RESOLUTION NO. 2012-13

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO A DRAINAGE IMPROVEMENT PROJECT AT SUB-BASIN NO. 10 WITHIN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT WITH KIMLEY HORN & ASSOCIATES, INC. TO PROVIDE DESIGN, PERMITTING, BIDDING AND CONSTRUCTION SUPPORT; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $125,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Kimley Horn and Associates, Inc. submitted a proposal to assist the Village in addressing the current flooding issues occurring in Sub Basin No. 10 as identified in the Village's Stormwater Master Plan; and,

WHEREAS, according to data collection findings and hydrologic/hydraulic modeling contained in the Storm Water Master Plan, the need for drainage improvements has been identified in the area of Sub-Basin No. 10, generally located south of SW 152 Street, North of SW 156 Terrace, east of 89 Avenue, and west of SW 87 Avenue; and,

WHEREAS, Kimley Horn and Associates, Inc. shall provide planning, design development plans, drainage design and permitting, contract documents, bid and support with limited construction services to successfully construct drainage improvements and repaving of Sub-Basin No. 10; and,

WHEREAS, the sub-basin consists of approximately 41.5 acres of existing detached single-family residential development with approximately 11,500 linear feet of roadway, including SW 87 Avenue, SW 87 Court, SW 88 Avenue, SW 88 Court, SW 89 Avenue, SW 152 Street, SW 153 Terrace, SW 154 Street, SW 154 Terrace, SW 155 Terrace, and SW 156 Terrace; and,

WHEREAS, currently, the drainage system in the area recommended for improvement is a closed system with catch basins connected to exfiltration trench located in the vegetated swales along the sides of the roadways; and,

WHEREAS, the drainage improvements will consist of additional catch basins and exfiltration trenches at low points in the roadway of the sub basin and connect to drainage wells; and,

WHEREAS, existing catch basins will be modified or reconstructed as required to provide sediment traps and pollution retardant baffles to protect the exfiltration trench and canal outfalls; and,

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 to continue the agreement with Kimley-Horn and Associates, Inc. to provide design, permitting, bidding and construction support for drainage improvements in the Village of Palmetto Bay in an amount not to exceed $125,000.

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

PASSED and **ADOPTED** this 6th day of February, 2012.

ATTEST:

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

READ AND APPROVED AS TO FORM:

Eve Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	YES
Council Member Howard J. Tendrich	YES
Council Member Joan Lindsay	YES
Vice-Mayor Brian W. Pariser	YES
Mayor Shelley Stanczyk.	YES

CONTINUING SERVICES

A G R E E M E N T

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

KIMLEY HORN AND ASSOCIATES, INC.

CONTINUING SERVICES

A G R E E M E N T

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

KIMLEY HORN AND ASSOCIATES, INC.

THIS AGREEMENT is made between the Village of Palmetto Bay, Florida, a Florida municipal corporation, (hereinafter referred to as the "Village ") and Kimley Horn and Associates, Inc. licensed and authorized to do business in the State of Florida, (hereinafter referred to as the "Consultant "), whose place of business is 5200 NW 33RD Avenue, Suite 109, Fort Lauderdale, FL 33309.

WHEREAS, pursuant to section 287.055, Florida Statutes, the Village requested qualifications from qualified engineers and selected the Consultant to provide professional Landscape Architecture, General Civil Engineering/Surveying, and General Planning services; and,

WHEREAS, after a competitive selection process of qualified applicants, the Consultant was selected to be on the pre-qualified list of the Village's specialized consultants to provide continuing services to the Village, on an as needed basis relating to the skill set of Consultant and needs of the Village relating to engineering services; and,

WHEREAS, the Consultant is willing and able to perform such professional, services for the Village within the basic terms and conditions set forth in this agreement (hereinafter referred to as "continuing services agreement or agreement"); and,

WHEREAS, the purpose of this continuing services agreement is not to authorize the Consultant to perform a specific project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for specific projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Consultant agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the Village for the Consultant's professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the project. reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the specific project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular project.

1.4 **Subconsultant Fee:** the direct and actual cost of the subconsultant with no markup, as reflected by actual invoices of the subconsultant.

1.5 **Travel Expenses:** is a reimbursable expense and provides reimbursement entitlement to Consultant for: actual mileage at $0.50 per mile, meals and lodging expenses incurred directly for the specific project for travel outside of Miami-Dade County. No overnight travel or out-of-town travel outside of Miami-Dade County shall be reimbursed unless the Consultant has secured advance written authorization for such travel from the Village Manager. Reimbursement for authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this agreement as though set forth in full.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, the Consultant may provide professional services to the Village for specific projects as authorized from time to time by either the Village council or Village Manager as authorized by subsection 2.6. The services shall be for the following types of projects or similar disciplines:[1]

a. Architecture;
b. Lanscape Architecture;

[1] The disciplines listed below are more extensively defined and identified in RFQ 2009-PW-106 Section 2.2 Scope of Services; which RFQ is incorporated by reference as exhibit C to this contract.

c. General Civil Engineering;
d. Transportation Planning and Engineering Services;
e. General Planning Services
f. Electrial and Structural Engineering;
g. Utility infrastructure evaluation and review;
h. Plat and site plan review;
i. Surveying;
j. Project management;
k. Opinion of probable cost of construction; and
l. Public Works permitting and inspections.

