

## AGREEMENT BETWEEN COUNTY AND PROFESSIONAL SERVICES FIRM

This Agreement Between County and Professional Services Firm, (this “Agreement”) made and entered into by and between Marion County, a political subdivision of the State of Florida, located at 601 SE 25<sup>th</sup> Ave, Ocala, FL 34471 (hereinafter referred to as “COUNTY”) and **Kimley-Horn and Associates, Inc.**, located at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601, possessing FEIN# 56-0885615 (hereinafter referred to as “FIRM”) under seal for the SW 52nd Street Flood Mitigation Program, (hereinafter referred to as the “Project”), and COUNTY and FIRM hereby agreeing as follows:

### WITNESSETH:

In consideration of the mutual covenants and promises contained herein, COUNTY and FIRM (singularly referred to as “Party”, collectively “Parties”) hereto agree as follows:

**Section 1 – The Contract.** The contract between COUNTY and FIRM, of which this Agreement is part, consists of the Contract Documents. This Agreement approved by the Board of County Commissioners shall be effective on the last signature date set forth below.

**Section 2 – The Contract Documents.** The Contract Documents are defined as this Agreement, the Specifications, the Drawings, all Purchase Orders, Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the Parties hereafter, together with the following (if any):

**Marion County Solicitation #20Q-190 - SW 52nd Street Flood Mitigation Program, the Offer, Scope and/or Specifications, Plans and/or Drawings, any/all Addenda as issued in support of this Solicitation and any/all Exhibits defined herein, Certificates of Insurance and Notice to Proceed or Purchase Order.**

**Section 3 – Entire Agreement.** The Contract Documents form the agreement between Parties for the Project and the FIRM acknowledges receipt of a copy of each and every Contract Document. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only in writing. The Contract Documents shall not be construed to create a contractual relationship of any kind between any person or entities other than COUNTY and FIRM.

**Section 4 - Term.** This Agreement shall commence upon COUNTY’s Board of County Commissioner’s approval. The Work (defined herein) shall commence upon issuance of Notice to Proceed and be completed by September 31, 2021 (“Term”). **TIME IS OF THE ESSENCE.** All limitations of time set forth in the Contract Documents are of the essence. The Work may be presumed abandoned after ninety (90) consecutive days if FIRM terminates the Work without just cause or without proper notification to COUNTY, including the reason for termination, or fails to perform Work without just cause for ninety (90) consecutive days.

**Section 5 – Scope of Services.** As per specifications and requirements of the Project 20Q-190, shall provide complete Professional Services as stated in the Solicitation and shall additionally adhere by the duties attached in **Exhibit A** all services referred to herein as “Work.” The Work shall particularly comply with the original RFP or Task Order that is part of the Contract Documents. Individual tasks to be included in FIRM’s Proposal, **EXHIBIT A**, Scope of Services. The Work includes:

Design, permit, and model the SW 52<sup>nd</sup> Street Flood Relief Project including new drainage retention areas, (DRAs), stormwater conveyance infrastructure, and possibly an elevated roadway providing flood relief to SW 52nd Street and surrounding properties during the 100-year storm even.

**Section 6 – Compensation.** COUNTY shall make payment of \$199,993.00, (the “Agreement Price”), to FIRM under established procedure, upon completion of the Work as established in **Exhibit B**. There shall be no provisions for pricing adjustments during the Term. Not more frequently than monthly, unless otherwise agreed in writing by FIRM and COUNTY, shall FIRM submit an invoice to COUNTY requesting payment for services properly rendered and reimbursement for Reimbursable Expenses, if provided in the Contract Documents, due hereunder.

FIRM's invoice shall describe with reasonable particularity each service rendered, the person(s) rendering the service, and their billing rate. FIRM's invoice shall be accompanied by reasonable documentation or data in support of Reimbursable Expenses for which reimbursement is sought as COUNTY may require. If payment is requested for services by FIRM, the invoice shall bear the signature of FIRM, which signature shall constitute FIRM's representation to COUNTY that the services indicated in the invoice have been properly and timely performed as required herein, that the Reimbursable Expenses included in the invoice have been reasonably incurred, that all the obligations of FIRM covered by prior invoices have been paid in full, and that, to the best of FIRM's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to FIRM that payment of any portion thereof should be withheld. Submission of FIRM's invoice for final payment and reimbursements shall further constitute FIRM's representation to COUNTY that, upon receipt from COUNTY of the amount invoiced, all obligations of FIRM to others, including its consultants, incurred in connection with the Project, will be paid in full forthwith. When applicable, the Classification and Hourly Fee Schedule, are hereby incorporated into this Agreement as **Exhibit B**.

**Section 7 – Assignment.** FIRM may not subcontract all or any part of this Agreement without written approval by COUNTY.

**Section 8 – Laws, Permits, and Regulations.** Prior to the performance of any Work hereunder, FIRM shall obtain and pay for all licenses and permits, as required, to perform the Work. FIRM shall at all times comply with all appropriate laws, regulations, and ordinances applicable to the Work provided under this Agreement.

**Section 9 – Amendments.** This Agreement may only be amended by mutual written agreement of both Parties.

**Section 10 – Books and Records.** FIRM shall keep records of all transactions, including documentation accurately reflecting the time expended by FIRM and its personnel and records of Reimbursable Expenses. COUNTY shall have a right to request records from FIRM, and for those records to be made available within a reasonable timeframe depending on method of acquisition.

**Section 11 – Public Records Compliance**

**A. IF FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Public Relations | 601 SE 25<sup>th</sup> Ave, Ocala, FL 34471**

**Phone: 352-438-2300 | Fax: 352-438-2309**

**Email: [publicrelations@marioncountyfl.org](mailto:publicrelations@marioncountyfl.org)**

**B. FIRM shall comply with public records laws, specifically:**

- Keep and maintain public records required by COUNTY to perform the Work;
- Upon request from COUNTY's custodian of public records, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Term and following completion of this Agreement if FIRM does not transfer the records to COUNTY; and,
- Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of FIRM or keep and maintain public records required by COUNTY to perform the Work. If FIRM transfers all public records to COUNTY upon completion of this Agreement, FIRM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If FIRM keeps and maintains public records upon the completion of this Agreement, FIRM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

- C. If FIRM fails to provide the public records to COUNTY within a reasonable time, FIRM may be subject to penalties under Section 119.10 Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY.

