

**Red-line/Strikeout Version**  
**Traffic Study Consultant Agreement**



~~September 20, 2016~~ ~~September 12, 2016~~

Ms. Mary Gibbs, AICP  
Community Development Director  
Village of Estero  
9401 Corkscrew Palms Circle  
Estero, Florida 33928

**Re: Letter Agreement for Transportation Engineering Services  
Village of Estero Area-Wide Traffic Study  
Village of Estero, Florida**

Dear Ms. Gibbs:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant") is pleased to submit this scope of services to the Village of Estero ("Client") to provide professional services to conduct the Area-Wide Traffic Study in the Village of Estero, Florida. Our project understanding, scope of services, and fees follow.

#### **Scope of Services**

##### **Task 1 – Site Observations**

Kimley-Horn will conduct a field review to observe general physical and operating roadway and traffic characteristics of the roadway network (i.e., number and type of lanes) at the following study area roadway segments:

- Corkscrew Road, east of Bella Terra at Village of Estero Limits
- Williams Road, between Via Coconut Point and Three Oaks Parkway
- Via Coconut Point, south of Corkscrew Road
- Via Coconut Point, north of Coconut Road
- River Ranch Road, south of Corkscrew Road
- Trailside Drive, between US-41 and Poinciana Avenue
- Poinciana Avenue, between Trailside Drive and Broadway West

Kimley-Horn will conduct a field review to observe roadway and traffic characteristics of the roadway network at the following study area intersections:

- Corkscrew Road & Bella Terra Boulevard
- Corkscrew Road & Cypress Shadows Boulevard
- Corkscrew Road & Wildcat Run Drive
- Corkscrew Road & Palermo Lake Court
- Corkscrew Road & Grande Oaks Way

- Corkscrew Road & Stoneybrook Golf Drive
- Corkscrew Road & Grande Oaks Shoppes Boulevard
- Corkscrew Road & Ben Hill Griffin Parkway
- Corkscrew Road & Miromar Outlets Boulevard
- Corkscrew Road & I-75 Northbound Ramps
- Corkscrew Road & I-75 Southbound Ramps
- Corkscrew Road & Corkscrew Woodlands Boulevard
- Corkscrew Road & Three Oaks Parkway
- Corkscrew Road & River Ranch Road & Country Creek Drive
- Corkscrew Road & Via Coconut Point/Sandy Lane
- Corkscrew Road & US-41
- Estero Parkway & Ben Hill Griffin Parkway
- Estero Parkway & Three Oaks Parkway
- Broadway & US-41
- Coconut Road & Via Coconut Point
- Coconut Road & Three Oaks Parkway
- Williams Road & Three Oaks Parkway
- Williams Road & US-41
- Pelican Sound Drive & US-41
- Estero Parkway & US-41
- Marsh Landing Boulevard & US-41

The observations are intended to obtain a general understanding of traffic patterns based on readily apparent conditions.

### **Task 2 – Project Kickoff Meeting**

Kimley-Horn will prepare for and attend one (1) project Kickoff meeting with Village of Estero staff. In advance of the kickoff meeting, Kimley-Horn will coordinate with the Village to prepare the meeting agenda including goals, participants, and materials. Observations from the site observations will be discussed at the Kickoff meeting.

Kimley-Horn will discuss with Village staff the specific transportation methodology for the Area-Wide Traffic Study. The methodology will include a list of up to ~~ten-thirteen (1013)~~ locations during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to twenty ~~two-six (226)~~ locations during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour to include in the study and analysis. The methodology will be summarized in a draft memorandum and submitted to the Village staff for up to one (1) round of review and comment. The memorandum will then be updated based on Client comments.

### **Task 3 – Safety Review**

Kimley-Horn will retrieve the most recent five years of crash data from Signal Four Analytics to encompass the Corkscrew Road segment and the other intersections listed in Task 1. This task will include the review of up to 500 crashes. The crash data will be tabulated to identify trends in crash frequency, crash type, and other relevant contributing circumstances such as lighting condition,

pavement condition, and time of day. A summary of crash trends will be provided.

