

RESOLUTION NO. 06 311

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE PROJECT AGREEMENT BETWEEN KIMLEY-HORN AND ASSOCIATES, INC. AND THE TOWN OF MIAMI LAKES FOR THE PREPARATION OF THE MIAMI-DADE COUNTY MS4 PERMIT ANNUAL REPORT-YEAR 3; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the “Town”) has retained the services of Kimley-Horn and Associates, Inc. (“Kimley-Horn”) as Town Engineer; and

WHEREAS, pursuant to Work Authorization No. 05/06-08, Kimley-Horn prepared the Miami-Dade County MS4 Permit Annual Report-Year 3 (the “Project”) for the Town; and

WHEREAS, this Work Authorization contemplates that Kimley-Horn will prepare the Year 3 annual report on the Town’s compliance with the requirements of the Florida Department of Environmental Protection (DEP) permit number FLS000003 to discharge storm water from the Municipal Separate Storm Sewer System (MS4) located within Miami-Dade County; and

WHEREAS, the Town Council finds that it is necessary for Kimley-Horn to perform the work for this Project; and

WHEREAS, Kimley-Horn has agreed to provide the services for the Project; and

WHEREAS, the Town Council finds that approval of the project agreement between the Town and Kimley-Horn for the preparation of the Miami-Dade County MS4 Annual Report–

Year 3 is in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. Approval of Agreement. The Project Agreement between Kimley-Horn and Associates, Inc. and the Town of Miami Lakes for the preparation of the Miami-Dade County MS4 Annual Report –Year 3 (the “Agreement”), a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town’s Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 5. Execution of Agreement. The Town Manager is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Town Attorney.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 14 day of February, 2006.

Motion to adopt by Mary Collins, second by Roberto Alonso.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Robert Meador	<u>absent</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember Peter Thomson	<u>absent</u>

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Debra Eastman
Debra Eastman, MMC
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

Weiss, Serota, Helfman, Pastoriza, Cole & Boniske
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.A.
TOWN ATTORNEY

PROJECT AGREEMENT

Between

TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

for

Work Authorization No. 05/06-08

Miami-Dade County MS4 Permit Annual Report – Year 3

PROJECT AGREEMENT
Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

For

Work Authorization No. 05/06-08

Miami-Dade County MS4 Permit Annual Report – Year 3

Pursuant to the provisions contained in the "Continuing Services Agreement" between the TOWN OF MIAMI LAKES, FLORIDA (the "TOWN") and KIMLEY-HORN AND ASSOCIATES, INC., ("CONSULTANT") dated May 15, 2002, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below.

The TOWN and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide consulting services to the TOWN to prepare the Year 3 annual report on the TOWN's compliance with the requirements of Florida Department of Environmental Protection (DEP) permit number FLS000003 to discharge storm water from the Municipal Separate Storm Sewer System (MS4) located within Miami-Dade County. This annual report will cover the third year of the permit's five-year term (October 8, 2004 through October 7, 2005). According to the permit, this report is due to DEP within the six (6) months following the reporting period (by April 8, 2004).

The professional services for this project will include the following:

Task 1 – Coordination with DEP and Co-permittees

The annual report on permit compliance is a joint responsibility with the co-permittees listed in the permit. The list of co-permittees includes Miami-Dade County, the Florida Department of Transportation and other municipalities within Miami-Dade County. The CONSULTANT will coordinate with the Department of Environmental Protection (DEP) and the co-permittees to prepare the annual report. This coordination task is limited to attendance at up to one (1) meeting with DEP and/or co-permittee representatives to discuss the contents of the annual report and the schedule for its preparation and electronic or telephone communication.

Task 2 – Pollutant Loading and Event Mean Concentration Calculations

One of the attachments required to be submitted with the annual report is an estimate of pollutant loadings and event mean concentrations for each major outfall or watershed within the Town. Per the MS4 Permit, the permittee shall provide estimates of the seasonal pollutant load and event mean concentration of a representative storm for the following constituents: Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Total Dissolved Solids (TDS), Total Kjeldahl Nitrogen (N), Nitrate plus Nitrite, Total Phosphorus (P), Dissolved Phosphorus, Oil & Grease, Fecal Coliform, Fecal Streptococcus, Total Recoverable Copper, Total Recoverable Lead, Total Recoverable Zinc, Total Recoverable Cadmium. This seasonal pollutant load and event mean concentration for each major outfall may be estimated from representative monitoring locations, from regional or State data, or from pooling results from other nearby Florida MS4 monitoring activities and shall take into consideration land uses and drainage areas for each outfall.

