



**Marion County
Board of County Commissioners**

**MODIFICATION OF AGREEMENT
WITH MARION COUNTY ("COUNTY")**

AGREEMENT NUMBER/TITLE: 20Q-074 Utilities Engineering Design Support Services

MODIFICATION NUMBER: 1 MODIFICATION EFFECTIVE DATE: February 2, 2021

DESCRIPTION OF MODIFICATION:

Language revisions, replacements and additions to conform with current Florida Statutes.

This Modification and the changes/additions reflected on Exhibit A hereto shall be deemed to amend and become part of the Agreement in accordance with Project 20Q-074 and shall remain in full force and effect until the completion of all services required of FIRM under the Agreement. All provisions of the Agreement not specifically amended herein shall remain in full force and effect.

ISSUED BY: Marion County Board of County Commissioners
Procurement Services
2631 SE Third St.
Ocala, FL 34471

PCA/BUYER: SHARI CHINEVERE
E-MAIL: shari.chinevere@marioncountyfl.org
PHONE: 352-671-8648

NAME: Kimley-Horn and Associates, Inc.
ADDRESS: 101 E. Silver Springs Blvd., Suite 400, Ocala, FL 34470
ATTN: Lewis Bryant - lewis.bryant@kimley-horn.com

INSTRUCTIONS: FIRM shall sign Signature Block showing acceptance of the above written modification and return this form to Procurement Services within five (5) days after receipt. Once fully executed, a copy of this modification will be returned to FIRM to attach to the original agreement.

MARION COUNTY, A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

Jeff Gold
JEFF GOLD
CHAIRMAN

2/2/2021
DATE

FOR USE AND RELIANCE OF MARION COUNTY ONLY,
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Matthew G. Minter
for MATTHEW G. MINTER
MARION COUNTY ATTORNEY

ATTEST:

Gregory C. Harrell
GREGORY C. HARRELL
MARION COUNTY CLERK OF THE COURT

2/2/2021
DATE

COMPANY NAME:

Kimley-Horn and Associates, Inc.

BY:

Malcolm L. Bryant
PRINTED NAME

ITS:

2/4/2021
DATE

20Q-074-CA-01
Utilities Engineering Design Support Services
EXHIBIT A

1. DEFINITIONS.

- A. Section '2' of the Agreement is modified to include Purchase Orders in the definition of Contract Documents; to add that should any conflict arise between the Contract Documents and the Agreement, the terms of the Agreement shall govern.

2. INDEMNIFICATION.

- A. **Design Professional.** FIRM represents that it is a design professional (as defined under Section 725.08, Florida Statutes) as it is an entity licensed by the State of Florida holding a current certificate of registration or is qualified under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering.
- B. **Professional Services Contract.** If the Agreement is a "professional services contract" as defined under Section 725.08, F.S., as relating to the planning, design, construction, administration, study, evaluation, consulting or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, then Section '12' of the Agreement is deleted in its entirety and replaced with the following:

Section 12 – Indemnification, pursuant to Section 725.08, F.S.

FIRM shall indemnify COUNTY and its elected officials and employees against, and hold COUNTY and its elected officials and employees harmless from, all liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, which COUNTY or its elected officials and employees may sustain, or which may be asserted against COUNTY or its elected officials and employees, arising out of the negligence, recklessness, or intentionally wrongful conduct of FIRM and other persons employed or utilized by FIRM, in the performance of the Agreement, including but not limited to property damage, harm or personal injury, including death, to the extent allowed by Section 725.08, F.S., and to the extent that the services rendered pursuant to the Agreement were services of a "Design Professional" as defined in Section 725.08(4), F.S.

3. INSURANCE.

- A. Section '13' of the Agreement requiring in part that the company issuing the required Certificate of Insurance have an A.M. Best Company rating of at least a B+ is modified solely to delete the words "at least a B+" and replace them with "at least an A-."

4. EMPLOYEE ELIGIBILITY VERIFICATION.

- A. Section '19' of the Agreement regarding E-Verify is deleted in its entirety and replaced with the following:

Section 19 – E-Verify, pursuant to Section 448.095, F.S.

Section 448.095, Florida Statutes, requires FIRM to be registered and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits FIRM from entering into the Agreement unless it is in compliance therewith. Information provided by FIRM is subject to review for the most current version of the State or Federal policies at the time of the award of the Agreement.