**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. A bond for indemnification may be required.

**Section 13 – Insurance.** As applicable, during the period of Work, insurance policies shall be with a company or companies authorized to do business in the State of Florida. COUNTY shall be notified if any policy limit has eroded to one half its annual aggregate. FIRM shall provide, within the timeframe noted in the Award Letter, a Certificate of Insurance, issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least A-. All policies must show the "Marion County, a political subdivision of the State of Florida" as an Additional Insured. The Certificate should provide for 30-day cancellation notice to the Procurement Director's address, set forth herein, with policies for the following:

- **Business Auto Liability** with combined single limits of not less than \$1,000,000 per occurrence and is to include bodily injury and property damage liability arising out of operation, maintenance or use of any auto, including owned, hired and non-owned automobiles.
- **Worker's Compensation** with statutory limits and employers liability limits of at least \$1,000,000 each accident and \$1,000,000 each employee and \$1,000,000 policy limit for disease. A "**subrogation waiver endorsement**" is required.
- **General Liability** with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The policy must be maintained by FIRM for the duration of the Project. If the policy is written on a claims-made basis, FIRM must maintain the policy a minimum of 5 years following completion of the Project.
- **Professional Liability** with limits of not less than \$1,000,000 per occurrence and \$2,000,000.00 annual aggregate. Higher limits may be required for projects valued in excess of \$5,000,000. Projects \$5,000,000 or more will need to be reviewed by COUNTY's Risk and Benefit Services Department to determine appropriate Professional Liability limits. The policy must be maintained by FIRM for the duration of the Project. If the policy is written on a claims-made basis, FIRM must maintain the policy for a minimum of 5 years following the completion of the Project.

**Section 14 – Independent Contractor.** In the performance of this Agreement, FIRM will be acting in the capacity of an "Independent Contractor" and not as an agent, employee, partner, joint venture, or associate of COUNTY. FIRM shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by FIRM in the full performance of this Agreement.

**Section 15 – Default/Termination.** In the event FIRM fails to comply with any of the provisions of this Agreement, COUNTY may terminate this Agreement for cause by first notifying FIRM in writing, specifying the nature of the default and providing FIRM with a reasonable period of time in which to rectify such default. In the event the default is not cured within the time period given, COUNTY thereafter may terminate this Agreement for cause upon written notice to FIRM without prejudice to COUNTY. In the event of termination of this Agreement for cause, COUNTY will then be responsible to compensate FIRM only for those services timely and satisfactorily performed pursuant to this Agreement up to the date of termination. COUNTY may terminate this Agreement without cause providing at least thirty (30) days written notice to FIRM. In the event of termination of this Agreement without cause, COUNTY will compensate FIRM for all the work timely and satisfactorily performed pursuant to this Agreement up to and including the date of termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Agreement. COUNTY shall have no further obligation to FIRM, other than to pay for services rendered prior to termination.

**Section 16 – Damage to Property.** FIRM shall be responsible for all material, equipment and supplies sold and delivered to COUNTY under this Agreement and until final inspection of the Work and acceptance thereof by COUNTY. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed, or COUNTY property, buildings, or equipment is damaged during delivery or unloading, or in the course of the WORK prior to final inspection and acceptance, FIRM shall replace the same or be returned to original state without additional cost to COUNTY, as applicable.

**Section 17 – Termination for Loss of Funding/Cancellation for Unappropriated Funds.** The obligation of COUNTY for payment to FIRM is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

**Section 18 – Use of Other Contracts.** COUNTY reserves the right to utilize any COUNTY contract, State of Florida contract, city or county governmental agencies, school board, community college/state university system, or cooperative bid agreement. COUNTY reserves the right to separately bid any single order or to purchase any item on this solicitation/Agreement if it is in the best interest of COUNTY.

**Section 19 – Employee Eligibility Verification.** 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.

Beginning January 1, 2021, Section 448.095, F.S., requires FIRM to register and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits FIRM from entering into this Contract 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 this Contract.

By previously signing the ITB Acknowledgment and Addenda Certification Form, and this Contract, FIRM has agreed to perform in accordance with the requirements of this subsection and agrees:

- a) It is registered and uses the E-Verify system to verify work authorization status of all newly hired employees.
- b) COUNTY shall immediately terminate FIRM if COUNTY has a good faith belief that FIRM has knowingly violated Section 448.09(1), F.S., 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) If FIRM enters into a contract with a subcontractor, FIRM shall obtain from the subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
- d) FIRM shall maintain a copy of such affidavit for the duration of this Contract and provide it to COUNTY upon request.
- e) FIRM shall immediately terminate the subcontractor if FIRM has a good faith belief that the subcontractor has knowingly violated Section 448.09(1), F.S., as set forth above.
- f) If COUNTY has a good faith belief that FIRM's subcontractor has knowingly violated Section 448.09(1), F.S., but that FIRM has otherwise complied, COUNTY shall promptly order FIRM to terminate the subcontractor. FIRM agrees that upon such an order, FIRM shall immediately terminate the subcontractor. FIRM agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate FIRM.
- g) If COUNTY terminates this Contract 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 subsection.
- i) Any such termination under this subsection is not a breach of this Contract 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 this Contract and COUNTY may treat a failure to comply as a material breach of this Contract.

**Section 20 – Force Majeure.** Neither FIRM nor COUNTY shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control and not a result of the fault or negligence of, the affected Party (a "Force Majeure Event"). If a Party is prevented or delayed in the performance of any such obligations by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. A Force Majeure Event shall include, but not be limited to acts of civil or military authority (including courts or regulatory agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, hurricanes and severe floods.

**Section 21 – Truth in Negotiation.** FIRM warrants that the wage rates and other factual unit costs supporting the compensation to FIRM under this Agreement are accurate, complete and current at the time of contracting. In addition, FIRM understands and agrees that the original Agreement Price and any additions thereto will be adjusted to exclude any significant sums by which COUNTY determines the Agreement Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such price adjustments must be made within one year following the end of this Agreement.

**Section 22 – Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final Agreement of the Parties and conclusive proof of such Agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. COUNTY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

**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.

**Section 24 – Authority to Obligate.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and bind and obligate such Party with respect to all provisions contained in this Agreement.

