

RESOLUTION NO. 07-54

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO DRAINAGE IMPROVEMENTS ON SW 148TH STREET IN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT WITH KIMLEY-HORN TO PROVIDE CONSTRUCTION SUPPORT SERVICES DURING CONSTRUCTION OF THIS PROJECT; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT UP TO \$40,500.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Resolution No. 06-45, dated May 1, 2006 authorized the Village Manager to contract with Kimley-Horn and Associates, Inc. for the design and permitting of a paving and drainage project on SW 148th Drive and SW 148th Street, north of SW 152nd Street and west of 80th Avenue; and

WHEREAS, Kimley-Horn and Associates, Inc., provided planning and consultation services to the Village for the design and permitting of the Paving and Drainage Improvements on SW 148th Street; and

WHEREAS, the bidding process is complete and the Village would like to contract with Kimley-Horn and Associates, Inc. to provide additional professional services for limited construction phase services as part of the SW 148th Street Paving and Drainage Improvement Project; and

WHEREAS, the consultant will review the project for completeness in accordance with the contract document to provide limited construction phase services; and,

WHEREAS, the Administration desires to select Kimley-Horn and Associates, Inc., to provide professional limited construction phase services for the SW 148th Street Paving and Drainage Improvement Project; and,

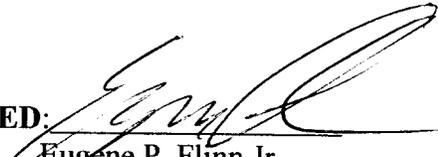
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1: Village Manager is authorized to approve expenditure of funds in an amount up to \$40,500.00 for limited construction support services as part of the SW 148th Street Paving and Drainage Improvement Project

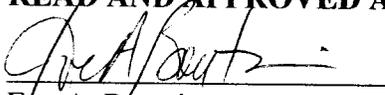
Section 2: This Resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 7th day of May, 2007.

ATTEST: 
Meighan Rader
Village Clerk

APPROVED: 
Eugene P. Flinn Jr.
Mayor

READ AND APPROVED AS TO FORM:


Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member Shelley Stanczky	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn Jr.	<u>YES</u>

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EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 07-01

SW 148th Drive Paving and Drainage Improvements
Limited Construction Phase Services – Base Bid Scope of Work

PROJECT AGREEMENT

Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 07-01

SW 148th Drive Paving and Drainage Improvements
Limited Construction Phase Services – Base Bid Scope of Work

Pursuant to the provisions contained in the “continuing services agreement” between the VILLAGE OF PALMETTO BAY, FLORIDA, 8950 SW 152nd Street, Palmetto Bay, Florida 33157 (the “VILLAGE”) and Kimley-Horn and Associates, Inc., (“CONSULTANT” or “ENGINEER”) dated April 07, 2006, this project agreement authorizes the CONSULTANT to provide the services as set forth below:

The VILLAGE and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide engineering services to the VILLAGE for the project as described in the “Project Description” attached as Exhibit “1.”

1.2 The “Scope of Services and Project Schedule” and tasks to be provided by the CONSULTANT for this project are those services and tasks as listed in Exhibit “2.”

1.3 The VILLAGE may request changes that would increase, decrease, or otherwise modify the Scope of Services. The 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

As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the VILLAGE the following Deliverables:

See Scope of Services in Attachments EXHIBIT "2"

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 until the project is completed, unless otherwise terminated pursuant to section 4 or other applicable provisions of this project agreement. The VILLAGE manager, in his sole discretion, may extend the term of this agreement through written notification to the CONSULTANT. The extension shall not exceed 30 days. No further extensions of this agreement shall be effective unless authorized by the VILLAGE 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 VILLAGE. 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 VILLAGE manager or his designee 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 VILLAGE on the Commencement Date, and shall continuously perform services to the VILLAGE, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this agreement as Exhibit "2". 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 village 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 village 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 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 village reasonably believes that completion will be inexcusably delayed, the village shall be entitled, but not required, to withhold from any amounts otherwise due the consultant an amount then believed by the village to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving completion, or any part thereof, for which the village has withheld payment, the village 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.** VILLAGE agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$35,000.00. [OR, IF HOURLY, "VILLAGE AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$_____.]

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 VILLAGE), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the VILLAGE.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of 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 VILLAGE. The VILLAGE shall pay CONSULTANT within 30 days of approval by the VILLAGE manager of any invoices submitted by CONSULTANT to the VILLAGE.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the VILLAGE for payment to the CONSULTANT is disputed, or additional backup documentation is required, the VILLAGE shall notify the CONSULTANT within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The CONSULTANT shall provide the VILLAGE with additional backup documentation within five working days of the date of the VILLAGE's notice. The VILLAGE may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The VILLAGE, 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 VILLAGE 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 VILLAGE 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 VILLAGE's reasonable satisfaction.

5.4 **Retainage.** The village reserves the right to withhold retainage in the amount of 10 percent of any payment due to the consultant until the project is completed. Said retainage may be withheld at the sole discretion of the village 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 VILLAGE that, upon receipt from the VILLAGE of the amount invoiced, all obligations of the CONSULTANT to others, including its CONSULTANT's, incurred in connection with the project, shall be paid in full. The CONSULTANT shall deliver to the VILLAGE all documents requested by the VILLAGE evidencing payments to any and all subconsultant's, 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 VILLAGE by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This project agreement may be terminated by either party upon five 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 VILLAGE, the CONSULTANT shall indemnify the VILLAGE against any costs incurred in

replacing CONSULTANT for this project agreement. In the event that the CONSULTANT is terminated by the VILLAGE for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the 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 VILLAGE for convenience upon 14 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 VILLAGE 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 VILLAGE 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 VILLAGE and the CONSULTANT shall, within 10 working days of receipt of written direction from the VILLAGE, transfer to either the VILLAGE 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 VILLAGE's request, the CONSULTANT shall assign its rights, title and interest under any subconsultant's agreements to the VILLAGE.