Only extracted crash data records will be reviewed; the individual hard copy narratives will not be reviewed as a part of this task. Specific emphasis will be placed on identifying crashes related to access management; however, it should be noted that it is not possible to differentiate between a left-turn crash (involving opposing parallel approaches) and an angle crash (involving perpendicular approaches) without reading the narratives. Review of the hard copy narratives may be assigned as an additional service in order to categorize and properly mitigate for access-related crashes.

#### **Task 4 – Area-Wide Synchro Model**

Based on the results of Task 2 and based upon signal timing and phasing data to be provided by the Client, Kimley-Horn will create a Synchro network for the study area roadways and intersections identified in Task 2.

#### **Task 5 – Interactive Growth Model**

Metro Forecasting Models, LLC (MFM) will develop and refine the Interactive Growth Model™ for the 41 Traffic Analysis Zones (TAZs) in the Village of Estero, and will provide the following updated TAZ information for 2016, 2020, 2025, 2030, 2035, 2040:

- The number of single family and multifamily units including vacancy rates and household size and the rate of change over time;
- The permanent population and/or the peak seasonal population;
- The demand and supply of commercial space in acres, square feet of building area, and number of employees; and
- The demand and supply of industrial development in square feet of building area and number of employees.

#### **Task 6 – Future Traffic Volume Development**

Kimley-Horn will perform one (1) unaltered run of the Existing plus Committed (E+C) Lee County Metropolitan Planning Organization (MPO)/Collier County MPO model. Based on the update TAZ data provided by MFM as identified in Task 5, Kimley-Horn will update the Estero TAZ data and conduct up to one (1) model run for the 2040 Lee County MPO/Collier County MPO model (Cost Feasible Plan).

Kimley-Horn will develop an annual corridor growth rate for the study corridors based upon the two FSUTMS model runs.

#### **Task 7 – Data Collection**

Kimley-Horn will utilize a traffic count subconsultant to undertake up to ~~ten-thirteen~~ (103) traffic counts at up to ~~ten-thirteen~~ (103) locations during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to ~~twenty-two-six~~ (226) traffic counts at up to ~~twenty-two-six~~ (226) locations during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour. 24-hour tube counts will also be collected at up to ~~five-seven~~ (57) locations. It is expected that data collection will occur between ~~January 1~~ February 15~~8~~, 2017 and ~~April 18~~ March 14, 2017 which is the peak season for Lee County based on the Florida Department of

Transportation (FDOT) 2015 Peak Season Factor Category Report.

Any additional traffic data collection (beyond the ~~10-13~~ a.m. peak hour and ~~22-26~~ p.m. peak hour study locations), including additional count locations, time periods, or type of counts (i.e., mid-day peak-hour, 24-hour directional counts, delay studies, etc.), as required by the Client, will be considered additional services as indicated in the Additional Services section of this Agreement.

#### **Task 8 – Area-Wide Traffic Operations Analysis**

Kimley-Horn will perform an a.m. and p.m. peak hour traffic operations analysis for the Village. This analysis will include the following efforts:

- Forecast traffic volumes at the study area roadways and intersections identified in Task 2 to a buildout year based on annual growth rates identified in Task 6;
- Develop future turning movement counts at up to ~~ten-thirteen~~ (103) intersections during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to twenty-~~two-six~~ (2226) intersections during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour ;
- Calculate level of service for roadway and intersections;
- Evaluate/recommend appropriate intersection control and lane geometry;
- Prepare a draft report summarizing the results of the traffic analysis; and
- Prepare a final report that incorporates up to two rounds of Village staff comments of the draft report.

Kimley-Horn will prepare for and attend up to one (1) meeting with Village of Estero Council to present the findings of the Area-Wide Traffic Study.

Conceptual layouts or design of potential modifications, as required by the Client, will be considered additional services as indicated in the Additional Services section of this Agreement.

#### **Additional Services**

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

- Stakeholder interviews
- Presentations
- Additional review of project documentation provided by others
- Intersection or roadway analysis as dictated by the Client
- Additional data collection as dictated by the Client
- Additional transportation engineering services as dictated by the Client
- Attendance at meetings and/or hearings as dictated by the Client

**Schedule**

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

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**Fee and Billing**

Kimley-Horn will perform the services in Tasks 1 – 8 for a total lump sum fee of \$7176,535452. Individual task amounts are informational only.