**Section 25 - FIRM's Basic Duties.** By executing this Agreement, FIRM represents to COUNTY that FIRM is professionally qualified to act in the professional capacity for the Project and is licensed to practice by all public entities having jurisdiction over FIRM and the Project. FIRM further represents to COUNTY that it will maintain all necessary licenses, permits or other authorizations necessary to act as the professional representative for the Project until its remaining duties hereunder have been satisfied. FIRM assumes full responsibility to COUNTY for the improper acts and omissions of its consultants or others employed or retained by FIRM in connection with the Project. Execution of this Agreement by FIRM constitutes a representation that it will become familiar with the Project site and the local conditions under which the Project is to be implemented.

**Section 26 - Bidding/Negotiation Services.** FIRM shall assist COUNTY or Construction Manager in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. Services performed in this phase include reviewing agency submittals and review for permitting.

**Section 27 - Construction Administration Services.** As a representative of COUNTY, FIRM in conjunction with COUNTY's project management team shall visit the Project site at intervals appropriate to the stage of the FIRM's operations, or as otherwise agreed with COUNTY to become generally familiar with and to keep COUNTY informed about the progress and quality of the portion of the Work completed. FIRM shall determine in general if the Work is being performed in a manner that would indicate that the Work, when fully completed, will be in accordance with this Agreement.

**Section 28 - COUNTY's Right to Withhold Payment.** In the event that COUNTY in its sole judgment becomes credibly informed that any representations of FIRM are wholly or partially inaccurate, COUNTY may withhold payment of sums then or in the future equal to the amount of the inaccuracy, otherwise due to FIRM until the inaccuracy, and the cause thereof, is corrected to COUNTY's reasonable satisfaction.

**Section 29 - Use and Ownership of Documents.** The drawings, specifications and other documents or things prepared by FIRM for the Project shall become and be the sole property of COUNTY. FIRM shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications, and other documents or things are not intended by FIRM for use on other projects by COUNTY or others. COUNTY shall not reuse or make any modifications to the drawings, specifications, and other documents without prior written authorization of FIRM.

**Section 30 – Firm Conduct:** These Guidelines govern FIRM while doing work on COUNTY property, as well as FIRM's employees, agents, consultants, and others on COUNTY property in connection with the FIRM's work or at the FIRM's express or implied invitation.

- **Courtesy and Respect:** COUNTY is a diverse government institution and it is critical that FIRM and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
- **Language and Behavior:** FIRM and its employees cannot engage in behavior that is rude, threatening, or offensive. Use of profane or insulting language is prohibited. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior cannot be tolerated. Roughhousing, fighting, fisticuffs, physical threats, destruction of property, vandalism, littering, or physical abuse of anyone on COUNTY property is not permitted under any circumstance.
- **No Weapons, Alcohol, or Drugs:** The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by FIRM or its employees is prohibited. Offenders will be removed from COUNTY property and/or reported to law enforcement.
- **Smoking:** FIRM and its employees are not permitted to smoke in or near any COUNTY buildings.
- **Fraternization:** FIRM and its employees may not fraternize or socialize with COUNTY staff.
- **Appearance:** FIRM and its employees are required to wear appropriate work wear, hard hats and safety footwear, as the case may be, while on the job. Articles of clothing must be neat and tidy in appearance, and cannot display offensive or inappropriate language, symbols or graphics. COUNTY has the right to decide if such clothing is inappropriate.

FIRM is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, FIRM will take all necessary steps to stop and prevent any future occurrence. Any breach of these conditions will result in the removal of the person responsible from COUNTY property and prohibited actions could result in the immediate termination of any or all of FIRM's contracts with COUNTY.

**Section 31 – 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.

**Section 32 – 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.

**Section 33 – Notices.** Except as otherwise provided herein, all written communication between the parties, including all notices, shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid and if hand delivered, upon personally handing same to the party to whom the notice of other communication is addressed with signed proof of delivery. If otherwise delivered, notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. All parties certify that each has software capable of sending electronic mail read receipts to the other. Any party sending notice by electronic mail acknowledges and accepts the inherent risks that come with same. If notice is delivered in multiple ways, notice shall be considered delivered at the earliest delivery time. FIRM's and COUNTY's representatives and addresses for notice purposes are:

FIRM: Kimley-Horn and Associates, Inc.  
421 Fayetteville Street, Suite 600, Raleigh, NC 27601  
CONTACT PERSON: Richard Busche | Phone: 352-438-3000

COUNTY: Marion County Office of the County Engineer  
c/o Marion County, a political subdivision of the State of Florida  
601 SE 25<sup>th</sup> Ave, Ocala, FL 34471

**A copy of all notices to COUNTY hereunder shall also be sent to:**



Procurement Services Director  
Marion County Procurement Services Department  
2631 SE 3rd St., Ocala, FL 34471

Alternatively, the parties may elect to receive said notices by e-mail. COUNTY hereby elects to receive all notices solely by email and designates its email address as [procurement@marioncountyfl.org](mailto:procurement@marioncountyfl.org). If FIRM agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with accepting notices solely by e-mail, FIRM may designate up to two (2) e-mail addresses: [richard.busche@kimley-horn.com](mailto:richard.busche@kimley-horn.com) and [stewart.hill@kimley-horn.com](mailto:stewart.hill@kimley-horn.com). Designation signifies FIRM's election to accept notices solely by e-mail.

**Section 34 – Law, Venue, Waiver of Jury Trial, Attorney's Fees.** This Agreement and all the Contract Documents shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceeding arising from or related to this Agreement; (1) venue for state or federal legal proceedings shall be in Marion County, Florida, (2) for civil proceedings, the parties consent to trial by the court and waive right to jury trial, (3) the prevailing party shall be entitled to recover all of its costs, including attorney fees.

**Section 35 – Exhibits/Attachments.** The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein: **EXHIBIT A** – Scope of Services, and **EXHIBIT C** – Supplemental Terms and Conditions.

IN WITNESS WHEREOF the Parties have entered into this Agreement, as approved by the Marion County Board of County Commissioners, on the date of the last signature below.