6.4 **Suspension for Convenience.** The VILLAGE 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 30 calendar days. If the suspension is directed by the VILLAGE, the CONSULTANT shall immediately comply with same. In the event the VILLAGE directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the VILLAGE shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

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

7.1 This project agreement incorporates the terms and conditions set forth in the continuing services agreement dated December 09, 2003 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.

ATTEST:

VILLAGE OF PALMETTO BAY

VILLAGE Clerk

By: _____
Charles Scurr, VILLAGE Manager

Date: _____

APPROVED AS TO FORM:

VILLAGE Attorney

ATTEST:

Kimley-Horn and Associates, Inc.

By: _____
Gary R. Ratay, P.E.
Vice President

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

Exhibit "1"

Project Description Limited Construction Phase Services – Base Bid Scope of Work

The VILLAGE was incorporated in September 2002 and a Storm Water Master Plan was adopted in December 2004. According to data collection findings and hydrologic/ hydraulic modeling contained in the Storm Water Master Plan, one area of the VILLAGE that is subject to roadway flooding is Drainage Sub-basin #5. Drainage Sub-basin #5 is bounded by SW 148th Street to the north, SW 148th Drive to the west, SW 152nd Street to the south, and SW 80th Avenue to the east. Currently, the drainage infrastructure in the area consists of roadside swales and drainage catch basins connected to short lengths of exfiltration trench.

The CONSULTANT provided planning and Consultation services to the VILLAGE for the design and permitting of paving and drainage improvements within Drainage Sub-basin #5 on SW 148th Drive, SW 148th Street, SW 149th Drive, SW 150th Drive, SW 151st Street, and SW 82nd Avenue. The paving and drainage improvements are designed in accordance with the VILLAGE's Storm Water Master Plan. The project bidding phase is complete and the project is proceeding into the construction phase.

This Work Authorization is to provide additional professional services for limited construction phase service by the CONSULTANT during construction of the project. There are five separate construction phase tasks that this proposal will address regarding the VILLAGE's SW 148th Drive Paving and Drainage Improvements project. The tasks are as follows:

1. Meetings
2. Resident Project Representative
3. Shop Drawing Review
4. Contract Administration
5. Project Close-out

This project was bid with a Base Bid and an Additive Bid format. The construction duration for the Base Bid scope of work is 150 days. The construction duration for the Additive Bid adds an additional 30 days to the construction duration. This limited construction phase services scope and fee is for work associated with the Base Bid portion of the project only. If the Village does authorized the contractor to perform additional work associated with the Additive Bid, an alternate Payment Schedule has been provided for reference for the additional 30 days of limited construction phase services.

Exhibit "2"

Scope of Services Limited Construction Phase Services – Base Bid Scope of Work

Task 1 Meetings

The CONSULTANT shall attend bi-monthly progress meetings (as scheduled by the CONSULTANT) with the Contractor(s) to assess the project schedule and Contractor progress for the duration of the construction process. This task includes ten (10) meetings.

Task 2 Resident Project Representation

A Resident Project Representative ("RPR") shall 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 associated with this issue.

The RPR shall visit the site three (3) times per week, for two (2) hours per day, for sixteen (16) weeks (total of 48 visits) at the various stages of construction to observe the progress and quality of the executed work of the Contractor(s) and to determine if such work is proceeding in 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 VILLAGE 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 VILLAGE informed of the progress of the work, shall endeavor to protect the VILLAGE 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.

The RPR shall prepare and submit monthly reports of the field visits describing the general working conditions, areas of construction activity, tests performed, and special and unusual events.

Task 3 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 VILLAGE as to the acceptability of substitute materials and equipment that are proposed by the prime contractor(s) hereinafter called "Contractor(s)".

Task 4 Contract Administration

4.1 Contract Clarifications

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

4.2 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 shall constitute a representation to the VILLAGE 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 to Contractor(s).

By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, equipment choice and usage, sequences, or procedures of construction of safety precautions or programs incident thereto, nor Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

Task 5 Project Close-out

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 there under, the CONSULTANT may recommend, in writing, final payment to each Contractor and may give written notice to the VILLAGE and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

CONSULTANT will review project record drawings prepared, provided, and certified by the Contractor. One set of reproducible "As-Built" drawings will be provided to the VILLAGE.

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.

EXHIBIT "3"

Payment Schedule Limited Construction Phase Services – Base Bid Scope of Work

The CONSULTANT will complete this scope of services for the lump sum amount of \$35,000.00. The following is a breakdown of the lump sum amount for reference:

Task 1	Meetings	\$7,500.00
Task 2	Resident Project Representative	\$17,200.00
Task 3	Shop Drawing Review	\$1,400.00
Task 4	Contract Administration	\$4,700.00
Task 5	Project Close-out	<u>\$4,200.00</u>
	Total Fee	\$35,000.00

If the Village does authorized the contractor to perform additional work associated with the Additive Bid, the following Payment Schedule will be requested for the additional 30 days of limited construction phase services.

Payment Schedule Limited Construction Phase Services – Base Bid and Additive Bid Scope of Work

The CONSULTANT will complete this scope of services for the lump sum amount of \$40,500.00. The following is a breakdown of the lump sum amount for reference:

Task 1	Meetings	\$8,000.00
Task 2	Resident Project Representative	\$20,700.00
Task 3	Shop Drawing Review	\$1,500.00
Task 4	Contract Administration	\$5,300.00
Task 5	Project Close-out	<u>\$5,000.00</u>
	Total Fee	\$40,500.00