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RESOLUTION NO. 2011-74

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES; AUTHORIZING THE SELECTION OF KIMLEY-HORN AND ASSOCIATES, INC. TO ASSIST THE VILLAGE WITH THE PREPARATION OF THE EVALUATION AND APPRAISAL REPORT (EAR) RELATING TO THE VILLAGE'S FUTURE LAND USE AND COMPREHENSIVE PLAN; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$34,250; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 1, 2005, the Mayor and Council of the Village of Palmetto Bay adopted a Comprehensive Plan as required per Florida Statute 163, Florida Statutes; and,

WHEREAS, the Comprehensive Plan reflects at the time of its adoption a data, inventory, and analysis of the Village's facilities (Roads, parks, drainage, etc) together with goals, objectives, and policies to provide or improve upon such facilities to reach, maintain, and/or exceed level of service (LOS) standards; and,

WHEREAS, to that end, the Comprehensive Plan is the guiding policy document which governs land use development, concurrency, and (LOS) standards; and,

WHEREAS, the Village's comprehensive plan is now in its seventh year and must be reevaluated pursuant to Florida Statute 163.3191, which requires every local government to review their Comprehensive Plan at least once every seven (7) years; and,

WHEREAS, the review, commonly referred to as an Evaluation Appraisal Report (EAR), seeks to identify any changes in conditions that may have occurred since the original adoption of the comprehensive plan and also seeks to recommend any further amendments, if applicable, to bring the document up to date with the Village's current conditions; and,

WHEREAS, the completion of an EAR review requires a substantial amount of time to complete and as such the Village sought three bids from qualified planning agencies that currently are under continuing service agreements with the Village; and,

WHEREAS, Kimley-Horn and Associates, Inc. responded to the request for service and was the lowest bidder for the job and is therefore recommended for approval of the contract for EAR services.

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

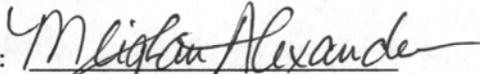
Section 1: The Village Manager is authorized pursuant to the continuing services agreement with Kimley-Horn and Associates, Inc. to approve a specific project agreement (under the continuing services agreement) for the preparation of the Village's Evaluation and Appraisal Report

1 (EAR) in an amount not to exceed \$34,250. The project agreement proposal is attached and
2 incorporated by reference herein as Exhibit 1, for execution.
3

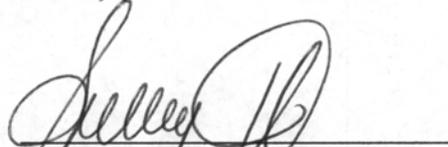
4 **Section 2:** This Resolution shall take effect immediately upon approval.
5

6 PASSED and ADOPTED this 5th day of December, 2011.
7

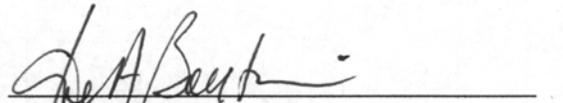
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9
10 Attest:



11 Meighan Alexander
12 Village Clerk
13


14
15 Shelley Stanczyk
16 Mayor

17 APPROVED AS TO FORM:
18

19 
20 Eve A. Boutsis,
21 FIGUEREDO & BOUTSIS, P.A., as Office
22 of the Village Attorney
23
24
25

26
27 FINAL VOTE AT ADOPTION:
28

29 Council Member Patrick Fiore YES
30
31 Council Member Howard J. Tendrich YES
32
33 Council Member Joan Lindsay YES
34
35 Vice-Mayor Brian W. Pariser YES
36
37 Mayor Shelley Stanczyk. YES
38

EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 11-02

**Preparation of the Evaluation and Appraisal Report
for the Village of Palmetto Bay**

RECEIVED
Zoning Department

October 7, 2011

Village of Palmetto Bay
Building & Zoning Department

By:

Vanessa Bencomo

PROJECT AGREEMENT

Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 11-02

Preparation of the Evaluation and Appraisal Report
for the Village of Palmetto Bay

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 June 11, 2010, 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 planning 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 Attachment 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 6 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 **Compensation.** The VILLAGE Agrees to pay CONSULTANT compensation for a lumpsum fee of \$34,250.00, inclusive of expenses.