2.2 When the need for services for a specific project occurs, the Village Manager may, enter into negotiations with the Consultant for that specific project under the terms and conditions of this agreement. The Village shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to provide professional services for the specific project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Village Manager and Consultant shall negotiate the terms of the specific project in accordance with the provisions of subsection 2.3.

2.3 The Village and Consultant shall utilize as the agreement for each specific project a standard project agreement ("project agreement"), a copy of which is attached and incorporated into this agreement as Exhibit "A". Each supplemental agreement for a specific project will, by mutual agreement, set forth, among other things, the following:

a. The Scope of Services;
b. The Deliverables;
c. The Time and Schedule of Performance and Term;
d. The amount of Compensation;
e. The Personnel assigned to the specific project;
f. Any additional contractual requirements of section 287.055, Florida Statutes, for Consultant agreements; and
g. Any modifications to the project agreement, if mutually agreed upon by the parties.

2.4 When required and in lieu of a lump sum compensation package, the Consultant shall charge the Village for professional services at those hourly fees as specified in Exhibit "B." The project agreement shall specify that the Consultant's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each project agreement. Performance of work by Consultant prior to execution of a project agreement shall be at Consultant's sole risk.

2.6 The Village Manager is authorized to negotiate and execute a project agreement for projects in which the consultants' services do not exceed $25,000.00.

2.7 The Contract Documents for each specific project shall incorporate this continuing services agreement. In the event that any of the terms or conditions of this agreement conflict with the project agreement, the provisions of the project agreement shall apply.

2.8 This Agreement sets forth the terms and conditions pursuant to which the Consultant will provide Services for Project(s) assigned under this Continuing Services Agreement and as further detailed herein and at Exhibit A. The Recitals above are incorporated into and made a part of this Agreement.

2.9 It is the intent of Village to describe in the Contract Documents a functionally complete Project to be constructed in accordance with the Contract Documents relating to Exhibit A and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by the Consultant team whether or not specifically called for.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** This continuing agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to section 3.2 or other applicable sections of this agreement. Each project agreement shall specify the period of service agreed to by the Village and Consultant for services to be rendered under the project agreement. This continuing service agreement shall be for a three (3) year initial term, with two (2) one-year options to renewals, upon prior approval of the Village Manager.

3.2 **Termination For Convenience.** The Village may terminate this agreement for convenience at any time by giving 30 days notice in writing to the Consultant. The Consultant will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Consultant will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses. In the event that the Village improperly terminates the agreement for default under paragraph 3.3, the termination shall be deemed a termination for convenience under this paragraph.

3.3 **Termination For Default.** Either party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this agreement by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination. Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Consultant may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the Village in the event that Consultant is unable to complete the services identified in section 2 due to causes beyond Consultant's control. The Village shall have no liability to the Consultant for future profits or losses in the event of termination for default. The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement. Should Consultant provide the Village with written notice of cancellation of agreement, Consultant will be required to refund a pro-rata share of the compensation identified in section 2.

3.4 **Termination for Delay.** If the project is suspended or the Consultant's services are delayed by the Village for more than 30 consecutive days, the Consultant may terminate this agreement by giving not less than 10 days written notice. The liability of the Village upon termination by the Consultant for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Consultant to the time of termination by Consultant. The Village shall not be liable for future profits or losses.

3.5 **Termination for Lack of Funds.** Not withstanding any other provisions of the agreement, if the funds anticipated by the Village for the for the payment of work under this agreement are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

3.5.1 In the event the Village declines to appropriate funds for payment of the agreement for future fiscal years, Consultant shall be paid for work performed under the agreement with funds that are appropriated for the current fiscal year. The liability of the Village to Consultant shall be limited to the obligation to budget and appropriate funds for work performed during the current fiscal year.

3.6 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing project agreement(s). Termination of a project agreement shall be exclusively through the termination provisions of the specific project agreement.

3.7 **Non-Exclusive Agreement** - Notwithstanding the provisions of subsection 3.1, the Village Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the Village under similar continuing services agreements. Nothing in this agreement shall be construed to give the Consultant a right to perform services for a specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** The Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work. Changes in the scope of services of a project agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the Village by change order without invalidating the project agreement.

4.2 **Change Order Defined.** Change order shall mean a written order to the Consultant executed by the Village, issued after execution of a project agreement, authorizing and directing a change in the scope of services or an adjustment in the contract price or the contract time, or any combination thereof. The contract price and/or the contract time may be changed only by change order.

4.3 **Effect of Executed Change Order.** The execution of a change order by the Village and the Consultant shall constitute conclusive evidence of the Consultant's agreement to the ordered changes in the scope of services or an adjustment in the contract price or the contract time, or any combination thereof. The Consultant, by executing the change order, waives and forever releases any claim against the Village for additional time or compensation for matters relating to or arising out of or resulting from the services included within or affected by the executed change order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The Village Manager is authorized to negotiate and execute change orders, in an amount not to exceed $25,000.00 per contract. Changes, which exceed $25,000.00, shall be approved by the Village Council.