Tasks	Subs	Task Total
<b>Project Management</b>		\$ 2,102
<b>Task 1.0 - Site Observations</b>	\$ -	\$ 6,448,855
<i>Site Observations</i>		\$ <del>1,960,096</del>
<i>Documentation &amp; Preliminary Recommendations</i>		\$ <del>4,383,655</del>
<b>Task 2.0 - Project Kickoff Meeting</b>	\$ -	\$ 1,950
<i>Kickoff Meeting</i>		\$ 1,014
<i>Meeting Summary &amp; Summary of Next Steps</i>		\$ 936
<b>Task 3.0 - Safety Review</b>	\$ -	\$ 5,962
<i>Safety Review</i>		\$ 5,962
<b>Task 4.0 - Area-Wide Synchro Model</b>	\$ -	\$ 5,7436,402
<i>Synchro Model</i>		\$ <del>6,4025,743</del>
<b>Task 5.0 - Interactive Growth Model</b>	\$ 10,000	\$ 10,000
<i>Sub Consultant - Interactive Growth Model</i>	\$ 10,000	\$ 10,000
<b>Task 6.0 - Future Traffic Volume Development</b>	\$ -	\$ 11,344
<i>Local Agency Coordination - Approvals</i>		\$ 1,459
<i>FSUTMS Model Refinement and Model Runs</i>		\$ 8,530
<i>Growth Rate Calculations</i>		\$ 1,355
<b>Task 7.0 - Data Collection</b>	\$ <del>9,42012,120</del>	\$ <del>9,42012,120</del>
<i>Sub Consultant - Data Collection</i>	\$ <del>9,42012,120</del>	\$ - <del>9,42012,120</del>
<b>Task 8.0 - Area-Wide Traffic Operations Analysis</b>	\$ -	\$ 18,56619,717
<i>Operational Analysis</i>		\$ <del>6,7217,662</del>
<i>Summary of Operations</i>		\$ 1,109
<i>Report &amp; Recommendations</i>		\$ <del>4,163-372</del>
<i>Final Meeting &amp; Response to Comments</i>		\$ 2,209
<i>Final Report &amp; Final Recommendations</i>		\$ 2,588
<i>Presentation to Council</i>		\$ 1,777
<b>Kimley-Horn Fee</b>		\$ <del>5254,115332</del>
<b>Sub Consultant - Interactive Growth Model Fee</b>		\$ 10,000

Sub Consultant - Data Collection Fee	\$ -9,42012,120
Total Fee	\$ 761,535452

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 be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to the **Village of Estero**.

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

\_\_\_ Please email all invoices to \_\_\_\_\_@\_\_\_\_\_.

\_\_\_ Please email invoices to \_\_\_\_\_@\_\_\_\_\_. AND provide a hard copy to the address listed above (please note below if it should be to some else’s attention or an alternative address).

\_\_\_ Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to some else’s attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

|

We appreciate the opportunity to perform this service for you. Please contact me if you have any questions.

Very truly yours,

*Danni Jorgenson*

Danni Jorgenson, P.E.  
Project Manager  
Transportation Engineer



David Campbell, P.E.  
Senior Vice President

Attachments: Standard Provisions

**Village of Estero**

By:

\_\_\_\_\_, Village Manager

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

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

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

Attest:

\_\_\_\_\_, Village Clerk

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



## 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	<input type="checkbox"/>

### 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'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) 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 Ownership 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. All materials, reports, data, and other documents developed by Consultant or otherwise generated pursuant to this Agreement shall remain the exclusive property of the Village, and Consultant shall surrender them to the Village upon request of termination of this Agreement. All documents prepared pursuant to this Agreement are subject to Florida's Public Records Law. Refusal of the Consultant to allow public access to such records as required by such law shall constitute ground for unilateral cancellation of this Agreement by the Village; however, this Agreement shall not be terminated if the Consultant is directed by the Village's project manager, to withhold access to said document, because it is confidential or exempt from disclosure pursuant to Federal or Florida law.~~

(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 in the amount of \$2,000,000 per claim, 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.** ~~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 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.

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

**(15) Construction Phase Services.**

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

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

**(16) No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

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

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

(19) Indemnification. IT IS AGREED THAT PURSUANT TO FLORIDA STATUTE 558.0035, INDIVIDUAL EMPLOYEES HIRED BY CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE IN PERFORMING SERVICES UNDER THIS CONTRACTThe consultant hereby indemnifies and holds harmless the Villages and its agents and employees, from any claim, loss, liability or demand arising out of or relating to any negligent act, omission or misconduct by the consultant in the performance of services under this Agreement. Indemnification shall comply with F.S. 725.08 for professional services.