ATTEST:

  
\_\_\_\_\_  
GREGORY C. HARRELL, DATE 3/16/2021  
MARION COUNTY CLERK OF COURT

MARION COUNTY, A POLITICAL SUB-  
DIVISION OF THE STATE OF FLORIDA

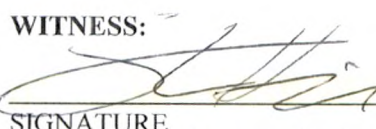
  
\_\_\_\_\_  
JEFF GOLD, DATE 3/16/2021  
CHAIRMAN

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

BCC APPROVED: March 16, 2021  
20Q-190 | SW 52nd Street Flood Mitigation

  
\_\_\_\_\_  
MATTHEW G. MINTER, DATE 4/1/2021  
MARION COUNTY ATTORNEY

WITNESS:

  
\_\_\_\_\_  
SIGNATURE  
Stewart L. Hill  
\_\_\_\_\_  
PRINTED NAME

KIMLEY-HORN AND ASSOCIATES, INC.

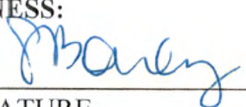
  
\_\_\_\_\_  
BY: DATE 3-29-2021

PRINTED:

ITS: (TITLE)

Richard V. Busche, P.E.  
Sr. Vice President  
Kimley-Horn and Associates, Inc.

WITNESS:

  
\_\_\_\_\_  
SIGNATURE  
Stacy Boney  
\_\_\_\_\_  
PRINTED NAME





AGREEMENT BETWEEN THE MARION COUNTY BOARD OF COUNTY COMMISSIONERS  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.

SCOPE OF SERVICES  
FOR DESIGN AND PERMITTING SERVICES  
FOR  
SW 52<sup>nd</sup> STREET FLOOD MITIGATION PROGRAM (RFQ 20Q-190)  
MARION COUNTY, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

By: \_\_\_\_\_  
(Signature)

Richard V. Busche, PE – Senior Vice President  
(Print Name and Title)

Date: November 3, 2020; Revised November 20, 2020

## **PART I - PREAMBLE**

### **A. PURPOSE**

The purpose of this Agreement is to describe the scope of work and the responsibilities of Kimley-Horn and Associates, Inc., hereinafter called the ENGINEER and the Marion County Office of the County Engineer, hereinafter called the COUNTY, in connection with the completion of final design and preparation of complete construction plans for the proposed improvements included with the:

#### ***SW 52nd Street Flood Mitigation Program (the "Project").***

This Scope of Services is for the design and permitting of stormwater and roadway improvements within Marion County. The ENGINEER was selected for this project as part of RFQ# 20Q-190 in 2020 under a competitive process consistent with the CCNA process contained in the Florida Statutes.

The Project consists of the following general scope items:

Field surveying, geotechnical services, environmental assessments, design plans and regulatory agency permitting for improvements along SW 52<sup>nd</sup> Street to mitigate flooding during significant storm events. Anticipated improvements included with the Project are new stormwater retention areas, associated stormwater conveyance infrastructure, and partial redesign of SW 52<sup>nd</sup> Street to raise the roadway profile. The Project will also include coordination with the COUNTY for compliance with the Hazard Mitigation Grant Program (HMGP) funding previously obtained.

The ENGINEER will utilize JCH CONSULTING GROUP, INC. for professional survey services and obtaining survey field data. The ENGINEER will utilize ANDREYEV ENGINEERING, INC. for professional geotechnical services and obtaining geotechnical data for the proposed improvements. The ENGINEER will utilize SEARCH, INC. for historical preservation research and assistance. The ENGINEER will perform those environmental assessments, engineering analyses, designs and permitting services required to complete the final design, and to prepare design plans that include the environmental assessments, surveying, geotechnical assessments, stormwater, roadway, and utility coordination. The COUNTY will provide job specific information and/or functions as outlined in this contract.

During the design stage, it will be necessary for the ENGINEER to have access to the proposed stormwater retention areas and possible areas outside of the Project limits for field assessments, environmental work, survey, staking, etc. The COUNTY will secure all necessary permissions, easements, agreements, etc., needed to permit access to the ENGINEER.

This Agreement does not include post-design services, including bid phase assistance or construction phase services. The ENGINEER assumes all grant funding communication will be provided through the COUNTY.

This Agreement does not include work pertaining to the acquisition of property through the eminent domain process, or a cooperative process with the property owners. If requested, this work will be considered post-design services and provided under a separate Agreement or amendment to this Agreement.

## **PART II - DESIGN SCOPE OF SERVICES**

### **TASK 1 - PROJECT MEETINGS AND ADMINISTRATION**

The project administration activities contemplate a six-month duration following Notice to Proceed by the COUNTY, not including post-design services. The administration activities that will be conducted include the following:

- A. Project Setup. The ENGINEER will establish project files, project work plan, and initiate the project accounting and invoicing system.
- B. Project Kickoff Meeting. The ENGINEER will conduct a kick-off meeting with the COUNTY and the project team. The ENGINEER will circulate meeting minutes to all participants following the kick-off meeting.
- C. Bi-Weekly Progress Meetings. Beginning two weeks after the Kickoff Meeting and continuing through the life of the contract, the ENGINEER will meet with the COUNTY bi-weekly to review the progress of work. Meetings will alternate between in-person and virtual/conference call meetings.
- D. ~~Public Meetings (Optional Task). ENGINEER will prepare for and attend up to one public meeting with the County and nearby affected landowners. Advertisement services for the meeting will be provided by the COUNTY.~~
- E. Miscellaneous Meetings. ENGINEER will prepare for and attend up to two miscellaneous, general meetings with the COUNTY, affected landowners, etc.

### **TASK 2 - ENVIRONMENTAL ANALYSIS AND REPORTING**

- A. Natural Resource Assessment and Wetland Delineation
  - 1) The ENGINEER will conduct a Natural Resource Assessment (NRA) to identify wetlands, surface waters and upland habitats (including potential sensitive habitats) on-site and will evaluate the potential for usage by listed species. The ENGINEER will review previously prepared environmental documentation (if available) and conduct field reconnaissance on-site. In preparing the NRA, the ENGINEER will conduct the following tasks:
    - a. Review readily available natural resource documentation, previous environmental studies (provided by client, if applicable), readily available permits and listed species information;
    - b. Review existing GIS databases including the Florida Natural Areas Inventory (FNAI) and the Florida Fish and Wildlife Conservation Commission (FWC) regarding known occurrences of listed species on and near the subject property;
    - c. Review aerial photography, soils maps, and mapping of existing wetland and surface water features on-site;
    - d. Review of FEMA FIRM map;
    - e. Conduct a 15% Gopher Tortoise survey;