SECTION 5. NO DAMAGES FOR DELAY CLAUSE

5.1 No claim for damages or any claim other than for an extension of time shall be made or asserted against the Village by reason of any delays. The Consultant shall not be entitled to an increase in the agreement sum or payment of compensation of any kind from the Village for direct, indirect, consequential, impact, mobilization, demobilization, or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery or damages by the Consultant for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Village or its agents. Otherwise, the Consultant shall be entitled only to extension of the agreement time as the sole and exclusive remedy for a resulting delay, in accordance with and to the extent specifically provided above.

SECTION 6. RIGHT TO WITHHOLD

6.1 If work under this agreement is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Consultant, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Consultant with 10 days prior written notice in the event that it elects to exercise its right to withhold under this paragraph.

SECTION 7. INTEREST PAYMENTS

7.1 The Village shall make payment to Consultant within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by section 218.74, Florida Statues.

7.2 Consultant shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

SECTION 8. SURVIVAL OF PROVISIONS

8.1 Any terms or conditions of either this agreement or any subsequent project agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 9. VILLAGE'S RESPONSIBILITIES

9.1 Assist Consultant by placing at its disposal all available information as may be requested in writing by the Consultant and allow reasonable access to all pertinent information relating to the services to be performed by Consultant.

9.2 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the Village.

9.3 Arrange for access to and make all provisions for Consultant to enter upon public property as required for Consultant to perform services.

SECTION 10. CODE OF ETHICS/ PUBLIC ENTITY CRIMES AFFIDAVIT

10.1 The code of ethics of the Florida Engineering Society shall be incorporated in this agreement by this reference.

10.2 Consultant warrants and represents that its employees will abide by the Conflict of Interest and Code of Ethics Ordinances set forth section 2-11.1 of the Miami-Dade County Code, and Village code, as these codes may be amended from time to time.

10.3 Public Entity Crimes. In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to the Village, may not submit a bid on a contract with the Village for the construction or repair of a public building or public work, may not submit bids on leases of real property to the Village, may not be awarded or perform work as a contractor, supplier, subcontractor, or subconsultant under a contract with the Village, and may not transact any business with the Village in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by Consultant shall result in cancellation of the Village purchase and may result in Consultant's debarment.

SECTION 11. POLICY OF NON-DISCRIMINATION/WAGES

11.1 The Consultant shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race,

color, religion, sex, age, marital status, national origin, physical or mental disability in performing under this agreement.

11.2 The Consultant shall comply with the wage provisions of section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the Consultant shall be required to comply with applicant grant requirements.

11.3 Consultant warrants and represents that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Consultant's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Consultant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

11.4 Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by Village, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

SECTION 12. OWNERSHIP OF DOCUMENTS/DELIVERABLES

12.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the Village or furnished by the Consultant pursuant to any project agreement, shall become the property of the Village, whether the project for which they are made is completed or not, and shall be delivered by Consultant to the Village within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files, including any CADD files, if applicable. The Consultant shall have the right to keep one record set of the documents upon completion of the project, however, in no event shall the Consultant, without the Village's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

12.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the Consultant for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the Village.

12.3 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a professional engineer, architect, landscape architect, professional geologist, or land surveyor, as appropriate, in the State of Florida and date

approved and/or sealed. Consultant shall within three business days of ascertaining or determining that the registered professional engineer, landscape architect, professional geologist or land surveyor is no longer affiliated with Consultant or barred from practicing under his/her license, shall notify Village of the event and obtain the services of another, duly qualified and registered professional.

SECTION 13. RECORDS/AUDITS

13.1 Consultant shall maintain and require subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the specific project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Village Manager or any authorized Village representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the Village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the Village.

13.2 The Consultant shall comply with Chapter 119, Florida Statutes, as applicable.

13.3 Refusal of the Consultant to comply with these provisions shall be grounds for immediate termination for cause by the Village of this agreement or any project agreement.

13.4 Consultant's records which shall include but not be limited to accounting records, payroll time sheets, cancelled payroll checks, W-2's, 1099's, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), originals estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Village's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Consultant or any of his/her payees pursuant to the execution of the Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

SECTION 14. NO CONTINGENT FEE

14.1 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission,

percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. In the event the Consultant violates this provision, the Village shall have the right to terminate this agreement or any project agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

14.2 Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Consultant has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this agreement to Consultant.

14.3 Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this agreement in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances.

14.4 A violation of this paragraph will result in the termination of the agreement and forfeiture of funds paid, or to be paid, to the Consultant.

SECTION 15. INDEPENDENT CONTRACTOR

15.1 The Consultant is an Consultant under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer – employee relationship. Personal services provided by the Consultant shall be by employees of the Consultant and subject to supervision by the Consultant, and not as officers, employees, or agents of the Village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Consultant.

15.2 The Consultant's staff shall not be employees of the Village, and the Consultant alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract Documents shall impose any liability or duty on the Village on account of the Consultant's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Consultant as a Subcontractor, expert, consultant, Consultants, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind. The Consultant hereby agrees to indemnify and hold harmless the Village against any such liabilities, even if they arise from actions directed or taken by the Village.

SECTION 16. ASSIGNMENT; AMENDMENTS

16.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Consultant, without the prior written consent of the Village.

16.2 No modification, amendment or alteration in the terms or conditions of this agreement shall be effective unless contained in a written document executed with the same formality as this agreement.

16.3 The performance of this Agreement shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Consultant without the written consent of the Village. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Village approval.