(20) IT IS AGREED THAT PURSUANT TO FLORIDA STATUTE 558.0035, INDIVIDUAL EMPLOYEES HIRED BY CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE IN PERFORMING SERVICES UNDER THIS CONTRACT.

**Clean Version**  
**Traffic Study Consultant Agreement**



September 26, 2016

Ms. Mary Gibbs, AICP  
Community Development Director  
Village of Estero  
9401 Corkscrew Palms Circle  
Estero, Florida 33928

**Re: Letter Agreement for Transportation Engineering Services  
Village of Estero Area-Wide Traffic Study  
Village of Estero, Florida**

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- Williams Road, between Via Coconut Point and Three Oaks Parkway
- Via Coconut Point, south of Corkscrew Road
- Via Coconut Point, north of Coconut Road
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Kimley-Horn will conduct a field review to observe roadway and traffic characteristics of the roadway network at the following study area intersections:

- Corkscrew Road & Bella Terra Boulevard
- Corkscrew Road & Cypress Shadows Boulevard
- Corkscrew Road & Wildcat Run Drive
- Corkscrew Road & Palermo Lake Court
- Corkscrew Road & Grande Oaks Way

- Corkscrew Road & Stoneybrook Golf Drive
- Corkscrew Road & Grande Oaks Shoppes Boulevard
- Corkscrew Road & Ben Hill Griffin Parkway
- Corkscrew Road & Miromar Outlets Boulevard
- Corkscrew Road & I-75 Northbound Ramps
- Corkscrew Road & I-75 Southbound Ramps
- Corkscrew Road & Corkscrew Woodlands Boulevard
- Corkscrew Road & Three Oaks Parkway
- Corkscrew Road & River Ranch Road & Country Creek Drive
- Corkscrew Road & Via Coconut Point/Sandy Lane
- Corkscrew Road & US-41
- Estero Parkway & Ben Hill Griffin Parkway
- Estero Parkway & Three Oaks Parkway
- Broadway & US-41
- Coconut Road & Via Coconut Point
- Coconut Road & Three Oaks Parkway
- Williams Road & Three Oaks Parkway
- Williams Road & US-41
- Pelican Sound Drive & US-41
- Estero Parkway & US-41
- Marsh Landing Boulevard & US-41

The observations are intended to obtain a general understanding of traffic patterns based on readily apparent conditions.

### **Task 2 – Project Kickoff Meeting**

Kimley-Horn will prepare for and attend one (1) project Kickoff meeting with Village of Estero staff. In advance of the kickoff meeting, Kimley-Horn will coordinate with the Village to prepare the meeting agenda including goals, participants, and materials. Observations from the site observations will be discussed at the Kickoff meeting.

Kimley-Horn will discuss with Village staff the specific transportation methodology for the Area-Wide Traffic Study. The methodology will include a list of up to thirteen (13) locations during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to twenty-six (26) locations during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour to include in the study and analysis. The methodology will be summarized in a draft memorandum and submitted to the Village staff for up to one (1) round of review and comment. The memorandum will then be updated based on Client comments.

### **Task 3 – Safety Review**

Kimley-Horn will retrieve the most recent five years of crash data from Signal Four Analytics to encompass the Corkscrew Road segment and the other intersections listed in Task 1. This task will include the review of up to 500 crashes. The crash data will be tabulated to identify trends in crash frequency, crash type, and other relevant contributing circumstances such as lighting condition,

pavement condition, and time of day. A summary of crash trends will be provided.

Only extracted crash data records will be reviewed; the individual hard copy narratives will not be reviewed as a part of this task. Specific emphasis will be placed on identifying crashes related to access management; however, it should be noted that it is not possible to differentiate between a left-turn crash (involving opposing parallel approaches) and an angle crash (involving perpendicular approaches) without reading the narratives. Review of the hard copy narratives may be assigned as an additional service in order to categorize and properly mitigate for access-related crashes.

