RESOLUTION NO. 2012-83

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE VILLAGE OF PALMETTO BAY'S STORMWATER MASTER PLAN UPDATE; APPROVING THE SELECTION OF KIMLEY-HORN AND ASSOCIATES, INC., TO PROVIDE CIVIL ENGINEERING SERVICES TO THE VILLAGE; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $79,800.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in February 2004, as per Resolution No. 04-21, the Village of Palmetto Bay contracted with Kimley-Horn and Associates, Inc. for the development of a Stormwater Master Plan (SWMP); and

WHEREAS, the SWMP was completed and accepted as per Resolution No. 04-102 in December 2004; and

WHEREAS, the SWMP includes a Capital Improvement Plan (CIP) that addresses seventeen priority stormwater improvement projects (basins) throughout the Village of Palmetto Bay based on observed flooding, flood complaints, roadway conditions, traffic volumes, and hydraulic analysis; and

WHEREAS, the original SWMP is now over 7 years old and there have been several stormwater projects and localized drainage improvements that have enhanced and improved the Village's stormwater system; and

WHEREAS, there have been changes in the construction industry and stormwater best management practices (BMP's) that should be reviewed and incorporated into the budgets for the stormwater program. In order to evaluate the stormwater program as well as address these issues and assess additional areas of the Village for stormwater programming and priorities, it is recommended that the Village of Palmetto Bay update the SWMP; and

WHEREAS, in response to the Village's needs, the Department of Public Works requested a proposal from Kimley-Horn and Associates Inc. for the update of the Village's SWMP; and

WHEREAS, as per Resolution No. 2010-36 approved on April 12, 2010, Kimley-Horn and Associates is qualified to provide ongoing general civil engineering services for the Village of Palmetto Bay; and

WHEREAS, having completed the original SWMP as well as implementing four of the Village's stormwater capital improvement projects, Kimley-Horn and Associates, Inc. has extensive information and local knowledge that will be used to minimize data collection efforts and to better serve the Village during this SWMP Update; 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 enter agreement with Kimley-Horn and Associates to update the Village of Palmetto Bay's Stormwater Master Plan in an amount not to exceed $79,800.

Section 2. This Resolution shall become effective immediately.

PASSED AND ADOPTED this 5th day of November, 2012.

Attest: _____
Meighan J. Alexander
Village Clerk

_____
Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____
Eve A. Boutsis,
FIGUEREDO & BOUTSIS, P.A., as Office of the Village Attorney

FINAL VOTE AT ADOPTION:

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

May 21, 2012

Kimley-Horn and Associates, Inc.
Gary Ratay P.E., Project Manager
5200 NW 33 Avenue, Suite 109
Ft. Lauderdale, Florida 33309

Re: Approval of Renewal Contract with Kimley-Horn and Associates, Inc. for Professional Services

Dear Mr. Ratay,

On April 12, 2010, Village of Palmetto Bay Council approved Resolution No. 2010-36, relating to professional services further approving the qualification of firms to provide the Village with Architecture, Landscape Architecture, General Civil Engineering/ Surveying, Transportation Planning and Engineering, Electrical Engineering, Structural Engineering, and General Planning Services.

Pursuant to Section 4.1 Term of Engagement of Request for Qualification (RFQ) 2009-PW-106, the Village of Palmetto Bay has the option to extend the existing contract for two (2) one year terms upon expiration. At this time, the Village would like to exercise its option to renew its contract with Kimley-Horn and Associates, Inc. for one additional year. If accepted by both parties, the term of this option to renew subject contract is for one year starting June 11, 2012 with an expiration date of June 11, 2013.

Please indicate your firm's concurrence of this renewal option below and return to our office in the enclosed self-addressed envelope. Should you need further information, please feel free to contact 305-969-5011.

Kimley-Horn and Associates, Inc.

Approved
Gary Ratay
Project Manager

Disapproved
Gary Ratay
Project Manager

Village of Palmetto Bay

Approved
Ron E. Williams
Village of Palmetto Bay Manager

Disapproved
Ron E. Williams
Village of Palmetto Bay Manager

Approved by Legal Sufficiency _____
Eve Boutsis, Village of Palmetto Bay Attorney

9705 East Hibiscus Street, Palmetto Bay, Florida 33157
Tel: 305.259.1234 • Fax: 305.259.1290

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

AGREEMENT

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.

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ATTEST:

Meighan Radar
Village Clerk

VILLAGE OF PALMETTO BAY

By: Ron E. Williams
Ron E. Williams, Village Manager

Date: 6-11-10

APPROVED AS TO FORM:

Jeff Bauer
Village Attorney

ATTEST:

Kimley Horn and Associates, Inc.

By: Gary Ratay
Gary Ratay P.E.
Project Manager

Date: 6/10/10

WITNESSES:

Signature: Joan W Eckersly

Print Name: JOAN W ECKERSLEY

Signature: Clandette Smith

Print Name: Clandette Smith