16.4 The Consultant's services are unique in nature and any transference without Village Council's approval shall be cause for the Village to nullify this Agreement. Any assignment without the Village's consent shall be null and void. The Consultant shall have no recourse from such cancellation. The Village may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an assignment/ assumption agreement in a form satisfactory to the Village Attorney as a condition precedent to considering approval of an assignment. The Consultant and the Village each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

16.5 If the Consultant assigns, transfers, sublets or otherwise disposes of the Agreement or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the Village, such action shall be an Event of Default. Nothing herein shall either restrict the right of the Consultant to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Consultant for the benefit of its creditors, made pursuant to applicable law.

SECTION 17. INDEMNIFICATION/HOLD HARMLESS

17.1 The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Consultant or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Consultant, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Consultant or subcontractors.

17.2 The Consultant shall not commence work under this agreement until it has obtained all insurance required by the Village. The Consultant shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action

arising solely out of a negligent act, error, or omission or misconduct of the Consultant, or the Consultant's subcontractors, suppliers and laborers incident to the performance of the Consultant's services under this agreement. The Consultant shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

17.3 Pursuant to section 725.08 and 768-28, Florida Statutes, the Consultant shall indemnify and hold harmless the Village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant or any persons employed or utilized by the Consultant in the performance of this or any project agreement.

17.4 The indemnification provided above shall obligate Consultant to defend at its own cost and expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at Village's option, any and all claims of liability and all suits and actions of every name and description which may be brought against Village whether performed by Consultant, or persons employed or utilized by Consultant.

17.5 This indemnity will survive the cancellation or expiration of the Agreement. This indemnity will be interpreted under the laws of the State of Florida, including without limitation, Chapter 725, Florida Statutes. To the extent this indemnification provision does not comply with Chapter 725, Florida Statutes, as may be amended, this provision shall hereby be interpreted as the parties' intention for the indemnification clauses to comply with Chapter 725, Florida Statutes.

17.6 Consultant shall require all Subcontractor agreements to include a provision that they will indemnify and hold harmless the Village, its officers, agents, directors, and employees, and instrumentalities as herein provided.

17.7 The Consultant agrees and recognizes that the Village shall not be held liable or responsible for any claims which may result from any actions or omissions of the Consultant in which the Village participated either through review or concurrence of the Consultant's actions. In reviewing, approving or rejecting any submissions by the Consultant or other acts of the Consultant, the Village in no way assumes or shares any responsibility or liability of the Consultant or Subcontractor, under this Agreement.

17.8 Ten ($10.00) dollars payable by the Village to the Consultant constitutes separate and distinct consideration for this indemnity and hold harmless provision, the sufficiency of which is hereby acknowledged by the Consultant.

SECTION 18. INSURANCE

18.1 The Consultant shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Village against hazards or risks of loss as specified below. The insurance coverage shall include a minimum of:

A. Professional Liability Insurance in the amount of $1,000,000.00 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the Consultant shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant or any person employed by him in connection with this agreement. However, if the project amount exceeds $1,000,000.00 then the amount of Professional Liability Insurance must meet the higher amount with a deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the Consultant shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant or any person employed by him in connection with this agreement. This insurance shall be maintained for three years after completion of the construction and acceptance of any project covered by this agreement. However, the Consultant may purchase Specific Project Professional Liability Insurance which is also acceptable.

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of $1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of $500,000 per accident.

18.2 The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required

policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the Village.

18.3 All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida and have agents upon whom service of process may be made in the State of Florida.

18.4 The Consultant shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village.

18.5 The Village is to be specifically included as an additional insured for the liability of the Village resulting from operations performed by or on behalf of Consultant in performance of this or any project agreement. Consultant's insurance, including that applicable to the Village as an additional insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to Consultant's insurance. Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each.

18.6 Prior to the execution of this agreement, Consultant shall provide the Village Manager with evidence of insurability from the Consultant's insurance carrier or a certificate of insurance. Prior to execution of any project agreement, the Consultant shall provide to the Village Manager, certificates of insurance evidencing the required insurance coverage. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by this and any project agreement. The Village reserves the right to require the Consultant to provide a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30 days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the Village Manager.

18.7 Compliance with the foregoing requirements shall not relieve the Consultant of its liability and obligations under this agreement.

18.8 All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The Consultant shall be responsible for the payment of any deductible or self-insured retention in the event of any claim. The Village Manager may require the Consultant, as a condition of execution of a particular project agreement, to provide a bond or

other monetary consideration to cover the consultants' deductible for professional liability insurance.

SECTION 19. REPRESENTATIVE OF VILLAGE AND CONSULTANT

19.1 **Village Representative**. It is recognized that questions in the day-to-day conduct of this agreement will arise. The Village designates the Director of Public Work, as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

19.2 **Consultant Representative**. Consultant shall inform the Village representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

SECTION 20. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

20.1 The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings.

20.2 In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 21. MEDIATION

21.1 Any claim or dispute arising out of or related to this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

21.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon.

21.3 Agreements reached in mediation shall be enforceable as settlement agreements in the circuit court for the 11th judicial circuit for the State of Florida.

SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED

22.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this

agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 23. CONSULTANT'S RESPONSIBILITIES

23.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable Village codes, state and federal laws, rules and regulations.

