

RESOLUTION NO. 07-599

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 TO PROVIDE ENGINEERING SERVICES FOR SITE CIVIL WORK FOR ROADWAY RESURFACING, DRAINAGE IMPROVEMENTS AND MISCELLANEOUS DRAINAGE REPAIRS; AUTHORIZING THE TOWN OFFICIALS 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. 07/08-09, Kimley-Horn has prepared a Project Agreement to provide engineering services to the Town for the development of a bid package for roadway drainage and resurfacing improvements within the Town (the "Project"); and

WHEREAS, the intent of the Project is to develop site civil contract documents for bidding purposes; 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 Project is in the best interest 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.** Work Authorization No. 07/08-09 between Kimley-Horn and the Town of Miami Lakes to provide engineering services to the Town for the development of a bid package for roadway drainage and resurfacing improvements within the Town (the "Project 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 Project 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 Project Agreement.

**Section 5. Execution of Agreement.** The Town Manager is authorized to execute the Project Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Project Agreement and to execute any extensions and/or amendments to the Project 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 11 day of Dec., 2007.

Motion to adopt by Nancy Simon, second by Mary Collins.

PASSED AND ADOPTED this 11 day of Dec., 2007.

Motion to adopt by Nancy Simon, second by Mary Collins.

FINAL VOTE AT ADOPTION

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

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Debra Castro  
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature]  
TOWN ATTORNEY  
Weiss, Serota, Helfman, Pastoriza,  
Cole & Boniske, P.L.

# EXHIBIT A

## PROJECT AGREEMENT

Between

TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

for

Work Authorization No. 07/08-09

Roadway Resurfacing, Drainage Improvements  
and Miscellaneous Drainage Repairs

## PROJECT AGREEMENT

Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

For

Work Authorization No. 07/08-09

Roadway Resurfacing, Drainage Improvements  
and Miscellaneous Drainage Repairs

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 **Bid Package Preparation.** The CONSULTANT will provide engineering services to the TOWN for the development of a bid package for drainage and resurfacing improvements on the following streets:

- Eagle Nest Lane (Drainage/Resurfacing/Survey)
- Turn Bull Drive (Resurfacing)
- Cowpen Road (Drainage/Resurfacing)
- Gage Place (Drainage/Resurfacing)

The bid package will address spot drainage improvements for drainage deficiencies on the above listed streets as identified in the Town's Stormwater Master Plan Update #1. The intent is to develop site civil contract documents for public advertisement that will consist of technical specifications, maps, details, and contract forms. The scope of services includes limited survey on Eagle Nest Lane only. The following bid items will be included as needed:

- Roadway resurfacing
- Roadway milling
- Roadway striping

- Raising existing manhole and valve covers
- Pothole repair
- Inlets
- Drainage pipe installation
- French drains
- Sodding/Swale restoration
- Driveway restoration
- Curbing

This scope also includes submittal packages and two meetings with Miami-Dade County Public Works Department for coordination of pavement markings on the roadways listed above.

In addition, the bid package will include a separate/modified bid form based on the above items with estimated quantities for miscellaneous drainage repairs throughout the Town.

The CONSULTANT will utilize the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction as the basis of the technical specifications for the bid package. Elements within this document will be supplemented as deemed necessary by the CONSULTANT to provide specific detail for the bid package. The CONSULTANT will utilize the Town's contract as provided by the TOWN Attorney. The contract will provide a specific contract time for the improvements on the specific roadways listed above, but also provide a contract duration with potential extensions for the miscellaneous repairs.

Environmental permitting is not anticipated or included in this scope of services for the specific roadway improvements or the miscellaneous repairs.

1.2 **Construction Phase Services.** The CONSULTANT will provide construction phase services to the TOWN for the specific roadways listed above that will consist of providing coordination and observation services during the roadway resurfacing operations. The services provided shall include the following:

1.2.1 Shop Drawing Review

The CONSULTANT shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the General Conditions of each construction contract) and samples and other data that each Contractor is required to submit but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (such review and approval, or other action, shall not extend to means, methods, sequences, techniques or procedures of construction, or safety precautions and programs incident hereto). The CONSULTANT shall perform these reviews in accordance with the standard of care of the profession at the time of service.