- f. Conduct site reconnaissance to review the site and ground-truth the database search findings.
- 2) While onsite, the ENGINEER will field flag the wetlands in accordance with the State unified wetland delineation methodologies described in Chapter 62-340, Florida Administrative Code (FAC) and the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and Regional Supplement. USACE data sheets will also be completed (one upland and one wetland). Following the field delineation, the ENGINEER will prepare a wetland delineation map to provide to the surveyor. The ENGINEER will coordinate with the surveyor to incorporate the flags into the site plan (surveying of wetland flags is not included in this scope).
  - a. Following site reconnaissance and database review, a Technical Memorandum will be prepared summarizing the results of the data collection efforts. The following exhibits will be prepared:
  - b. A land cover map classifying the habitats on-site based on the Florida Land Use, Cover, and Forms Classification System (FLUCFCS) and showing approximate acreage of each land cover, including wetlands and/or surface waters. The acreage of upland habitats shown will be approximate based on aerial interpretation.
  - c. USGS 7.5 Minute Quadrangle Map,
  - d. Soils map,
  - e. Location map,
  - f. Listed species map/maps, if applicable.

**B. State Coordination and Permitting**

- 1) The ecological information gathered from Task 2A will be utilized to prepare the support documentation for an Environmental Resource Permit (ERP) application to be submitted to the St. Johns River Water Management District (SJRWMD). The ENGINEER will complete sections A, C and E of the ERP application and provide associated wetland impact/mitigation tables, as well as figures depicting the existing wetland limits and proposed wetland impact, as applicable. For the purposes of this scope, if wetland mitigation is required, it is anticipated that mitigation will be accomplished in the form of offsite credit purchase at an appropriate, permitted wetland mitigation bank within the same basin as the project. If additional mitigation is required or some form of onsite mitigation is required, the Client will be notified, and an addendum will be prepared. Additionally, if no mitigation is available in the same basin, an addendum will be prepared for preparation of the Cumulative Impacts Analysis document that will be required by the state in order to purchase wetland credits outside of the project basin. Once the application is submitted, the ENGINEER will respond to one Request for Available Information (RAI). The ENGINEER will attend one site visit with the SJRWMD to confirm wetland limits and to review the project site. Any additional RAIs or meetings with the SJRWMD will be considered additional services. All mitigation and application fees shall be paid by the Client.
- 2) The ENGINEER will also coordinate with the Florida Fish and Wildlife Conservation Commission (FWC), to address issues related to state-level protected species, during permitting. This proposal assumes FWC coordination will be conducted via telephone and email.

# Kimley»Horn

## C. Federal Coordination (USACE).

- 1) The wetlands onsite appear to be isolated and therefore will not be considered Waters of the US (WOTUS) by the US Army Corps of Engineers (USACE). The ENGINEER will submit an Approved Jurisdictional Determination (AJD) to the USACE to receive confirmation that the project would receive a No Permit Required letter. If required, a site visit will be completed with the USACE to review field conditions. Further permitting with the USACE beyond a No Permit Required letter is not included in this Agreement.
- 2) The ENGINEER will also coordinate with the US Fish and Wildlife Service (USFWS) regarding federally-listed protected species. This proposal assumes USFWS coordination will be conducted via telephone and email.

## D. ~~Historical Preservation~~

- 1) ~~SEARCH, Inc. will conduct a desktop analysis consisting of historical background research, review of the Florida Master Site File (FMSF) database, and examination of soils map and pertinent data to assess the potential for recorded or unrecorded historic resources to be present within the Study Area.~~
- 2) ~~The resultant document is intended for planning purposes only and will not satisfy the requirements of Rule Chapter 1A-46 of the Florida Administrative Code (FAC), Chapter 267, Florida Statutes, or Section 106 of the National Historic Preservation Act of 1966, as amended (Public Law 113-287 [Title 54 USC]).~~
  - a. ~~Study Area: The Study Area for the desktop analysis will include the four parcels highlighted on the graphic provided to SEARCH by Kimley Horn and Associates, Inc. (KHA) via email on 10/26/20. In addition to these parcels, the Study Area will also include the SW 52nd Street right-of-way between SW 7th Avenue and CR 475.~~
  - b. ~~Fieldwork and Lab Analysis: No fieldwork or lab analysis is included in this proposal.~~
  - c. ~~Tribal Consultation: Consultation with federally recognized Native American Tribes will not be the responsibility of SEARCH under this scope of work.~~

## TASK 3 - SURVEYING AND MAPPING SERVICES

### A. Boundary & Topographic Survey

- 1) Boundary & Topographic information to include Parcel No: 36033-000-00, 3069+007-010, and 3069+007-004 as depicted on Exhibit "A (approximately 15.27 acres).
- 2) State Plane Coordinates will be referenced to Florida West State Plane Coordinate System, NAD-83, 2011 adjustment.
- 3) Horizontal data will meet or exceed Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17.050-052, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes

- 4) Indicate whether or not the property is located in a flood zone(s). Indicate the FEMA flood zone map(s) reference and the specific flood hazard zone in which the property is located (Zone A, B, C, etc.). If property has multiple flood zone classifications, show and identify each flood zone and mark the contour lines of each flood zone on the survey.
- 5) Show measurements and bearings (metes and bounds) to accurately close boundary in clockwise orientation.
- 6) Locate and provide topography at all above ground improvements
- 7) Locate existing conditions along contiguous roadways
- 8) Vertical datum will be on NAVD 1988
- 9) Contours will be shown on a 1' for minor, and 5' for major
- 10) Confirm FEMA Flood Elevation
- 11) State Plane Coordinates
- 12) All easements depicted on survey as furnished by client or platted
- 13) Contours will be collected on a 100' grid
- 14) Topographic data to include 50' overlap on all surrounding parcels
- 15) Locate all above ground utilities (gate valves, water meters, etc.)