23.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each project agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any project agreement or the construction of the project for which the Consultant has provided engineering, architectural landscape architectural, surveying or mapping services under a prior project agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular project, upon written notification from the Village, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the Village for any other services and expenses made necessary thereby, save and expect any costs and expenses which the Village would have otherwise paid absent the Consultant's error or omission. The Village's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this agreement, the project agreement, by law, equity or otherwise.

23.3 The Consultant's obligations under this section of this agreement shall survive termination of this agreement or any project agreement.

SECTION 24. SUBCONSULTANTS

24.1 None of the work or services under this agreement shall be subcontracted unless Consultant obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this agreement and Consultant shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

24.2 The Consultant shall not assign, transfer or pledge any interest in this agreement without the prior written consent of the Village; provided, however, that claims for money by the Consultant from the Village under this agreement may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice

of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Consultant to the Village.

24.3 In the event the Consultant requires the services of any subconsultants or other professional associates in connection with services covered by any project agreement, the Consultant must secure the prior written approval of the Village Manager. The Consultant shall utilize his/her best efforts to utilize subconsultants where principal place of business is located within the Village of Palmetto Bay, Florida.

24.4 Any subcontract with a subconsultant shall afford to the Consultant rights against the subconsultant which correspond to those rights afforded to the Village against the Consultant herein, including but not limited to those rights of termination as set forth herein.

24.5 No reimbursement shall be made to the Consultant for any subconsultants that have not been previously approved by the Village for use by the Consultant.

24.6 The Consultant, subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property. Consultant and its subcontractors specifically acknowledge that (i) it is entering into a contract with the Village for Continuing Services and may provide services contemplated in Chapter 255, Florida Statutes, and (ii) that neither Consultant nor any of its subcontractors have the right to file a construction lien against the Work or the Project. Contractor agrees to include a similar requirement (precluding the filing of liens against Village property) in any purchase order or subcontract entered into by Subcontractor.

24.7 The Consultant shall be fully responsible for all acts and omissions of its Subcontractor and of persons directly or indirectly employed by its subcontractors and of persons for whose acts any of them may be liable to the same extent that the Consultant is responsible for the acts and omissions of persons directly employed by it.

24.8 Nothing in this Agreement shall create any contractual relationship between any Subcontractor and Village or any obligation on the part of Village to pay or to see the payment of any monies due any Subcontractor. Village or Consultant may furnish to any subcontractor evidence of amounts paid to Consultant on account of specific work performed.

24.9 Consultant shall be required to comply with all Village requirements for Subcontractor utilization reports.

24.10 Consultant agrees to bind specifically every Subcontractor to the applicable terms and conditions of this Agreement for the benefit of Village.

24.11 If Consultant requires a Subcontractor to obtain performance and payment bonds, then such bonds shall name the Consultant and the Village as co-obligees, shall cover all

warranties and guarantees of the Subcontractor, and shall comply with all bond requirements under this Agreement.

24.12 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, Consultant shall ensure that the bond(s) referenced above shall be recorded in the public records of Miami-Dade County and provide Village with evidence of such recording.

SECTION 25. NOTICES

25.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers:

FOR CONSULTANT:

Kimley Horn and Associates, Inc.
Gary Ratay P.E., Project Manager
5200 NW 33RD Avenue, Suite 109
Ft. Lauderdale, FL 33309
Telephone: (954) 535-5100
Facsimile: (954) 739-2247

FOR VILLAGE:

Village of Palmetto Bay
Ron E. Williams, Village Manager
8950 SW 152nd Street
Palmetto Bay, Florida 33157
Telephone: (305) 259-1234
Facsimile: (305) 259-1290

SECTION 26. TRUTH-IN-NEGOTIATION CERTIFICATE

26.1 Signature of this agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this agreement or any project agreement are accurate, complete, and current at

the time of contracting. Each project agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the Village determines the project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each project agreement.

SECTION 27. CONSENT TO JURISDICTION/GOVERNING LAW

27.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County, Florida.

SECTION 28. CHANGES IN SCOPE.

28.1 Any changes to the terms of this Agreement must be contained in a written document, executed by the parties hereto, This Article shall not prohibit the issuance of Change Orders executed only by Village as hereinafter provided.

28.2 No changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall be authorized, permitted or accepted except by prior written authorization executed by the Village Manager and or Village Council, within the financial limits identified herein.

28.3 The Consultant shall increase or decrease the value of the Performance and Payment Bonds to reflect the value of the project as it may be revised.

28.4 No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Village by reason of any delays except as provided herein. Consultant shall not be entitled to an increase in the Agreement Price or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Consultant for actual delays due solely to fraud, bad faith or active interference on the part of Village or its Consultant. Otherwise, Consultant shall be entitled only to extensions of the Agreement time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided under each project agreement as provided under Exhibit A.

SECTION 29. HEADINGS

29.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

SECTION 30. EXHIBITS

30.1 Each Exhibit referred to in this agreement forms an essential part of this agreement. The Exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference.

SECTION 31. SEVERABILITY

31.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

31.2 This Agreement, as it may be amended from time to time, represents the entire and integrated agreement between the Village and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement.

