

RESOLUTION NO. 11 876

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 TRAFFIC ENGINEERING SERVICES IN CONNECTION WITH THE ANTICIPATED SETTLEMENT OF EMINENT DOMAIN LITIGATION; 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 connection with the anticipated settlement of eminent domain litigation styled, *Miami Dade County v. Genet Family Trust, et al.* (the "Eminent Domain Litigation"), the Town is contemplating execution of a Development Agreement (the "Development Agreement") in accordance with Florida Law which, if approved, would reserve transportation related concurrency for certain property located within the Town's municipal boundaries; and

WHEREAS, in order to insure that any proposed Development Agreement adequately addresses the impacts of anticipated future development on the Town's public facilities, a traffic study has been submitted by the property owner involved in the aforementioned Eminent Domain Litigation (the "Traffic Study"), which demonstrates the method in which the development will satisfy the Town's Concurrency Management requirements; and

WHEREAS, pursuant to Town's Code in order for the Traffic Study to meet the requirements of the Town's Land Development Code, approval by the Town's Engineer is required (the "Project"); and

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

WHEREAS, the Town Council finds that approval of a 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. The Project Agreement between Kimley-Horn and the Town of Miami Lakes to provide review of the Traffic Study in connection with the Eminent Domain Litigation (the “Project Agreement”), together with such 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 8 day of March, 2011.

Motion to adopt by Collins, second by Perdomo.

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Nick Perdomo	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Nelson Hernandez	<u>Absent</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Richard Pulido	<u>yes.</u>



Michael Pizzi
MAYOR

ATTEST:

Maryjo Tejeda
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

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

PROJECT AGREEMENT

Between

TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

for

Work Authorization No. 10/11-03

Commerce Way Unsignalized Crosswalk Traffic Study

PROJECT AGREEMENT

Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

For

Work Authorization No. 10/11-03

Commerce Way Unsignalized Crosswalk Traffic Study

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:

SECTION 1. PROJECT UNDERSTANDING

The CONSULTANT shall provide engineering and consultation services to the TOWN to prepare a traffic engineering analyses to assess the feasibility of installing an unsignalized crossway on Commerce Way in the vicinity of NW 80th Avenue.

The professional services for this project will include the following:

Task 1 – Coordination Meeting with Miami-Dade County Public Works Department

The CONSULTANT will contact Miami-Dade County Public Works Department (MDCPWD) to set-up and attend one initial meeting to review the study requirements and crosswalk design options for implementing an unsignalized crosswalk across Commerce Way in the vicinity of 80th Avenue.

Task 2 – Field Review and Data Collection

Following the initial study methodology meeting with MDCPWD, the CONSULTANT will conduct one field inspection during the morning weekday peak period of pedestrian activity and one field inspection during the afternoon weekday peak period of pedestrian activity to observe prevailing pedestrian demand activity in the area. The field inspections will record up to a

maximum of one hour of pedestrian counts during the morning weekday peak hour and one hour of pedestrian counts during the afternoon weekday peak hour. The location of pedestrian crossing activity will be noted. Coordination with Town staff will be conducted in advance of the field inspections to approve the timeframes for the morning and afternoon peak hours of pedestrian counts. In addition, up to two (2) 24-hour bi-directional motorized traffic volume counts will be conducted along Commerce Way (one count north of 80th Avenue and one count south of 80th Avenue) on a typical weekday.

Task 3 – Traffic Engineering Analysis

The CONSULTANT will analyze the motorized traffic count data and the pedestrian count data to determine a recommended location and design configuration for the unsignalized crosswalk across Commerce Way. The CONSULTANT will prepare a memorandum describing the results of the study and recommended location for the crosswalk.

Task 4 – Meeting with MDCPWD

The CONSULTANT will attend one meeting with MDCPWD to review the recommended location for the unsignalized crosswalk and present the findings of the study. Kimley-Horn will respond to one round of review comments from Town staff and MDCPWD as to the recommended location of the unsignalized crosswalk.

SECTION 2. DELIVERABLES

2.1 The deliverable associated with this authorization will be a letter report that will include a summary of the traffic engineering analyses and recommendation for the proposed crosswalk.

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 of \$4,500.00 for this work authorization.

4.2 **Reimbursable Expenses.** The following reimbursable expenses such as long distance telephone calls, facsimile, courier services, mileage, photo and reproduction services are included in the Lump Sum Compensation.

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 10/11-03 on a monthly basis in a timely manner. Invoices shall not exceed amounts allocated to the Project 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 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.

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.

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ATTEST:

TOWN OF MIAMI LAKES

M. Tejada
Town Clerk

By: [Signature]
Alex Rey, Town Manager

Date: 2-28-11

APPROVED AS TO FORM:

[Signature]
Town Attorney

KIMLEY-HORN AND ASSOCIATES, INC.

By: [Signature]
Gary R Ratay, P.E.
Senior Associate

Date: 3/8/11