**B. Route Survey**

- 1) Topographic information to include SW 52nd Street between SW 7th Avenue Road & S magnolia Avenue as depicted on Exhibit "A (approximately 2,100 linear feet).
- 2) Full right of way.
- 3) State Plane Coordinates will be referenced to Florida West State Plane Coordinate System, NAD-83, 2011 adjustment.
- 4) Horizontal data will meet or exceed Standards of Practice as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17.050-052, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes
- 5) Indicate whether or not the property is located in a flood zone(s). Indicate the FEMA flood zone map(s) reference and the specific flood hazard zone in which the property is located (Zone A, B, C, etc.). If property has multiple flood zone classifications, show and identify each flood zone and mark the contour lines of each flood zone on the survey.
- 6) Locate and provide topography at all above ground improvements
- 7) Locate existing conditions along contiguous roadways
- 8) Vertical datum will be on NAVD 1988
- 9) Location of Tree's 10" & larger



# Kimley»Horn

- 10) Contours will be shown on a 1' for minor, and 5' for major
- 11) Confirm FEMA Flood Elevation
- 12) State Plane Coordinates
- 13) All easements depicted on survey as furnished by client or platted
- 14) Contours will be collected on a 100' grid
- 15) Topographic data to include 50' overlap on all surrounding parcels
- 16) Locate all above ground utilities (gate valves, water meters, etc.)

## C. Miscellaneous Task

- 1) Provide 4 hours of field crew for field investigations to include cross sections along ditch contiguous with Parcel No: 36030-000-02,
- 2) Provide 4 hours of field crew picking up culverts near the project,
- 3) Provide 16 hours of field crew picking up locate wetland flags on parcel 36033-000-00
- 4) Provide 4 hours of field crew picking up pick up boring locations

## TASK 4 - GEOTECHNICAL SERVICES

The Scope of services for the Geotechnical Services are as follows:

- A. Investigate the three areas of proposed potential stormwater pond locations and provide geotechnical information and recommendations with regards to these areas for stormwater design purposes, including estimated wet seasonal high groundwater conditions in these areas. Twelve (12) auger borings are proposed throughout these areas. The auger borings will be extended into the groundwater table, estimated at 20 feet for purposes of this proposal. Piezometers will be installed at all boring locations to obtain stabilized groundwater level measurements. In addition, five (5) Minus #200 Sieve Washes will be completed on selected samples for the borings. Also, twelve (12) laboratory permeability tests will be completed on tube samples obtained at each boring location.
- B. Investigate the sinkhole located on the northeast corner of SW 7th Avenue Road and SW 52nd Street and provide information on the approximate runoff from the immediate area that enters this feature. Two (2) auger borings are proposed in this area. The auger borings will be extended into the groundwater table, estimated at 20 feet for purposes of this proposal. Piezometers will be installed at all boring locations to obtain stabilized groundwater level measurements.
- C. Conduct roadway cores along the subject area. Five (5) cores will be completed through the existing roadway pavement to provide information on the existing pavement section and shallow subsoils. In addition, up to two (2) Limerock Bearing Ratio (LBR) tests will be conducted on the existing subsoil materials.

- D. Prepare a report summarizing the results of the study and provide geotechnical engineering and hydrogeologic conclusions and recommendations with regards to the project and flood mitigation modeling.

## **TASK 5 – DATA COLLECTION AND RESEARCH**

- A. The ENGINEER will coordinate with the COUNTY and the St. Johns River Water Management District (SJRWMD) to obtain existing available data for the Project study area. This data will include the latest Lake Panasoffkee and Marshall Swamp Watershed Management Plan (WMP) data and model, existing roadway and neighborhood improvement plans, stormwater calculations for adjacent improvement projects, existing utility record drawings, permit files, NRCS soil data, and updated land use data.
- B. The ENGINEER will coordinate with the COUNTY and the SJRWMD to obtain existing available data of historic flooding accounts, formal complaints, pictures, etc. for the Project study area.
- C. The ENGINEER will visit the watershed and Project area to field verify major conveyance features and verify features that could affect the existing conditions WMP model. This task is limited to one day of field work.

## **TASK 6 – MODELING AND ALTERNATIVES ANALYSIS**

- A. Existing Conditions Model and Analysis
- 1) Using the Lake Panasoffkee and Marshall Swamp WMP as a basis, the ENGINEER will develop an existing conditions stormwater hydraulic and hydrological (H&H) model of only those existing basins contributing to the Project study area. The ENGINEER will use the latest version of ICPR4 software by Streamline Technologies to conduct the stormwater modeling for this Task.
  - 2) The ENGINEER will update the existing conditions model using the data collected in Tasks 2-5. This data includes survey topography, geotechnical data, land use information, record drawings.
  - 3) The ENGINEER will model the following storm events in the updated existing conditions model: 2.33 year 24-hour, 10-year 24-hour, 25-year 24-hour, and 100-year 24-hour.
  - 4) The ENGINEER will compare the updated existing conditions model results with the historic flood data obtained under Task 5.B.
  - 5) The ENGINEER will prepare a draft Existing Summary Memorandum of the updated existing conditions model results and findings and submit it to the COUNTY for review. The Memorandum will include a flood map exhibit and results of the modeled peak elevations for the Project study area during the four design storm events. The Memorandum will include the information collected under Tasks 2-5 including environmental results, survey, geotechnical, and existing data findings. The COUNTY will provide comments on the Memorandum to the ENGINEER. The ENGINEER will submit a final Memorandum to the COUNTY.

# Kimley»Horn

## B. Alternatives Analysis

- 1) The ENGINEER will identify three proposed alternative design concepts for the Project study area and meet with the COUNTY to discuss the concepts prior to modeling. After the meeting, the ENGINEER will make up to one round of changes to the three proposed alternative design concepts based upon COUNTY comments.
- 2) Using the updated existing conditions model as a basis, the ENGINEER will create separate proposed conditions ICPR4 stormwater models for each of the three alternative design scenarios. The ENGINEER will create a flood map exhibit of the four design storm events for each scenario. The ENGINEER will create a high-level, preliminary opinion of probable cost for the three alternative scenarios. The ENGINEER will provide a Summary Alternatives Analysis for review of the model results, exhibits, and opinion of probable costs for the COUNTY.

## C. Modeling and Alternatives Analysis Technical Memorandum

- 1) The ENGINEER will prepare a document describing the existing conditions modeling, alternatives analyzed, and documenting anticipated improvements after the mitigation project is implemented utilizing the BCA toolkit methodology, and in accordance with the grant requirements.

## D. Planning Deliverable

- 1) The ENGINEER will prepare a Memorandum including a decision support matrix summarizing the main findings of this Task for the consideration of the COUNTY.
- 2) The COUNTY shall choose an alternative scenario and provide direction to the ENGINEER before proceeding with Task 7.