SECTION 32. COUNTERPARTS

32.1 This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

SECTION 33. WARRANTY OF AUTHORITY

33.1 The signatories to this agreement warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this agreement and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

SECTION 34. TERMINATION DUE TO UNDISCLOSED LOBBYIST OR AGENT

34.1 Consultant warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the Village shall have the right to terminate the Agreement without liability.

SECTION 35. MATERIALITY AND WAIVER OF BREACH

35.1 Village and Consultant agree that each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

35.2 Village's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

SECTION 36. FORCE MAJEURE

36.1 Should any failure to perform on the part of Consultant be due to a condition of force majeure as that term is interpreted under Florida law, then the Village may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

36.2 If the Consultant is delayed in performing any obligation under this Agreement due to a force Majeure condition, the Consultant shall request a time extension from the Village within two (2) working days of said force Majeure occurrence. Any time extension shall be subject to mutual agreement and shall not because for any claim by the Consultant for extra compensation unless additional services are required. Force Majeure shall not include inclement weather, except as permitted by Florida law, and shall not include the acts or omissions of Subconsultants/Subcontractors

SECTION 37. JOINT PREPARATION- INTERPRETATION

37.1 The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, article, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or

Article as a whole, including all of the subsections of such Section or Article, unless the reference is made to a particular subsection or subparagraph of such section or article.

SECTION 38. CONFIDENTIALITY

38.1 Unless authorized by the Director, Consultant shall keep confidential all information concerning and relating to this Project, including without limitation, any information and documentation provided by employee or officers of the Village to the Consultant any design costs, drawings, specifications or any other materials prepared by the Consultant or Subcontractor's in connection with the Work provided under this Agreement. Consultant shall not disclose any confidential information to any persons or other entities not listed above without the prior written consent of the Village. Such consent may be granted or withheld at the sole discretion of the Village. The foregoing shall not prohibit such disclosures as may be necessary in the performance of the Work under this Agreement or as required by law.

SECTION 39. AGREEMENT LIMITING TIME IN WHICH TO BRING ACTION AGAINST THE VILLAGE

39.1 In the event the Consultant may be deemed to have a cause of action against the Village, no action shall lie or be maintained by the Consultant against the Village upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Village or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Agreement, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract Documents, or if the Agreement is terminated or declared abandoned under the provisions of the Agreement unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the Village.

SECTION 40. DEFENSE OF CLAIMS

40.1 Should any claim be made or any legal action brought in any way relating hereto or to the Work hereunder, except as expressly provided herein, the Consultant shall diligently render to the Village, after additional compensation is mutually agreed upon, any and all assistance which the Village may require of the Consultant.

SECTION 41. SURVIVAL

41.1 The parties acknowledge that any of the obligations in the Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Consultant and the Village under the Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration thereof.

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The Village, signing by and through its Village Manager, attested to by its Village clerk, duly authorized to execute same and by Consultant by and through its assistant secretary, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

ATTEST:

Village Clerk

VILLAGE OF PALMETTO BAY

By: _____
Ron E. Williams, Village Manager

Date: 6-11-10

APPROVED AS TO FORM:

Village Attorney

ATTEST:

Kimley Horn and Associates, Inc.

By: _____
Gary Ratay P.E.
Project Manager

Date: 6/10/10

WITNESSES:

Signature: _____

Print Name: JOAN W ECKERSLEY

Signature: _____

Print Name: Claudette Smith

EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 11-02

SW 88th Avenue Area (Basin 10)
Paving and Drainage Improvements

PROJECT AGREEMENT

Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 11-02

SW 88th Avenue Area (Basin 10) Paving and Drainage Improvements

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 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 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 **Lump Sum Compensation.** VILLAGE agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" a Lump Sum amount of $125,000.00.

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 CONDTIONS 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.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

Date: _____

WITNESSES:

_____

Print Name: _____

_____

Print Name: _____

Exhibit "1"

Project Description

This proposal is to assist the VILLAGE in addressing the current flooding issues occurring in the Drainage Basin 10 as defined in the VILLAGE's Stormwater Master Plan. The Project Area consists of the contributing drainage area associated with the following roadways: SW 87th Avenue, SW 88th Court, SW 87th Court, SW 89th Avenue, SW 152nd Street, SW 153rd Terrace, SW 154th Terrace, SW 155th Terrace, SW 156th Terrace, and SW 154th Street. The drainage system in this basin is a closed system with catch basins connected to exfiltration trench located in the swales along the sides of the roadway.

Exhibit "2"

Scope of Services and Project Schedule

The professional services for this project will include the following:

Task 1 - Project Initiation, Survey, Geotechnical, and Schematic Design

As part of this task, the CONSULTANT shall obtain, review, and analyze survey and soil testing for the Project Area. Upon receipt of the survey and geotechnical information, the CONSULTANT shall visit the site listed in the Project Description (Exhibit "1") to collect data and note existing conditions. The survey and information collected during the site visits will be utilized to develop a schematic design plan. The schematic design plan will be represented to the VILLAGE on one (1) plan sheet identifying proposed drainage improvements and existing conditions. The schematic drainage design plans will be the basis for discussion of alternatives with VILLAGE staff.