4.2 **Reimbursable Expenses.** The expenses related to the Scope of Services is included in the lumpsum fee listed under 4.1.

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 on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed. Invoices for each phase shall not exceed amounts allocated to the Project. 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 CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This project agreement incorporates the terms and conditions set forth in the continuing services agreement dated June 11, 2010 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:

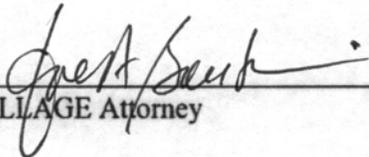
VILLAGE OF PALMETTO BAY

VILLAGE Clerk

By: _____
Ron E. Williams, VILLAGE Manager

Date: _____

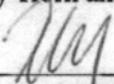
APPROVED AS TO FORM:



VILLAGE Attorney

ATTEST:

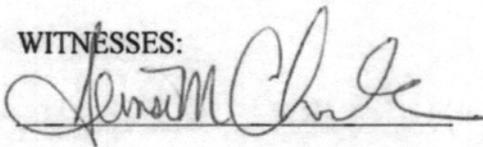
Kimley-Horn and Associates, Inc.

By: 

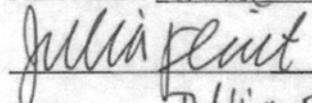
Kevin Schanen, P.E.
Vice President

Date: 10/0/11

WITNESSES:



Print Name: Denise M Chervenak



Print Name: Julia Flint

Exhibit "1"

Project Description

Pursuant to Chapter 163.3191 of the Florida Statutes (F.S.), all local governments must review their comprehensive plan once every seven years assessing the implementation progress of the comprehensive plan. Previously, the Florida statutes required the adoption of an Evaluation and Appraisal Report (EAR) by the local government and transmittal to the state review agency for approval.

Effective June 2, 2011, local governments have more discretion in determining whether they need to update their local comprehensive plan. As such, local governments no longer need to submit EARs to the Division of Community Development (DCD) for a sufficiency determination. However, at a minimum the local government is required to determine if there is a need to amend the comprehensive plan to reflect changes in state requirements since the last time the comprehensive plan was updated and notify the DCD of such determination. Additionally, local governments are required to adopt EAR based amendments within a year of such determination.

The Village of Palmetto Bay is interested in preparing an Evaluation and Appraisal Report (EAR) for the Village's Comprehensive Plan. The Village is requesting assistance to complete the EAR and assist in coordination with the DCD.

Exhibit "2"

Scope of Services and Project Schedule

The professional services for this project will include the following:

Task 1 – Project Kick-Off and Coordination Procedures

KHA will meet with Village staff and key officials one (1) time as a Project Kick-Off and also to conduct initial field observations and obtain readily available data. At this meeting, project organization and staff coordination guidelines/procedures will be established.

Task 2 – Data Collection/Review of Existing Information

KHA will gather available secondary data for the EAR and assess changes to the comprehensive plan since the Village's last EAR. The current elements of the comprehensive plan consist of:

- Future Land Use
- Transportation
- Housing
- Infrastructure
- Coastal Management
- Conservation
- Recreation and Open Space
- Intergovernmental Coordination
- Capital Improvements

The Consultant will rely on information provided by the Village, including, but not limited to, Planning, Information Services/Geographic Information Systems (GIS), Utilities and Public Works, and anticipates this information will be used to its fullest potential to evaluate the plan. The Consultant will also utilize readily available data from the Florida Department of Transportation (FDOT), South Florida Regional Planning Council (SFRPC), Miami-Dade County and the Florida Bureau of Economic and Business Research (BEBR).

Task 3 – Evaluation and Appraisal Report

The Consultant will assess the information and data collected in the previous tasks as it relates to each of the comprehensive plan elements. Specifically, the following actions will occur:

- 1.3.1 Evaluate population and land use changes.
- 1.3.2 Identify the amount and location of vacant land and its suitability and availability for development.
- 1.3.3 Determine the extent to which Village of Palmetto Bay was able to meet the growth demands on infrastructure, LOS standards, public services and facilities, and the financial feasibility of the plan.
- 1.3.4 Assess the successes and shortcomings of each element.

