

**AMENDMENT NUMBER 6 to the ON-CALL SUPPLEMENTAL
AGREEMENT NUMBER 17 to the MASTER AGREEMENT DATED
OCTOBER 2, 2006, between THE CITY OF DURHAM AND
KIMLEY-HORN AND ASSOCIATES, INC.**

AMENDMENT NUMBER 6 DATED December 1, 2014, to the ON-CALL SUPPLEMENTAL AGREEMENT NUMBER 17 to the MASTER AGREEMENT DATED OCTOBER 2, 2006, between The City of Durham, ("Client") and Kimley-Horn and Associates, Inc., ("Consultant") dated October 29, 2008, ("the Agreement") concerning the City Hall Plaza Improvements Project (the "Project").

The Consultant has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by Consultant and provisions for additional compensation by the Client to the Consultant, all as set forth in Exhibit A hereto. The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

Consultant shall perform the following Additional Services:

The purpose of this Amendment is for the CONSULTANT, Kimley-Horn and Associates, Inc., to provide on-call engineering services related to the basement located at 116 West Parrish Street in Downtown Durham. The specific tasks related to the basement located at 116 West Parrish Street are: *Review and update Electrical Plans, Review and update Streetscape and Structural Plans, Review and update Specifications, Limited Visual Survey and Rebid the project.*

Task 1 – Review and update Electrical Plans

Based upon potential property owner requests and Electrical Code changes, KHA will review and update the plans and specifications dated February 2012. The review is not intended to be exhaustive in nature, but a general review of the electrical code in an attempt to include all applicable changes since 2012. KHA will review all property owner requests that may impact the electrical system design and installation.

Task 2 – Review and update Streetscape and Structural Plans

Based upon potential property owner requests, KHA will review and update the streetscape and structural plans dated February 2012. The review is not intended to be exhaustive in nature, but a general review plans to incorporate any owner requests.

Task 3 – Review and update Specifications

Based upon potential property owner requests, KHA will review and update the specifications dated February 2012. The review is not intended to be exhaustive in nature, but a general review of the specification to incorporate any owner requests.

Task 4 – Limited Visual Survey

The purpose of the survey is to perform a visual, non-destructive walk through and document the condition of readily accessible finishes and components on the interior and exterior of the building in advance of construction activity, and potentially for comparison with future building conditions after construction is complete. This survey is intended to serve as an update to our August 4, 2006 and January 2011 Limited Visual Survey of Building Conditions.

Interior Survey

KHA will observe readily accessible areas of the building interior and document the observed conditions with notes and photographs. The primary focus of these observations will be the windows, doors, corners, and readily observed deficiencies such as cracking, efflorescence, blistered paint, and dripping water. KHA will request access to each floor level, and will pay particular attention to the areas that are closest to the south elevation. The interior survey will be conducted on a Friday between 8AM and 5PM.

Exterior Survey

KHA will observe the exterior of the building using a mechanical lift. Deficient and representative conditions will be documented with notes and photographs. These observations will focus on the south elevation, south facing building corners, windows, and other prominent features for evidence of missing components, cracks, efflorescence, and water stains. Areas beyond the reach of the aerial equipment along the left and right elevation walls will be observed from ground level.

The portion of the exterior survey that requires the use of a mechanical lift will occur on a Saturday between 7AM and 5PM and will require closure of the sidewalk and curb parking.

Summary Report

A brief written report of observations will be prepared to summarize the results of the survey. The report will provide a general summary of notable observations, but the primary representation of our findings will be photographs and captions included in the report. The layout and text format of our report will be similar to our August 4, 2006 and January 2011 Limited Survey of Building Conditions.

Additional Services Related to Limited Visual Survey

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 we can provide include, but are not limited to, the following:

- Coordination for destructive / intrusive testing
- Supplemental site visits
- Interviews and meetings
- Recommendations
- Opinion of probable cost
- Restoration repair documents

Information Provided by Client Related to Limited Visual Survey

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The Client shall provide all information requested by KHA during the project, including but not limited to the following:

- Notification to tenants and property owners in the subject building
- Access to the interior and exterior of the property
- Contact information for a representative of the property
- Permission to utilize a mechanical lift on and around the property
- Traffic control during movement and operation of aerial equipment
- Closure of sidewalk and curb parking on Parrish Street

Schedule for Limited Visual Survey

We will provide our services as expeditiously as practicable to meet the following mutually agreed upon schedule. We anticipate the interior and exterior surveys can be completed over a two day period within 14 days of authorization. The summary report can be completed within

two weeks of completing interior and exterior surveys.