As part of this task, two (2) copies of the survey will be forwarded to each utility company known to operate in the vicinity of the Project Area. Each utility company will be requested to return one redlined survey, identifying the horizontal and vertical location of their facilities and any proposed improvements planned within the next two years to the VILLAGE. This information will be incorporated into the schematic design plan upon receipt from the utility companies.

As part of this Task, the CONSULTANT shall attend two (2) meetings with VILLAGE staff. Task 1 will be completed within 12 weeks of authorization to proceed.

Task 2 – Design Development Plans

Utilizing the survey, soil testing results and schematic design plan developed in Task 1 above, the CONSULTANT shall prepare preliminary 60% design plans for the construction of paving and drainage improvements within the Project Area. These Design Development Plans shall show the geometric layout on top of the base survey data. The basis for design will be the Miami-Dade County Public Works Manual and Florida Department of Transportation (the "FDOT") Standard Indexes where applicable. Task 2 will be completed within 8 weeks of receiving schematic design plan approval from VILLAGE staff. The following plan sheets may be included in the Design Development Plans:

1. Key Sheet – Project title, vicinity map, engineer of record, and other appropriate information.

2. Resurfacing Maps – Identifying the limits of the roadways that will be resurfaced as part of this project.

3. Plan and Profile Sheets (in a 22" x 34" format) – Containing the geometric, horizontal and vertical alignment for the milling and resurfacing of the roadways within the project area.

These sheets shall also contain the horizontal, vertical, and geometric alignments for modifications/additions to the existing drainage system.

4. Miscellaneous Construction Details – These sheets shall provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.

5. Miscellaneous Drainage Details – These sheets would provide drainage details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.

6. Typical Signing and Pavement Marking Details – Signing and pavement markings shall be detailed for use in the project.

Task 3 – Drainage Design and Permitting

3.1 Coordination Meetings

The CONSULTANT shall attend one (1) coordination meeting each with representatives of the Miami Dade County Department of Environmental Resources Management ("DERM") and the Miami-Dade County Department of Public Works ("Miami-Dade Public Works") during the course of the design and permitting process. The intent of the meetings will be to review the proposed design and permitting requirements.

3.2 Hydraulic Analysis

The hydraulic analysis shall be completed for the Project Area based upon the geotechnical and survey information obtained in Task 1. 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 along with the incorporation of budget constraints will be the basis for design of the stormwater system.

3.3 Permitting

The CONSULTANT shall prepare and submit permit applications to DERM and Miami-Dade Public Works. The package will consist of the permit application form, pre-development and post-development runoff calculations, and the Design Development Plans. Responses to comments (one set of review comments by DERM and Miami-Dade Public Works) will be prepared within the Final Construction Plans. The VILLAGE will pay all permit fees directly. The permit applications will be submitted within 12 weeks of receiving design development plan approval from VILLAGE staff.

Task 4 - Final Construction Plans and Contract Documents

4.1 Final Construction Plans

Upon receipt of comments from DERM and Miami-Dade Public Works, the Design Development Plans will be upgraded to construction plans incorporating the permitting agency

comments. This task will be completed within 6 weeks of receiving DERM and Miami-Dade Public Works permit approval.

The final construction document set will include the following:

1. Key Sheet – Project title, vicinity map, engineer of record, and other appropriate information.

2. Resurfacing Maps – Identifying the limits of the roadways that will be resurfaced as part of this project.

3. Plan and Profile Sheets (in a 22" x 34" format) – Containing the geometric, horizontal and vertical alignment for the milling and resurfacing of the project area. These sheets shall also contain the horizontal, vertical, and geometric alignments for modifications/additions to the existing drainage system.

4. Miscellaneous Construction Details – These sheets shall provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.

5. Miscellaneous Drainage Details – These sheets would provide drainage details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.

6. Typical Signing and Pavement Marking Details – Signing and pavement markings shall be detailed for use in the project.

Plan set summary of estimated sheets:	
Cover/Key Sheets	2
Resurfacing Map	2
Plan and Profile Sheets	15
Miscellaneous Construction Details	2
Miscellaneous Drainage Details	2
Typical Signing and Pavement Marking Details	2
Erosion Control Plans and Details	4
Total Number of Sheets	**29**

4.2 Contract Documents

The Engineers Joint Contract Documents Committee ("EJCDC") standard contract documents will be utilized for this project. It is intended that the FDOT Technical Specifications be used for this project. Supplemental Technical Specifications shall be prepared by the CONSULTANT to address construction elements not addressed in the FDOT standard Technical Specifications or that are included but require modifications to make them project specific.

Task 5 – Contractor Selection Assistance

5.1 Bidding Assistance

It is our understanding that the VILLAGE will use a competitive bidding process to hire a contractor to construct the improvements described in the final construction plans and contract documents. The CONSULTANT shall consult with and advise the VILLAGE and act as its representative for the proposed improvements during the bidding process. This task is limited to attendance at a pre-bid meeting and issuance of addenda in response to contractor questions. Once bids are received, the CONSULTANT shall review the bids and prepare a bid tabulation sheet for use in making the recommended award.

Task 6 – Limited Construction Phase Services

This task is to provide limited construction phase service by the CONSULTANT during construction of the project. There are six separate construction phase sub tasks regarding the VILLAGE's SW 88th Avenue Area Paving and Drainage Improvements project. The tasks are as follows:

1. Meetings
2. Resident Project Representative
3. Shop Drawing Review
4. Contract Clarification
5. Review of Pay Application
6. Project Close-out

The construction duration for the scope of work is 180 days.