The CONSULTANT shall consult with and advise the TOWN as to the acceptability of substitute materials and equipment that are proposed by the prime contractor(s) hereinafter called "Contractor(s)".

#### 1.2.2 Contract Clarifications

The CONSULTANT shall issue instructions of the TOWN to Contractor(s); issue necessary interpretations and clarifications of the plans and specifications and in connection therewith and review change orders as required.

#### 1.2.3 Review of Pay Application

Based on the CONSULTANT's on-site observations and upon review of applications for payment and the accompanying data and schedules, the CONSULTANT shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to the TOWN based on such observations and review that the work has progressed to the point indicated and that, to the best of the CONSULTANT's knowledge, information, and belief, the quality of work is in accordance with the Contract Documents (subject to any qualifications stated in the CONSULTANT's recommendations), and that payment of the amount recommended is due Contractor(s).

#### 1.2.4 Resident Project Representative

The CONSULTANT shall attend one pre-construction meeting (as scheduled by the CONSULTANT) with the Contractor to assess the project schedule and Contractor progress for the duration of the construction process.

A Resident Project Representative ("RPR") will be furnished by the CONSULTANT and shall act as directed by the CONSULTANT in order to assist the CONSULTANT in observing performance of the work of the Contractor(s). The duties, responsibilities, and limitations on the authority of the RPR and assistants will be in accordance with the sections of EJCDC Document No. 1910-1 (1996 Edition) associated with this issue.

The RPR shall visit the site for two (2) hours daily for up to four (4) weeks at the various stages of construction to observe the progress and quality of the executed work of Contractor(s) and to determine if such work is proceeding in general accordance with the contract documents for the construction of the improvements (the "Contract Documents"). The RPR shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). The RPR's efforts will be directed toward providing the TOWN with a greater degree of confidence that the completed work of Contractor(s) will conform to the Contract Documents. The RPR shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations, the CONSULTANT shall keep the TOWN informed of the progress of the work,

shall endeavor to protect the TOWN against defects and deficiencies in such work, and may disapprove or reject work if it fails to conform to the Contract Documents. The CONSULTANT shall perform the observations in accordance with the standard of care of the profession at the time of service.

#### 1.2.5 Substantial Completion Review

The CONSULTANT shall review the Project to determine if the Project is substantially complete and conduct a final review to determine if the work has been completed in accordance with the Contract Documents. If the Contractor has fulfilled all of his obligations thereunder, the CONSULTANT may recommend, in writing, final payment to each Contractor and may give written notice to the TOWN and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

The CONSULTANT shall not be responsible for the acts or omissions of any Contractor or subcontractor, any of the Contractor(s)' or subcontractor(s)' agents or employees, or any other persons (except the CONSULTANT's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work. Consultant shall review "notice to owners" that are submitted by sub-contractors and verify that releases are submitted with pay applications.

Construction Phase Services associated with miscellaneous drainage repairs can be provided as an additional service if requested by the TOWN.

1.3 **Project Schedule.** The bid package will be prepared within 60 days of execution of this agreement. The construction schedule is based upon the schedule of the contractor that is providing services to the Town. It is anticipated that the construction will be completed within 90 days of award of contract to a contractor.

1.4 **Additional Services.** The TOWN may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

## **SECTION 2. DELIVERABLES**

2.1 The deliverable for this project is a bid package for advertising by the Town.



### **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 of \$18,900 for this work authorization.

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 07/08-09 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.

**SECION 7. INCORPORATION OF TERMS AND CONDCTIONS 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.

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**ATTEST:**

**TOWN OF MIAMI LAKES**

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Alex Rey, Town Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney

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

By: \_\_\_\_\_  
Gary R. Ratay, P.E.  
Vice President

Date: \_\_\_\_\_

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