#### **Task 4 – Area-Wide Synchro Model**

Based on the results of Task 2 and based upon signal timing and phasing data to be provided by the Client, Kimley-Horn will create a Synchro network for the study area roadways and intersections identified in Task 2.

#### **Task 5 – Interactive Growth Model**

Metro Forecasting Models, LLC (MFM) will develop and refine the Interactive Growth Model™ for the 41 Traffic Analysis Zones (TAZs) in the Village of Estero, and will provide the following updated TAZ information for 2016, 2020, 2025, 2030, 2035, 2040:

- The number of single family and multifamily units including vacancy rates and household size and the rate of change over time;
- The permanent population and/or the peak seasonal population;
- The demand and supply of commercial space in acres, square feet of building area, and number of employees; and
- The demand and supply of industrial development in square feet of building area and number of employees.

#### **Task 6 – Future Traffic Volume Development**

Kimley-Horn will perform one (1) unaltered run of the Existing plus Committed (E+C) Lee County Metropolitan Planning Organization (MPO)/Collier County MPO model. Based on the update TAZ data provided by MFM as identified in Task 5, Kimley-Horn will update the Estero TAZ data and conduct up to one (1) model run for the 2040 Lee County MPO/Collier County MPO model (Cost Feasible Plan).

Kimley-Horn will develop an annual corridor growth rate for the study corridors based upon the two FSUTMS model runs.

#### **Task 7 – Data Collection**

Kimley-Horn will utilize a traffic count subconsultant to undertake up to thirteen (13) traffic counts at up to thirteen (13) locations during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to twenty-six (26) traffic counts at up to twenty-six (26) locations during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour. 24-hour tube counts will also be collected at up to seven (7) locations. It is expected that data collection will occur between February 15, 2017 and March 14, 2017 which is the peak season for Lee County based on the Florida Department of Transportation (FDOT) *2015 Peak Season Factor Category*

*Report.*

Any additional traffic data collection (beyond the 13 a.m. peak hour and 26 p.m. peak hour study locations), including additional count locations, time periods, or type of counts (i.e., mid-day peak-hour, 24-hour directional counts, delay studies, etc.), as required by the Client, will be considered additional services as indicated in the Additional Services section of this Agreement.

**Task 8 – Area-Wide Traffic Operations Analysis**

Kimley-Horn will perform an a.m. and p.m. peak hour traffic operations analysis for the Village. This analysis will include the following efforts:

- Forecast traffic volumes at the study area roadways and intersections identified in Task 2 to a buildout year based on annual growth rates identified in Task 6;
- Develop future turning movement counts at up to thirteen (13) intersections during the a.m. (7:00 a.m. to 9:00 a.m.) peak hour and up to twenty-six (26) intersections during the p.m. (4:00 p.m. to 6:00 p.m.) peak hour ;
- Calculate level of service for roadway and intersections;
- Evaluate/recommend appropriate intersection control and lane geometry;
- Prepare a draft report summarizing the results of the traffic analysis; and
- Prepare a final report that incorporates up to two rounds of Village staff comments of the draft report.

Kimley-Horn will prepare for and attend up to one (1) meeting with Village of Estero Council to present the findings of the Area-Wide Traffic Study.

Conceptual layouts or design of potential modifications, as required by the Client, will be considered additional services as indicated in the Additional Services section of this Agreement.

**Additional Services**

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

- Stakeholder interviews
- Presentations
- Additional review of project documentation provided by others
- Intersection or roadway analysis as dictated by the Client
- Additional data collection as dictated by the Client
- Additional transportation engineering services as dictated by the Client
- Attendance at meetings and/or hearings as dictated by the Client

**Schedule**

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

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**Fee and Billing**

Kimley-Horn will perform the services in Tasks 1 – 8 for a total lump sum fee of \$76,452. Individual task amounts are informational only.

