

RESOLUTION NO. 09-729

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 A DESIGN CRITERIA PACKAGE FOR MIAMI LAKEWAY NORTH PAVING AND DRAINAGE IMPROVEMENTS; 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, in conjunction with the Federal Stimulus Bill, the Town has applied for Local Agency Certification under the Local Agency Program ("LAP") with the Florida Department of Transportation (the "FDOT") for project development and construction administration of roadway projects within the Town; and

WHEREAS, FDOT has determined that all projects under the LAP shall be "design-build" projects necessitating the preparation of a design criteria package for the "design-build" team; and

WHEREAS, pursuant to Work Authorization No. 08/09-12, Kimley-Horn has prepared a Project Agreement to provide planning and consultation services to the Town to develop a Design Criteria Package for Miami Lakeway North Paving and Drainage Improvements (the "Project"); and

WHEREAS, the intent of the Project is to develop conceptual plans and 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 the Project Agreement. Work Authorization No. 08/09-12 between Kimley-Horn and the Town of Miami Lakes to provide planning and consultation services to the Town to develop a Design Criteria Package for Miami Lakeway North Paving and Drainage Improvements (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 the Project 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.

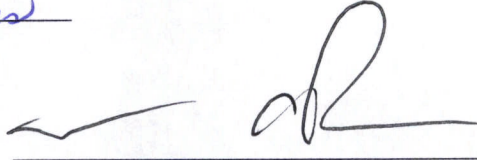
Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 30 day of March, 2009.

Motion to adopt by Mary Collins, second by Robert Meador.

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador II	<u>yes</u>
Councilmember Nick Perdomo	<u>absent</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember George Lopez	<u>yes</u>



Michael Pizzi
MAYOR

ATTEST:

Mary Collins
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. 08/09-12

Design Criteria Package
Miami Lakeway North Paving and Drainage Improvements

PROJECT AGREEMENT

Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

For

Work Authorization No. 08/09-12

Design Criteria Package
Miami Lakeway North Paving and Drainage Improvements

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., (the "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:

PROJECT UNDERSTANDING

The CONSULTANT shall provide planning and consultation services to the TOWN to develop a Design Criteria Package (DCP) for paving and drainage improvements on Miami Lakeway North as defined in the TOWN's Stormwater Master Plan Update #1 (the "Project Area"). The project includes paving and drainage improvements on Miami Lakeway North from the Celebration Point Development south to Miami Lakes Drive. The project will also include the addition of a 10-foot wide concrete sidewalk on the east side of Miami Lakeway North from Miami Lakes Drive to just north of NW 153rd Street. This scope of services includes the development of the DCP, but not design review or construction phase services that will follow. Design review and construction phase services will be more clearly defined throughout development of the DCP and can be provided as additional services at a later date.

Based on drainage projects requiring an environmental permit through the Department of Environmental Resource Management (DERM), this DCP will include conceptual plans. The conceptual plans are required for coordination with DERM as part of a pre-application meeting. The intent of the pre-application meeting is to confirm that the proposed water quantity and quality approach is acceptable to DERM. The conceptual plans will be developed in plan view only to indicate a proposed drainage layout, inlets, exfiltration trench, limits of roadway resurfacing, and limits of sidewalk for the project. The work associated with completing the design plans and obtaining an environmental permit through DERM will be left to the Design

Build (DB) team. The DB team will also be responsible to obtain all other local, state, and federal permits.

This DCP will include the Request for Proposals (RFP) and “Front End” documents for selection of the DB team, limited field survey to establish base maps, and geotechnical services to obtain limited soil information.

The professional services for this project will include the following:

Task 1 – Project Management and Project Permit Coordination

The CONSULTANT will attend meetings and provide project coordination including:

- 1.1. Attendance at a kick-off meeting with the TOWN to discuss details and pertinent information for the project.
- 1.2. As the primary permitting agency for this project, the CONSULTANT will attend one meeting with DERM to discuss the project intent and the design build process. The CONSULTANT will prepare a memorandum summarizing the meeting.