6.1 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 twelve (12) meetings.

6.2 Resident Project Representative

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 twenty (20) weeks (total of 60 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 to the CONSULTANT of the field visits describing the general working conditions, areas of construction activity, tests performed, and special and unusual events.

6.3 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)".

6.4 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.

6.5 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.

6.6 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).

The 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

The CONSULTANT will complete this scope of services for the lump sum amount of **$125,000.00.**

Task	Description	Labor Fee
1	Project Initiation, Survey, Geotechnical, and Schematic Design	$42,000.00
2	Design Development Plans	$18,000.00
3	Drainage Design and Permitting	$11,000.00
4	Final Construction Plans and Contract Documents	$13,000.00
5	Contractor Selection Assistance	$1,000.00
6	Limited Construction Phase Services	$40,000.00

LUMP SUM FEE **$125,000.00**

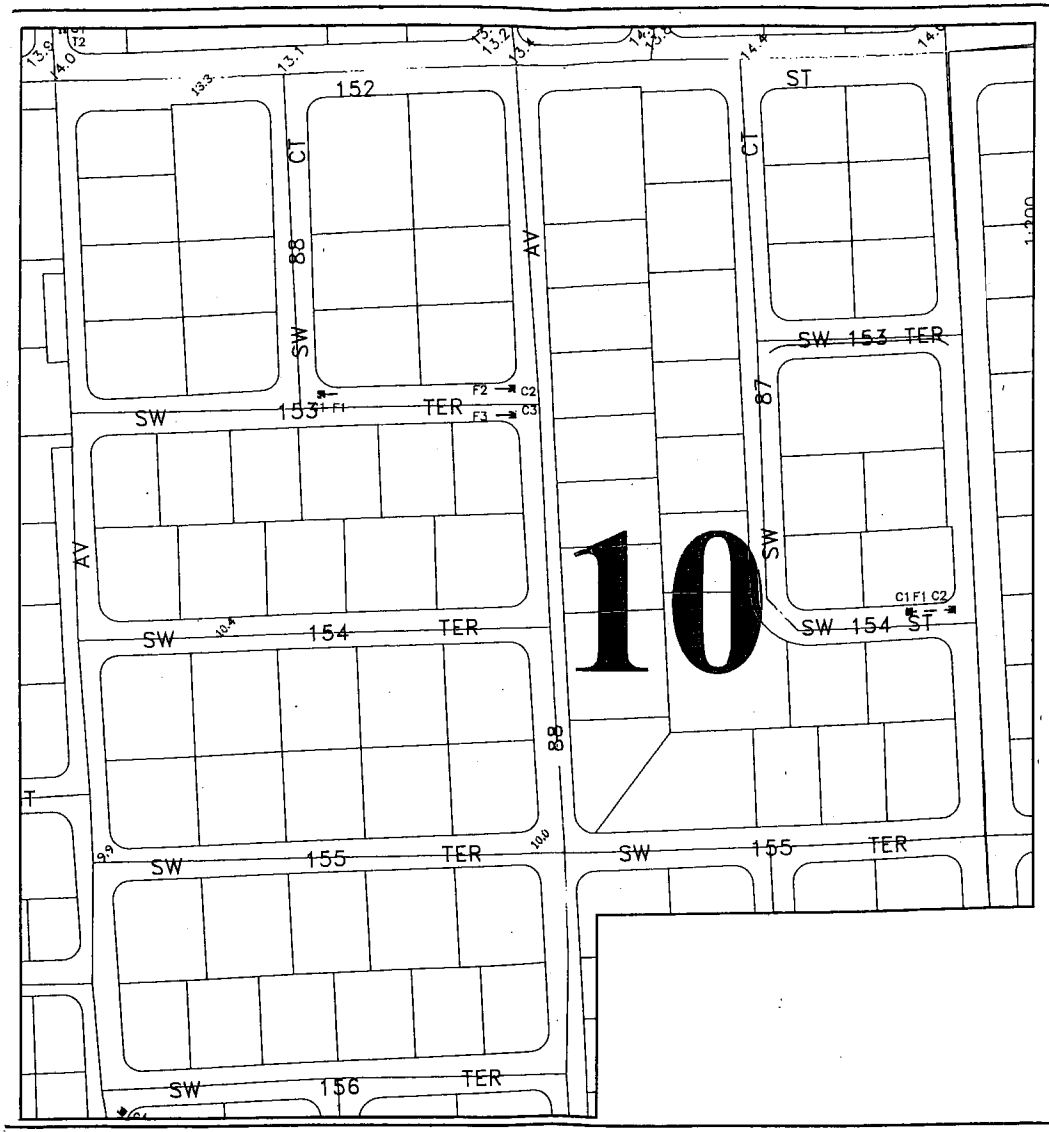

Figure 38
Drainage Sub-Basin #10
Existing Conditions

LEGEND

- Catch Basin (C1)
- French Drain (F1)
- Trench (T1)
- Pipe (P1)
- Outfall (O1)
- Sub-Basin Boundary
- Manhole (M1)
- Elevation 0.00

Kimley-Horn
and Associates, Inc.

Last Revised August 25, 2004