## **TASK 7 – PRELIMINARY DESIGN PHASE**

### A. Preliminary Site Plan/30% Design Plans

- 1) Once the alternative scenario is chosen by the COUNTY, the ENGINEER will prepare a Preliminary Site Plan layout of the Project. The Site Plan will consist of a single, full-sized plan sheet (24"x36") generally depicting the Project improvements, such as limits of roadway reconstruction, proposed roadway geometry and typical section, and proposed stormwater retention areas and conveyance structures. The ENGINEER will submit the Site Plan to the COUNTY for review and comment and make one round of revisions. This Task is considered the 30% Design Plans submittal to the COUNTY.

### B. Regulatory Agency Pre-Application Meetings

- 1) The ENGINEER will conduct a pre-application meeting with the St. Johns River Water Management District to discuss the proposed Project improvements and permitting conditions/timelines. This Task will occur during the COUNTY's review of the Preliminary Site Plan.
- 2) Consultation with the USACE to discuss the proposed Project is included under Task 2.

## TASK 8 – DESIGN PHASE

- A. Phased Design Review. The ENGINEER will prepare and submit phased review packages for each set of design plans to the COUNTY. Submittals will be made at the following stages:
- 1) 60% Design Plans and Calculations, including a preliminary estimate of quantities and opinion of probable construction costs.
  - 2) 100% Design Plans and Calculations, including an estimate of quantities and opinion of probable construction costs

The COUNTY acknowledges that the ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to the Engineer at the time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

The COUNTY will review each review package promptly and provide written comments, compiled by all reviewers into a single document, to the ENGINEER. The ENGINEER will, with each submittal, provide a written response to all COUNTY review comments detailing how each review comment was addressed in the resubmittal.

Following the submittal and review of the 100% Construction Plans and Calculations, the COUNTY will provide a written approval for the ENGINEER's records indicating that all comments have been addressed and the plans are approved as submitted.

- B. Drainage Calculations Report. The ENGINEER will prepare a drainage calculations report to summarize the proposed stormwater design for Agency review. The report will meet the requirements of Marion County and the SJRWMD.
- C. Regulatory Agency Submittal. The ENGINEER will prepare and submit one environmental resource permit application, calculations and design plans to the SJRWMD at the 60% Design Plan Phase. The ENGINEER will respond to requests for additional information and address permitting agency review comments as appropriate, through permit issuance. For all permits, the COUNTY will be the applicant and provide signatures and any permitting fees if required.

The scope of work of this Agreement does not include a formal permit submittal to USACE other than the coordination described under Task 2. This Agreement assumes the existing wetland area will not be considered Waters of the US by USACE.

The scope of work of this Agreement also does not include modification of flood insurance rate maps through FEMA. The current FEMA Flood Insurance Rate Map for the Project area, dated 04/19/2017, does not delineate any regulated flood zones within the Project limits.

## TASK 9 – FINAL GRANT/BID DOCUMENTS

- A. Bid Plans and Bid Form. ENGINEER will provide one CD with electronic file versions of the plans in PDF format to the COUNTY for bidding purposes. In addition, two signed and sealed sets of plans. The ENGINEER will prepare a final bid form that lists all anticipated pay items with corresponding estimated quantities for the COUNTY's use in preparing the bid documents. The

actual bid documents, posting the bid for potential bidders, and administration of the bid process will be handled by the COUNTY.

- B. Final Grant Documents. ENGINEER will assist the COUNTY to prepare the documents required for final submittal in accordance with the Grant. The list of required documents is included under Attachment A, Section A) 2) of the HMGP EXHIBIT-1 document. The COUNTY will be responsible for submittal of all grant documents and coordination.
- C. Pre-Bid Conference. Not included.
- D. Bid Opening. Not included.
- E. Bid Tabulation. Not included.

## **POST DESIGN SERVICES (NOT INCLUDED)**

## **ROADWAY LIGHTING (NOT INCLUDED)**

## **LANDSCAPE PLANS (NOT INCLUDED)**

## **EMINENT DOMAIN ASSISTANCE SERVICES (NOT INCLUDED)**

### **PART III – SCHEDULE**

The ENGINEER will undertake this work upon receipt of Notice-To-Proceed. Work will be completed according to the following schedules:

#### **DESIGN PLANS – NINE CALENDAR MONTHS FROM WRITTEN NOTICE TO PROCEED**

A detailed schedule will be provided to the COUNTY by ENGINEER at the Kickoff Meeting, and will be maintained and updated throughout the duration of the project.

### **PART IV – MISCELLANEOUS**

#### **SECTION I. PROVISIONS FOR WORK**

##### **A. GOVERNING REGULATIONS**

The services performed by the ENGINEER will comply with applicable COUNTY and FDOT Standards Guidelines. The current edition, including updates, of the following References and Guidelines will be used in the performance of this work.

- 1) Marion County Land Development Code, Latest Edition
- 2) Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (FDOT)
- 3) FDOT Florida Design Manual
- 4) FDOT Drainage Manual
- 5) AASHTO's "A Policy on Geometric Design of Highways and Streets"

# Kimley»Horn

- 6) Florida Manual on Uniform Traffic Studies (MUTS)
- 7) Manual on Uniform Traffic Control Devices (MUTCD)

## **B. PROGRESS REPORTING**

The ENGINEER will provide periodic e-mails and monthly written progress reports that describe the work performed on each task. Progress reports will be delivered to the COUNTY concurrently with the monthly invoice.

## **C. CORRESPONDENCE**

Copies of formal written correspondence between the ENGINEER and any party pertaining specifically to this contract will be provided to the COUNTY for their records.

## **D. SUBMITTALS**

The ENGINEER will provide copies of the required documents as listed below. Up to five copies will be submitted to the COUNTY and additional copies will be submitted to the regulating agencies as required for review and approval.