- 1.3.5 Evaluate the plan's ability to anticipate development.
- 1.3.6 Determine consistency with the water management district's plan. This task does not include preparation or coordination and analysis with South Florida Water Management District (SFWMD) regarding the Village's Water Supply Plan.
- 1.3.7 Analyze changes to the state comprehensive plan, the South Florida Regional Planning Council (SFRPC) Strategic Regional Policy Plan, and Florida Statutes related to comprehensive plans.

Upon substantial completion of Tasks 1 – 3, KHA will prepare a draft EAR for review by the Village. KHA will revise the proposed report one (1) time based on comments received. The draft EAR will be based upon the results of the tasks noted above and will also include information and analysis required by Chapter 163.3191, F.S.

Task 4 – Local Planning Agency and Village Council Adoption Hearing

The Consultant will provide one hard copy and one electronic copy of the draft EAR for distribution for the Local Planning Agency (LPA) hearing and the Village Council adoption hearing. It is anticipated that both hearings will occur in one meeting. The Village will be responsible for production and distribution of the EAR documents to the hearings. The Consultant will attend the hearings to present the draft EAR and to address questions and comments.

The Consultant will revise the draft EAR based upon the input from the LPA and the Village Council hearings as directed by Village staff. Following the revisions, the Consultant will provide one hard copy and one electronic copy of the final EAR document for transmittal to DCA and the review agencies for review.

Task 5 – Transmittal to DCD

The Consultant will assist the Village in preparing the transmittal letter to the Department of Community Development outlining the determination of whether the comprehensive plan will need to be amended based on the changes in the state requirements since the last time the comprehensive plan was amended. The Village is not required to transmit the adopted EAR to the DCD for sufficiency determination; however, it can be sent at the Village's discretion.

The Village will be responsible for production and transmittal of the letter and the adopted EAR to the DCD.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered additional services and will be performed at hourly rates included herein. Additional services we can provide include, but are not limited to, the following:

- Printed copies of the EAR
- Public meetings/workshops
- Additional hearings to the Village Council or LPA in addition to the two hearings included in the scope
- EAR Based Comprehensive Plan Amendments
- Zoning Code amendments

INFORMATION PROVIDED BY CLIENT

The following information shall be provided by the Client. The Consultant shall be entitled to rely on the completeness and accuracy of all information provided by the Client.

- Village's Comprehensive Plan
- All necessary Comprehensive Plan element maps in GIS or AutoCAD

SCHEDULE

We will provide our services as expeditiously as practicable to meet the following schedule. The duration and completion time of tasks may be mutually amended by the Client and the Consultant.

<u>Task</u>	<u>Time from Notice to Proceed</u>
Task 1 - Project Kick-Off /Project Initiation	1 week
Task 2 - Data Collection/Review of Existing Information	3 weeks
Task 3 - Preparation of First Draft of EAR	8 weeks
Client Review Period – First Draft	2.5 weeks
Preparation of Second Draft based on Client Comments	2.5 weeks
Task 4 - Public Hearings/Adoption	Village Meeting Schedule
Task 5 - Transmittal to DCD	2 weeks

Exhibit "3"

Payment Schedule

The Consultant will perform the Scope of Services for a total sum of \$34,250.00 including expenses. The breakdown of the fee by tasks is as follows and is to be paid upon completion of each task based on the billing schedule below:

Tasks	Fee
Task 1 – Project Kick-Off and Coordination Procedures	\$ 1,650
Task 2 – Data Collection	\$ 8,750
Task 3 – Evaluation and Appraisal Report	\$ 20,700
Task 4 – LPA and Village Council Adoption Hearing	\$ 1,500
Task 5 – Transmittal to DCD	\$1,650
Total	\$ 34,250

Billing Schedule:

Tasks 1, 2, 4, and 5 will be billed upon 100% completion.

Task 3 will be billed as follows:

Completion of first draft of EAR – 70% of Task Fee (\$14,490)

Completion of second draft of EAR – 90% of Task Fee (\$4,140)

Upon transmittal of final EAR to DCD – 100% of Task Fee (\$2,070)