The interior and exterior surveys are anticipated to be completed on a Friday and Saturday.

Task 5 – Rebid Project

Consultant will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract. Consultant will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. If requested by the Client, Consultant will notify the selected Contractor. Consultant will conduct a Pre-Construction Conference prior to commencement of Work at the Site.

Task 6 – Additional Construction Observation

KHA will provide construction phase services for the project for the purpose of providing assistance to Client during construction.

These services are as follows:

Visits to Site and Observation of Construction. Provide on-site construction observation services during construction. Observations will vary depending on the type of work being performed by the contractors, the location, and the contractors' schedules. For the fee estimate, we have assumed an additional 50 hours above what was approved in amendment number 5 dated August 6, 2102.

Make visits to the Site at intervals as directed by Client in order to observe the progress of the Work. Such visits and observations by KHA are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on KHA's exercise of professional judgment. Based on information obtained during such visits and such observations, KHA will determine if Contractor's work is generally proceeding in accordance with the Contract Documents, and KHA shall keep Client informed of the general progress of the Work.

The purpose of KHA's visits to the site will be to enable KHA to better carry out the duties and responsibilities assigned in this Agreement to KHA during the construction phase by Client, and, in addition, by the exercise of KHA's efforts, to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. KHA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall KHA have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, KHA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Recommendations with Respect to Defective Work. Recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, KHA believes that such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

Clarifications and Interpretations. Issue necessary clarifications and interpretations of the Contract Documents to Client as reasonably requested. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by Client.

Change Orders. Recommend Change Orders to Client, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to accuracy or completeness of details or construction means or methods. KHA is not responsible for any deviations from the Contract Documents not brought to KHA's attention in writing by the Contractor.

Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

Disagreements between Client and Contractor. As necessary, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, KHA shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Applications for Payment. Based on KHA's observations and on review of applications for payment and accompanying supporting documentation:

Determine the amounts that KHA recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute KHA's representation to Client, based on such observations and review, that, to the best of KHA's knowledge, information and belief, Contractor's work has progressed to the point indicated, such work-in-progress is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled insofar as it is KHA's responsibility to so determine. In the case of unit price work, KHA's recommendations of payment will include final determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.

By recommending any payment, KHA shall not thereby be deemed to have represented that observations made by KHA to check Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to KHA in this Agreement. Neither KHA's review of Contractor's work for the purposes of recommending payments nor KHA's recommendation of any payment including final payment will impose on KHA responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, equipment choice and usage, sequences, or procedures of construction of safety precautions or programs incident thereto, nor Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on KHA to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, KHA considers the Work substantially complete; KHA shall notify Client and Contractor.

Final Notice of Acceptability of the Work. Conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that KHA may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, KHA shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of KHA's knowledge, information, and belief and based on the extent of the services provided by KHA under this Agreement and based upon information provided to KHA upon which it is entitled to rely.

Limitation of Responsibilities. KHA shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. KHA shall not have the authority or responsibility to stop the work of any Contractor.

COMPENSATION:

KHA will provide the services described in the scope of services for a lump sum fee of \$39,000.00. The lump sum fee includes labor costs and direct expenses identified in this Agreement, as well as items such as local cellular phone, in-house duplication and printing, facsimile, local mileage, telephone charges, postage and computer expenses. All application, permitting, advertising cost, printing of bid sets, and similar fees will be paid directly by the City of Durham.

Additional services will be performed on an hourly rate basis as authorized by the City of Durham. Labor fee will be billed on the basis of our hourly billing rates in effect at the time the services are provided. Billing shall be on a monthly basis in conformance with Section V.B of the Master Agreement

**CITY OF DURHAM
ATTEST:**

City Clerk

By: _____
City Manager

**KIMLEY-HORN AND ASSOCIATES, INC.
ATTEST:**

Secretary
(Affix corporate seal)

By: _____
President

State of _____

ACKNOWLEDGEMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its _____ President, whose name is _____, sealed with its corporate seal, and attested by him/herself as its Secretary of Assistant Secretary. This the _____ day of _____, 20_____.

My commission expires:

Notary Public