



Kimley-Horn
and Associates, Inc.

March 28, 2012

■
Suite 117
6625 Lenox Park Drive
Memphis, Tennessee
38115

Mr. Darek Baskin, PE
Director of Planning and Economic Development
City Engineer
The City of Millington
4836 Navy Road, Suite # 2
Millington, TN 38053

Re: Design and Construction Engineering Inspection Services for the
Raleigh-Millington Road Realignment Project

Dear Mr. Baskin:

Kimley-Horn and Associates, Inc. ("KHA" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Millington ("the Client" or "the City") for providing professional engineering services for the Raleigh-Millington Road realignment project. Our project understanding, scope of services, schedule, and fee are below.

Project Understanding

The City desires to realign Raleigh-Millington Road to tie into Veteran's Parkway, which is currently under construction. The existing intersection of Raleigh-Millington Road with Church Street will be closed, and the roadway will be realigned to intersect with Veterans Parkway approximately 350 feet north of the intersection of Veterans Parkway and Church Street. The improvements planned to be a part of this project will include the realignment of the existing two lanes of Raleigh-Millington, installation of curb and gutter, sidewalk and storm water drainage facilities.

Scope of Services

KHA will provide the services specifically set forth below.

Task 1 – Project Management

This task will consist of the following project management activities:

- Project Coordination –coordination with the City to provide updates, coordinate project reviews, and other activities to help keep the project

- stakeholders generally informed of the progress of the project.
- Coordination Meetings – consists of scheduling, setting the agenda, and producing meeting minutes for all project meetings as defined in the tasks below.
- Project Administration – administrative and accounting activities related to the day to day management of this project.

Deliverables:

- Project updates will be sent via e-mail to the project stakeholders in PDF format.
- Coordination meeting minutes will be sent to the Client via e-mail in PDF format

Task 2 – Existing Conditions Survey

Task 2.1 – Data Collection

KHA will perform a field visit to the project location to review existing site conditions. During this field visit, KHA will collect digital photography along the road to assist with the design efforts in later tasks.

KHA will request copies of available utility mapping from utility owners known to have facilities within the project corridor, and will incorporate the information received, if any, into the project base mapping.

Task 2.2 – Field Surveys

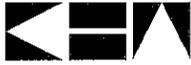
KHA will utilize the survey data assembled for the Railroad Crossing Improvement at Church Street and Old Raleigh-Millington Road, project number HSIP-R00S(43). KHA will supplement this data by conducting limited field surveys to further document key features and elevations on this project that have changed due to the current construction activities on the Veterans Parkway project. Utilizing the existing survey and this additional data, KHA will determine the following information:

- Vertical profile of Old Raleigh-Millington Road
- Topographic survey of the project area
- Horizontal and vertical data at the proposed tie-in locations

Task 3 – Design Services

Task 3.1 – Roadway Design

KHA will prepare the roadway design in accordance with TDOT's *Roadway Design Guidelines* and current City of Millington roadway design standards. The construction plans will consist of the following:



- Title sheet
- Index and Standard Drawings sheets
- Estimated Quantities sheets
- Typical Sections sheets
- Details and Notes sheets
- Property Map with ROW Acquisition Table
- Present Layouts
- Proposed Layouts
- Signing and Marking plans
- Phased Erosion Prevention and Sediment Control plans
- Construction Traffic Control plans
- Roadway Cross Sections (where appropriate)

Task 3.2 – Engineer’s Opinion of Probable Construction Cost

KHA will prepare an opinion of the probable construction cost of the proposed improvements defined by the plans and technical specifications. Quantities will be those developed from the construction plans. KHA will base this opinion of cost on actual bid prices for recent projects which involved similar equipment and construction.

Because KHA 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. KHA cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the City wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. KHA’s services required to bring costs within any limitation established by the City will be paid for as Additional Services.

Task 3.3 – Design Submittal

KHA will submit draft construction plans to the City for review and comment. KHA will meet with the City to discuss the City’s comments and coordinate the revisions. Following this review meeting, KHA will revise the plans based on the comments received and direction from the review meeting.

The Final Construction plans will be prepared on 22 by 34 inch sheets, signed and sealed by a State of Tennessee licensed Professional Engineer. KHA staff will provide copies of the plans package for use during the bidding process.

KHA Deliverables:

1. *Draft Construction plans to City for review (1 full-size bond hard copy, 2 half-size bond hard copies, and 1 electronic copy, Adobe PDF format)*



2. *Final sealed plans to City (1 full-size mylar hard copy, 2 half-size bond hard copies, and 1 electronic copy, Adobe PDF format)*
3. *Final engineer's opinion of probable construction cost to City (1 electronic copy, Microsoft Excel XLS format)*

Task 4 – Right-of-Way Phase Services

Task 4.1 – Acquisition Plats

It is anticipated that there will be 2 properties that will require right-of-way acquisition. KHA will prepare a plat and description for the required right-of-way and easements on the project for up to 2 properties. If additional plats beyond this number are required, KHA will notify the City and will prepare the additional plats in accordance with the Additional Services clause of this agreement.