1. COUNTY hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.
2. FIRM has agreed to perform in accordance with the requirements of this Section and agrees:

- a. FIRM certifies and assures COUNTY that FIRM is currently in full compliance with Section 448.095, Florida Statutes and it is registered and uses the E-Verify System to verify work authorization status of all newly hired employees and will continue to do so throughout the Term. This certification and assurance is a material term on which COUNTY relies in entering into the Agreement.
- b. COUNTY shall immediately terminate the Agreement if COUNTY has a good faith belief that FIRM has knowingly violated Section 448.09(1), Florida Statutes, that is, that FIRM knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
- c. When FIRM enters into a contract with an employee, a contractor or a subcontractor, FIRM shall obtain from that contracting party ("Contracting Party") an affidavit stating that the Contracting Party does not employ, contract with, or subcontract with an unauthorized alien.
- d. FIRM shall maintain a copy of such affidavit for the duration of the Agreement and provide it to COUNTY upon request.
- e. FIRM shall immediately terminate the Contracting Party if FIRM has a good faith belief that the Contracting Party has knowingly violated Section 448.09(1), Florida Statutes, as set forth above.
- f. If COUNTY has a good faith belief that FIRM's Contracting Party has knowingly violated Section 448.09(1), Florida Statutes, but that FIRM has otherwise complied, COUNTY shall promptly order FIRM to terminate the Contracting Party. FIRM agrees that upon such an order, FIRM shall immediately terminate the Contracting Party. FIRM agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate FIRM.
- g. If COUNTY terminates the Agreement with FIRM, FIRM may not be awarded a public contract for a least one (1) year after the date of termination.
- h. FIRM is liable for any additional costs incurred by COUNTY as a result of a termination under this Section.
- i. Any such termination under this Section is not a breach of the Agreement and may not be considered as such.
- j. FIRM shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its subcontractors, and to make such records available to COUNTY or other authorized governmental entity.
- k. To comply with the terms of this Employment Eligibility Verification provision is made an express condition of the Agreement and COUNTY may treat a failure to comply as a material breach of the Agreement.

5. SCRUTINIZED COMPANIES. Section '23' of the Agreement regarding Scrutinized Companies is deleted in its entirety and replaced with the following:

Section 23 - Scrutinized Companies, pursuant to Section 287.135,

F.S. A. Certification.

1. If the Agreement is for One Million Dollars or more, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
 - a. On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S., or
 - b. Engaged in business operations in Cuba or Syria.
2. If the Agreement is for any amount, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
 - a. On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or
 - b. Engaged in a boycott of Israel.

B. Termination, Threshold Amount. COUNTY may, entirely at its option, terminate the Agreement if it is for One Million Dollars or more and FIRM meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and
2. FIRM is found to have:
 - a. Submitted a false certification as provided under Section 287.135(5), F.S., or
 - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.
- OR
3. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and
4. FIRM is found to have:
 - a. Met either prohibition set forth in Section “23(B)(2)” above or
 - b. Been engaged in business operations in Cuba or Syria.
- OR
5. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and
6. FIRM is found to have:
 - a. Met any prohibition set forth in Section “23(B)(4)” above or
 - b. Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
- OR
7. Was entered into or renewed on or after July 1, 2018, and
8. FIRM is found to have met any prohibition set forth in Section “23(B)(4)” above.
- C. **Termination, Any Amount.** COUNTY may, entirely at its option, terminate the Agreement if it is for any amount and meets any of the following criteria.
 1. Was entered into or renewed on or after July 1, 2018, and
 2. FIRM is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
- D. **Comply; Inoperative.** The Parties agree to comply with Section 287.135, F.S., as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

6. **SOVEREIGN IMMUNITY.** Adds Section ‘34’ to the Agreement with the following:

Section 34 – Sovereign Immunity. Nothing in the Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. Notwithstanding anything stated to the contrary in the Agreement, any obligation of COUNTY to indemnify FIRM, if provided, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Section shall survive the termination of the Agreement.

7. **ON-GOING COMPLIANCE.** Adds Section ‘35’ to the Agreement with the following:

Section 35 – On-Going Compliance. The Parties acknowledge that the Agreement may contain provisions prescribed by laws, statutes, and regulations that can change during the Term of the Agreement. The Parties understand and agree that the Agreement is intended to reflect and require the Parties’ compliance with all laws at all times. The Parties expressly and specifically agree to perform the Agreement in full compliance with the governing laws, statutes, and regulations, as same may change from time to time.