

RESOLUTION NO. 06-370

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 DEVELOPMENT OF THE EVALUATION AND APPRAISAL REPORT-PART 2; 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. 05/06-10, Kimley-Horn prepared the Evaluation and Appraisal Report-Part 2, (the “EAR”) for the Town; and

WHEREAS, this Work Authorization contemplates that Kimley-Horn will provide data collection, prepare the draft EAR, attend Town Council and LPA meetings to answer questions related to the EAR and assist Town staff with revisions and transmittal of the EAR to the Department of Community Affairs on behalf of the Town; and

WHEREAS, the Town Council finds that it is necessary for Kimley-Horn to perform the work in the development of the EAR; and

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

WHEREAS, the Town Council finds that approval of the project agreement between the Town and Kimley-Horn for the development of the EAR 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 development of the Evaluation and Appraisal Report-Part 2 (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

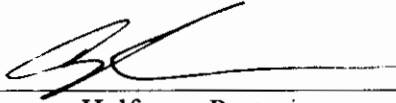
Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Robert Meador	<u>absent</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember Peter Thomson	<u>absent</u>

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:

A handwritten signature in black ink, appearing to be 'JL', written over a horizontal line.

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. 05/06-10

Evaluation and Appraisal Report – Part 2

PROJECT AGREEMENT

Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

For

Work Authorization No. 05/06-10

Evaluation and Appraisal Report – Part 2

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

The Town's EAR is due on May 1, 2006. The Department of Community Affairs generally recommends beginning the process at least 12 to 18 months prior to the EAR deadline. Therefore, a very aggressive schedule will be required to complete the EAR in time to meet the current deadline.

As you know, the extent of EARs vary dependent upon the major issues within the Town and the complexity of the comprehensive plan's goals, objectives, and policies. In addition, the EAR evaluates population growth and changes in land area, the extent of vacant and developable land, and the financial feasibility of implementing the comprehensive plan and of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems through the capital improvements element. Finally, the plan must be reviewed to respond to changes in state, regional, and local policies on planning and growth management and changing conditions and trends within the area. Other efforts related to the EAR include:

- Discussion of planned versus implemented development
- Analysis of potential social, economic, and environmental changes
- Statements regarding relevant changes to the state comprehensive plan
- Summary of the public participation program
- Coordination with existing public schools

- Consideration of the appropriate water management district's regional water supply plan
- Extent of success in identifying alternative water supply projects, including conservation and reuse, necessary to meet the water needs

The CONSULTANT shall provide the following scope of services that outline the steps needed in the development of the Evaluation and Appraisal Report for the Town of Miami Lakes' Comprehensive Plan as required by Florida Statutes.

Task 1 – Data Collection

We will We will assist in the preparation of a response if needed to the required Letter of Understanding (LOU) in order to finalize the LOU, and complete the collection of secondary data from existing data sources for each of the elements included within the adopted Town of Miami Lakes' Comprehensive Plan to assess how well each objective is meeting the intent. The current elements of the Plan include:

- Future Land Use
- Transportation
- Housing
- Infrastructure
- Recreation & Open Space
- Conservation
- Intergovernmental Coordination
- Capital Improvements
- Education Facilities
- Community Design

Geographic information systems will be utilized to evaluate the Plan elements and prepare the necessary maps as part of the EAR process, consisting of:

- Vacant lands
- Vacant lands with uses
- Existing land use
- Future land use
- Recreation and open space
- State and county roads
- Roadway daily levels of service
- Transit service routes
- Existing bicycle facilities
- Existing pedestrian facilities

Task 2 – Evaluation and Appraisal Report Draft

The draft report will include information and analysis required by Chapter 163. 3191, Florida Statutes, which includes:

- Population growth and changes
- Extent of vacant and developed land
- Financial feasibility of implementing the comprehensive plan and providing needed infrastructure
- Location of existing development in relation to location anticipated by current plan
- Identification of major issues
- Relevant changes to state comprehensive plan, Rule 9J-5 and South Florida Regional Planning Council Strategic Plan since adoption of current plan
- Assessment of whether plan objectives have been achieved as they relate to major issues, identification of unforeseen or unanticipated changes in circumstances which has effected objective implementation
- Brief assessment of successes and shortcomings of each element
- Identification of any actions or corrective measures, including plan amendments that are anticipated to address major issues
- Summary of public participation program and activities undertaken during project
- Effectiveness assessment for coordination of plan with existing public schools and those identified in the adopted local educational facilities plan
- Consideration of South Florida Water Management District's regional water supply plan and update of potable water element

The draft report will be prepared as an 8 ½ x 11-inch document presented in a three-ring binder. Color maps will be used as necessary. We will provide the Town up to five copies of the draft EAR for review and comment prior to scheduling the local planning agency (LPA) hearing. Revisions to the draft EAR document will be made based upon comments from Town staff.

Task 3 –LPA Public Hearing – EAR Draft

We will provide up to 15 copies of the draft EAR for distribution to the LPA for the public hearing. KHA will attend the public hearing to assist Town staff with questions related to the draft EAR.

We will revise the draft EAR based upon the input from the LPA and as directed by Town staff.

Task 4 – Town Council Adoption/Transmittal Hearing

The final draft of the EAR will be produced for transmittal to DCA and the local, regional, and state agencies. We will produce up to 15 copies of the EAR for distribution for the Town Council adoption/transmittal hearing. In addition, KHA will produce 25 copies of the EAR for transmittal to DCA and the review agencies. KHA will be available to assist town staff with the transmittal package to DCA and the review agencies as well as writing of the adoption/transmittal resolution to be presented at the adoption/transmittal hearing.

Task 5 – DCA-generated EAR Revisions

We will assist the Town staff with responses to comments from DCA and the review agencies. Based upon direction from Town staff, KHA will revise the EAR.

Task 6 – EAR Adoption Draft

After the completion of Task 5, we will provide up to 10 copies of the final EAR for the Town.

SECTION 2. DELIVERABLES

2.1 The deliverable associated with this task will be a letter of understanding to be submitted to the Department of Community Affairs.

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 –Data Collection	\$15,000
▪ Task 2 – Evaluation and Appraisal Report Draft	\$45,000
▪ Task 3 – LPA Public Hearing – Ear Draft	\$4,000
▪ Task 5 – Town Council Adoption/Transmittal Hearing	\$6,000
TOTAL	\$70,000

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 05/06-10 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 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.

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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