The City will be responsible for all other activities associated with the acquisition of rights-of-way and easements for this project. The only KHA task in this effort will be the preparation of legal plats and descriptions. KHA will not be responsible for any fees associated with the recording of the project acquisition documents.

KHA Deliverables:

- 1) *Plat and Legal Description for acquisitions on up to 2 properties to City (1 hard copy and 1 electronic copy, Adobe PDF format)*

Task 5 – Construction Engineering Inspection

Task 5.1 - Project Administration

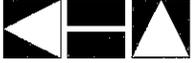
KHA will provide project administration and coordinate with the City of Millington. KHA will prepare for and attend, when requested, any periodic or in-depth FHWA inspections that may be conducted on the project related to project work, progress or records. KHA will also prepare for, cooperate with, and assist auditors that may be assigned to review records.

Task 5.2 - Pre-Construction Conference

KHA will prepare for and conduct a pre-construction conference. During this time, all issues and concerns that may be present prior to construction will be addressed. Minutes will be taken and distributed.

Task 5.3 - Supplemental Agreements/Construction Change Order

KHA will notify the City of Millington of the necessity of any Supplemental Agreements/Construction Changes. KHA will negotiate prices for additional pay items with the contractor while adhering to the current Tennessee Department of Transportation "Average Unit Price Index" when possible. We will also prepare any Supplemental Agreement/Construction Change Orders and submit to the City of Millington for final review and submittal for processing.



KHA will review all Value Engineering Change Proposals and prepare recommendations for the City of Millington.

Task 5.4 - Progress Payments

KHA will document and assemble accurate quantities for Monthly Progress Payments to the prime contractor from actual project field records. Test reports will be on file prior to payment. Progress Estimates will be submitted to the City of Millington for review and payment.

Task 5.5 - Construction Inspection

KHA will provide inspection services to determine if the work is in conformance to Plans and Specifications for items that are being incorporated into the project. KHA will observe, measure and record all quantities for payment related to the following construction activities:

- Curb and Gutter Placement
- Sidewalk and ADA Ramp installation
- Earthmoving and grading
- Cold Planing Bituminous Pavement
- Hot Mix Asphalt Paving
- Hot Mix Asphalt Plant
- Traffic Control
- Erosion Control
- Temporary and permanent striping and signing

Task 5.6 - Certified Testing

KHA will provide inspectors to perform materials testing as follows:

- Asphalt Roadway Paving Inspector
- Asphalt Certified Plant Technician
- Class 1 Concrete Technician
- Soils and Aggregate Technician
- Nuclear Gauge Training
- TDEC Level I (EPSC Inspector)

Task 5.7 - Project Documentation

KHA will prepare accurate daily diaries, signed by the inspector, consisting of:

- A record of the contractors on the project
- Contractor's personnel (number and classification)
- Location and work performed by each contractor or subcontractor
- Orders given to the contractor
- Accidents on the project and any details surrounding the accident such as police report number, fatalities, causes, time, etc.
- Days charged, with explanation if not charged



- Equipment arriving or leaving the project, idle equipment
- Materials received on the project and quantities
- Visitors to the jobsite

Task 5.8 - Final Inspection

KHA will prepare and conduct a final inspection with the City of Millington. During this inspection a punch list report will be prepared along with a photo log of items to be corrected. This report will be distributed to the prime contractor and an inspection will be performed to document that all corrections have been made. KHA will then submit a corrective action report to the City of Millington.

Task 5.9 – Final Records

KHA will submit a compilation of project records to the City of Millington at the completion of the project.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Bid Phase Services
- NEPA documentation
- Environmental Permitting
- Traffic Signal design
- Utility Relocation design
- Retaining Wall design
- Geotechnical Investigation
- Right-of-Way services beyond preparation of legal plats and descriptions

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed for mutually agreed upon fees.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the City of Millington, the Client, or the Client's consultants or representatives.

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

Fee and Expenses

KHA will perform the services in Tasks 1-4 for the total lump sum fee of **\$20,150.00**. KHA will perform the services in Tasks 5 for the total lump sum fee of **\$19,800.00**.

All permitting, application, and similar project fees will be paid directly by the Client.

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.

Closure

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

KHA, 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:

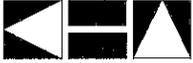
Please email all invoices to _____@_____.

Please email invoices to _____@_____.
AND provide a hard copy to the address listed above to the attention of _____ (or provide alternative address).

Please ONLY provide a hard copy invoice to the address listed above to the attention of _____ (or provide 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. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request



for Information. Failure to supply this information could result in delay in starting work on your project.

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.

James F. Collins, PE
Senior Vice-President

Drake Danley, PE
Project Manager

CITY OF MILLINGTON
A Municipality

By:

(Date)

(Print or Type Name)

(Email Address)

Attest:

_____, Secretary/Assistant Secretary

(Print or Type Name)

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions



Kimley-Horn
and Associates, Inc.

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) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or

represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

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

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

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

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

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

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

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

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

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

(15) Construction Phase Services.

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

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

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

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

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

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