In order to prepare these calculations, the CONSULTANT will complete the following sub-tasks:

a. **Data Collection**

During this stage of the project, the CONSULTANT will contact the Miami-Dade County Department of Environmental Resource Management to obtain the criteria and methodology used in preparation of pollutant loading and event mean concentrations for unincorporated Miami-Dade County outfalls. In addition, the CONSULTANT will utilize the information contained in the TOWN's Storm Water Master Plan and Storm Water Master Plan Update #1 and the Town's Land Use Map to determine contributing areas, land uses and pollutant reduction factors associated with each of the 203 major outfalls located within the Town of Miami Lakes.

b. **Calculations**

The CONSULTANT will prepare an Excel spreadsheet or XP-SWMM model to calculate the base contributing runoff, pollutant loading and event mean concentrations of the required constituents (as listed above) for each of the 203 major outfalls located within the Town. The calculation spreadsheet or XP-SWMM model will utilize the criteria and methodology established by DERM to calculate pollutant loading and event mean concentration for unincorporated Miami-Dade County outfalls. The results of the calculations will be prepared in a tabular format and submitted as part of the Town's Year 3 MS4 Annual Report.

Task 3 – Prepare Annual Report Form

The CONSULTANT will prepare a summary of the Storm Water Management Program (SWMP) activities performed by the TOWN between October 8, 2004 and October 7, 2005. The summary will be reported on Draft DEP Form 62-624.600(2). For each of the seventeen (17) SWMP elements listed in Form 62-624.600(2), the CONSULTANT will identify the number of activities performed, documentation/record, entity performing the activity, dollars spent in the reporting year

and the budget for the next reporting year. The CONSULTANT will also include the calculations prepared in Task 2 above as an attachment to the permit report form.

Task 4 – Prepare Report on Permit Requirements for Current Reporting Period

Upon completion of the annual report form, the CONSULTANT will identify tasks required for permit compliance in the current reporting period (October 8, 2004 through October 7, 2005). These tasks will be presented to the TOWN in the form of a letter report. The letter report will also contain suggestions for meeting the permit requirements identified.

SECTION 2. DELIVERABLES

2.1 The deliverables associated with this Project Agreement will be as follows:

Task 2 – Map showing outfall locations in AutoCAD and printed format

Task 3 – Completed annual report form and attachments

Task 4 – Letter report detailing TOWN’s responsibilities for 2003-2004 reporting year

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The TOWN Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the TOWN Council.

3.2 **Commencement.** The CONSULTANT’S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement (“Commencement Date”) provided to the CONSULTANT from the TOWN. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the TOWN Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the TOWN on the Commencement Date, and shall continuously perform services to the TOWN, without interruption, in accordance with the time frames set forth above. The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the TOWN in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the TOWN the sum of

dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$0.00 per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the TOWN reasonably believes that completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** TOWN agrees to pay CONSULTANT the lump sum compensation as follows for this work authorization.

Task 1 – Coordination	\$ 1,700
Task 2 – Pollutant Loading and Event Mean Concentration Calculations	\$23,000
Task 3 – Complete Annual Report Form	\$ 5,000
Task 4 – Current Reporting Period Letter Report	\$ 2,500

Total Lump Sum Compensation	\$32,500
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4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the TOWN), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the TOWN.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number 05/06-08 on a monthly basis in a timely manner. Invoices shall not exceed amounts allocated to the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual

of the total and credits for portions previously paid by the TOWN. The TOWN shall pay CONSULTANT within thirty (30) calendar days of approval by the TOWN Manager of any invoices submitted by CONSULTANT to the TOWN.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five (5) working days of the date of the TOWN'S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the TOWN'S reasonable satisfaction.

5.4 **Retainage.** The TOWN reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed. Said retainage may be withheld at the sole discretion of the TOWN Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its CONSULTANTS, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to

be terminated by the TOWN, the CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the TOWN for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subCONSULTANT obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the TOWN make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the TOWN and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the TOWN'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the TOWN.

6.4 **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the TOWN, the CONSULTANT shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated May 15, 2002 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

TOWN OF MIAMI LAKES

By: _____
Alex Rey, Town Manager

Date: _____

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
R. Russell Barnes, III, P.E.
Principal