Parking Structure
Vacant Restaurant Space – MEP Design

Dear Mr. Cunningham:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the Village of Orland Park ("Client") for providing an MEP Design for the Vacant Restaurant Space.

Project Understanding:

The Vacant Restaurant Space (Space) is currently unoccupied and unfinished. The Space is currently boarded up with plywood where doors or windows would be installed in the future. The Space also does not have a concrete floor – gravel only. Existing walls are bare, unsealed concrete. The ceiling is structural steel and metal decking. The Space is not a conditioned area and has no existing utilities or HVAC equipment. It is the desire of the Client to provide minimal HVAC systems to keep the facility from experiencing any adverse conditions due to the space being unoccupied and unconditioned. The Client proposes to have the Consultant prepare a MEP construction document based on the study prepared by Kimley-Horn, dated May 4, 2018.

Scope of Services:

The Client is requesting Kimley-Horn to provide a complete set of MEP Construction Document to be used for bid solicitation and construction.

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

Site Inspections:

- A site visit to assess and coordinate the proposed unit locations.

Design:

- 75% MEP Construction Document will include the followings:
 - Mechanical equipment general equipment drawing.
 - Air distribution layout
 - Equipment schedule, sequence of operations, specifications, and unit detail.
 - Electrical plan
- Final MEP construction document will be prepared after the 75% construction document review meeting and include the followings:
 - Final Mechanical equipment general equipment drawing.
 - Final Air distribution layout
 - Final Equipment schedule, sequence of operations, specifications, and unit detail. The specifications will be on the drawing.
 - Final Electrical plan

Exclusions:

- Construction Phase Services are not included in the current scope and may be added at a later date.

Schedule:

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

Design – 75% of the MEP within 2 weeks after NTP. And 100% of the Construction Document 1 week after the review meeting.

Construction Phase Services – TBD at a later date

Fee and Expenses

Kimley-Horn will perform the services listed in Scope of Services based on a Time and Material basis with a Not-to-Exceed (T&M w/ NTE) amount noted below. All permitting, application, and similar project fees will be paid directly by the Client.

MEP Design: \$18,000 T&M w/NTE

Invoices will be sent out monthly. Payment should include the invoice number and Kimley-Horn project number. Payment shall be made per the Local Government Prompt Payment Act (50 ILCS 505/).

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to the attached standard provisions.

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 accountspayable@orlandpark.org
Please copy bcunningham@orlandpark.org (Bill Cunningham)

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

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.

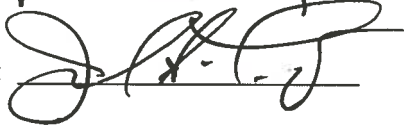


By: M. Anees Rahman, P.E.
Regional Vice President

Village of Orland Park

By: Joseph S. LaMorte

Signature:



Title: Village Manager

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client

only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

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

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

(9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

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

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

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

(15) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall the 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. The 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 Commonwealth of Virginia. 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.