Task 2 – Field Survey/Geotechnical

- 2.1. The CONSULTANT will utilize Aviom and Associates, Inc. as a SUB-CONSULTANT to provide a right-of-way survey of the proposed Miami Lakeway North project area to develop project base maps/plan sheets at 1"=20' scale. The survey will include right-of-way lines, topographic information, surface features, stationed baseline, and benchmarks. The Design Build team will be required to obtain a complete field survey of the project area as part of developing the final construction plans.
- 2.2. The CONSULTANT will utilize Tierra South Florida, Inc. as a SUB-CONSULTANT to obtain soil information throughout the project areas. The geotechnical information will be evaluated for anticipated performance of the exfiltration trench and will be included in the DCP as reference.

Task 3 – Conceptual Design Plans

- 3.1. The CONSULTANT will complete a hydraulic analysis for the project area based upon the survey and geotechnical information obtained in Task 2. During the analysis, the volume of stormwater runoff shall be calculated from the design storm and the capacity of the existing stormwater collection system shall be evaluated. The results of the above noted calculations will be the basis for design of the stormwater system.
- 3.2. The CONSULTANT will develop a conceptual design of the proposed roadway and drainage improvement project on the base mapping that was developed in Task 2. The conceptual design will be developed in plan view only to indicate a proposed drainage

layout, inlets, exfiltration trench, limits of roadway resurfacing, and limits of sidewalk for the project.

- 3.3. The design for the roadway, drainage, sidewalk, signage, and striping improvements will be based on the Miami-Dade County Public Works Manual and Florida Department of Transportation (the "FDOT") Standards.
- 3.4. The CONSULTANT will attend one pre-application meeting with DERM to confirm that the proposed drainage layout, water quantity, and quality approach is acceptable to DERM. The CONSULTANT will prepare a memorandum summarizing the meeting.
- 3.5. The CONSULTANT will prepare an opinion of probable construction cost associated with the conceptual design. The opinion of probable cost will be based upon estimated quantities and will utilize unit prices that have been received on similar projects.

Task 4 – Design Criteria Package (DCP)

- 4.1. In addition to the conceptual design plans discussed in the above task, the CONSULTANT will prepare design criteria specifications, Request for Proposals (RFP) and "Front End" documents for use in Design Build team selection and to obtain project pricing. The DCP will require the DB team to comply with the Local Agency Program (LAP) contract requirements.

Task 5 – Design Build Team Selection

- 5.1. The CONSULTANT will review proposals submitted by the DB teams, assisting the TOWN in short-listing teams, participating in the oral presentation and selection process, and answer questions from the DB teams.

SECTION 2. DELIVERABLES

2.1 The deliverable associated with this authorization will be as outlined in the scope of services for each of the listed tasks and include:

- a. Field Survey
- b. Geotechnical Report
- c. Conceptual Design Plans
- d. Design Criteria Package

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 6 or other applicable provisions of this Project Agreement until the project is completed. 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	Description	Labor Fee
1	Project Management and Project Permit Coordination	\$1,500.00
2	Field Survey/Geotechnical.....	\$2,500.00
3	Conceptual Design Plans	\$17,000.00
4	Design Criteria Package.....	\$11,000.00
5	Design Build Team Selection	<u>\$3,500.00</u>
SUB TOTAL (CONSULTANT FEE)		\$35,500.00

Task	Description	Labor Fee
2	Field Survey/Geotechnical: Avirom and Associates, Inc.	\$12,600.00
	Tierra South Florida, Inc.	<u>\$4,000.00</u>
SUB TOTAL (SUB-CONSULTANT FEE)		\$16,600.00

TOTAL FEE**\$52,100.00**

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: 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 08/09-12 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 provisions 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 sub-CONSULTANT 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.

[THE REST OF THIS SPACE LEFT BLANK INTENTIONALLY]

TOWN OF MIAMI LAKES

By: _____
Frank Bocanegra, Town Manager

Date: _____

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Gary R. Ratay, P.E.
Senior Associate

Date: _____