Tasks	Subs	Task Total
<b>Project Management</b>		<b>\$ 2,102</b>
<b>Task 1.0 - Site Observations</b>	<b>\$ -</b>	<b>\$ 6,855</b>
<i>Site Observations</i>		\$ 2,096
<i>Documentation &amp; Preliminary Recommendations</i>		\$ 4,655
<b>Task 2.0 - Project Kickoff Meeting</b>	<b>\$ -</b>	<b>\$ 1,950</b>
<i>Kickoff Meeting</i>		\$ 1,014
<i>Meeting Summary &amp; Summary of Next Steps</i>		\$ 936
<b>Task 3.0 - Safety Review</b>	<b>\$ -</b>	<b>\$ 5,962</b>
<i>Safety Review</i>		\$ 5,962
<b>Task 4.0 - Area-Wide Synchro Model</b>	<b>\$ -</b>	<b>\$ 6,402</b>
<i>Synchro Model</i>		\$ 6,402
<b>Task 5.0 - Interactive Growth Model</b>	<b>\$ 10,000</b>	<b>\$ 10,000</b>
<i>Sub Consultant - Interactive Growth Model</i>	\$ 10,000	\$ 10,000
<b>Task 6.0 - Future Traffic Volume Development</b>	<b>\$ -</b>	<b>\$ 11,344</b>
<i>Local Agency Coordination - Approvals</i>		\$ 1,459
<i>FSUTMS Model Refinement and Model Runs</i>		\$ 8,530
<i>Growth Rate Calculations</i>		\$ 1,355
<b>Task 7.0 - Data Collection</b>	<b>\$ 12,120</b>	<b>\$ 12,120</b>
<i>Sub Consultant - Data Collection</i>	\$ 12,120	\$ 12,120
<b>Task 8.0 - Area-Wide Traffic Operations Analysis</b>	<b>\$ -</b>	<b>\$ 19,717</b>
<i>Operational Analysis</i>		\$ 7,662
<i>Summary of Operations</i>		\$ 1,109
<i>Report &amp; Recommendations</i>		\$ 4,372
<i>Final Meeting &amp; Response to Comments</i>		\$ 2,209
<i>Final Report &amp; Final Recommendations</i>		\$ 2,588
<i>Presentation to Council</i>		\$ 1,777
<b>Kimley-Horn Fee</b>		<b>\$ 54,332</b>
<b>Sub Consultant - Interactive Growth Model Fee</b>		<b>\$ 10,000</b>
<b>Sub Consultant - Data Collection Fee</b>		<b>\$ 12,120</b>
<b>Total Fee</b>		<b>\$ 76,452</b>

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 be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to the **Village of Estero**.

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

\_\_\_ Please email all invoices to \_\_\_\_\_@\_\_\_\_\_.

\_\_\_ Please email invoices to \_\_\_\_\_@\_\_\_\_\_. AND provide a hard copy to the address listed above (please note below if it should be to some else's attention or an alternative address).

\_\_\_ Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to some else's attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to perform this service for you. Please contact me if you have any questions.

Very truly yours,

*Danni Jorgenson*

Danni Jorgenson, P.E.  
Project Manager  
Transportation Engineer



David Campbell, P.E.  
Senior Vice President

Attachments: Standard Provisions

**Village of Estero**

By:

\_\_\_\_\_, Village Manager

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

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

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

Attest:

\_\_\_\_\_, Village Clerk

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

Legal Sufficiency:

\_\_\_\_\_, Village Attorney

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



## 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'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) 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) **Ownership of Documents.** All materials, reports, data, and other documents developed by Consultant or otherwise generated pursuant to this Agreement shall remain the exclusive property of the Village, and Consultant shall surrender them to the Village upon request of termination of this Agreement. All documents prepared pursuant to this Agreement are subject to Florida's Public Records Law. Refusal of the Consultant to allow public access to such records as required by such law shall constitute ground for unilateral cancellation of this Agreement by the Village; however, this Agreement shall not be terminated if the Consultant is directed by the Village's project manager, to withhold access to said document, because it is confidential or exempt from disclosure pursuant to Federal or Florida law.

(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 in the amount of \$2,000,000 per claim, 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.** 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.

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

(15) **Construction Phase Services.**

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

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its

staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

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

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

(19) **Indemnification.** The consultant hereby indemnifies and holds harmless the Villages and its agents and employees, from any claim, loss, liability or demand arising out of or relating to any negligent act, omission or misconduct by the consultant in the performance of services under this Agreement. Indemnification shall comply with F.S. 725.08 for professional services.

**(20) IT IS AGREED THAT PURSUANT TO FLORIDA STATUTE 558.0035, INDIVIDUAL EMPLOYEES HIRED BY CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE IN PERFORMING SERVICES UNDER THIS CONTRACT.**