### **Engineering Items:**

- 1) Existing Summary Memorandum
- 2) Summary Alternatives Analysis
- 3) Modeling and Alternatives Analysis Technical Memorandum
- 4) Planning Memorandum
- 5) Preliminary Site Plan/30% Design Plan
- 6) 60% Design Plans and Calculations
- 7) 100% Design Plans and Calculations
- 8) Opinions of Probable Construction Costs at 60% and 100% Plans Stages in Microsoft Excel format
- 9) Final Plans, signed and sealed including files in electronic format

G:\New Business\Public Sector\Marion County\2020\SW 52nd Street Mitigation\Proposal\_RFQ 20Q-190\_SW 52nd Street\_REV1.docx



**EXHIBIT B**  
20Q-190 ~ SW 52nd Street Flood Mitigation Project



**TABLE A**  
**COST ESTIMATE FOR SERVICES**

PROJECT: SW 52ND STREET FLOOD MITIGATION PROGRAM (RFQ 20Q-190)  
CLIENT: MARION COUNTY OFFICE OF THE COUNTY ENGINEER  
KHA PM: RICHARD V. BUSCHE  
BASIS FOR ESTIMATE: COUNTY-APPROVED HOURLY RATES

SHEET: 1 of 1  
DATE: 11/3/2020  
REVISED: 11/20/2020

TASK ID	TASK DESCRIPTION	DIRECT LABOR (MAN-HOURS)									LABOR TOTAL
		Principal Engineer	Project Manager (Registered)	Project Engineer (Registered)	Staff Engineer	Staff Scientist	CADD Designer	Clerical	LABOR HOURS	SUB (\$)	
		\$175.00	\$145.00	\$125.00	\$95.00	\$75.00	\$75.00	\$35.00			
1	PROJECT MEETINGS AND ADMINISTRATION	2.0	12.0	16.0	18.0		4.0	12.0	64.0		\$ 6,520
4D	PUBLIC MEETINGS (OPTIONAL TASK)	0.0	0.0	0.0	0.0			0.0	0.0		\$ -
2	ENVIRONMENTAL ANALYSIS AND REPORTING	4.0	10.0	20.0	36.0	60.0	10.0		140.0	\$ -	\$ 13,320
3	SURVEYING AND MAPPING SERVICES	2.0	8.0	8.0	8.0		6.0	4.0	36.0	\$ 21,540	\$ 3,860
4	GEOTECHNICAL SERVICES	2.0	4.0	8.0	8.0		4.0	4.0	30.0	\$ 29,098	\$ 3,130
5	DATA COLLECTION AND RESEARCH	2.0	10.0	24.0	24.0		4.0	12.0	76.0		\$ 7,800
6	MODELING AND ALTERNATIVES ANALYSIS	25.0	70.0	100.0	140.0		48.0	24.0	407.0		\$ 44,765
7	PRELIMINARY DESIGN PHASE	2.0	8.0	8.0	12.0		20.0	4.0	54.0		\$ 5,290
8	DESIGN PHASE	18.0	60.0	116.0	180.0		230.0	30.0	634.0		\$ 61,750
9	FINAL GRANT/BID DOCUMENTS		4.0	8.0	8.0		4.0	8.0	32.0		\$ 2,920
TOTALS:		57.0	186.0	308.0	434.0	60.0	330.0	98.0	1473.0	\$ 50,638.00	\$ 149,355.00
GRAND TOTAL:										\$ 199,993.00	

**EXHIBIT C**  
**SUPPLEMENTAL TERMS AND CONDITIONS FOR 20Q-190**

- A. **Federal Provisions.** The Parties acknowledge this Agreement is made possible in whole or in part by Federal funds provided by the Federal Emergency Management Agency ("FEMA"). Accordingly, the following clauses from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), Appendix II are incorporated into and form a part of the terms and conditions of this Agreement. The full text of the Uniform Guidance may be found at 2 C.F.R. Part 200. FIRM agrees its performance of this Agreement shall comply with all applicable Federal laws, regulations, executive orders, and FEMA policies, procedures, and directives. The supplemental conditions contained in this Exhibit, if applicable, are intended to cooperate with, to supplement, and to modify the general terms and conditions and other specifications. In case of a conflict with any other section of this Agreement, these Supplemental Terms and Conditions shall govern. FIRM agrees to comply with the following and agrees to flow down all applicable clauses from the Uniform Guidance to lower-tier subcontractors.
- B. **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).** FIRM expressly agrees to comply with all applicable provisions of 2 C.F.R. Part 200 and its appendices and same are hereby incorporated by reference and shall have full force and effect.
- C. **Breach, Default, Termination:** COUNTY reserves the right to pursue all available legal, administrative, contractual or equitable remedies in the event of FIRM's breach of contract or violation of any term of this Agreement. As required in 2 C.F.R. Part 200, Appendix II(A), this Agreement addresses all administrative, contractual or legal remedies in instances where FIRM violates or breaches terms of this Agreement, and provides for such sanctions and penalties as appropriate. These provisions may be found in the body of this Agreement at:

SECTION #	SECTION TITLE
Section 11	Public Records Compliance.
Section 15	Default/Termination. Includes termination for convenience and for cause, the manner in which it will be effected.
Section 16	Damage to Property.
Section 17	Termination for Loss of Funding/Cancellation for Unappropriated Funds.
Section 19	Employee Eligibility Verification.
Section 23	Scrutinized Companies.
Section 28	County's Right to Withhold Payment.

- D. **Equal Employment Opportunity (41 C.F.R. Part 60):**
1. Except as otherwise provided under 41 CFR Part 60, if this Agreement qualifies as a "federally assisted construction contract" as defined in 41 CFR Part 60-1.3, FIRM agrees to comply with the equal opportunity clause under 41 CFR 60-1.4(b), incorporated herein by reference, and E.O. 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See 2 C.F.R. Part 200, Appendix II(C).
  2. The regulation at 41 C.F.R. § 60-1.3 defines a "*federally assisted construction contract*" as "any agreement or modification thereof between any applicant and a person for construction work which

is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work."

3. The regulation at 41 C.F.R. § 60-1.3 defines "*construction work*" as "the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction."
4. During the performance of this Agreement FIRM agrees as follows:
  - a. FIRM will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. FIRM will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. FIRM agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - b. FIRM will, in all solicitations or advertisements for employees placed by or on behalf of FIRM, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c. FIRM will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with FIRM's legal duty to furnish information.
  - d. FIRM will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of FIRM's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - e. FIRM will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - f. FIRM will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - g. In the event of FIRM's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and FIRM may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed

and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. FIRM will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs 4(a) through 4(h) of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. FIRM will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event FIRM becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, FIRM may request the United States to enter into such litigation to protect the interests of the United States.
- i. COUNTY further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if COUNTY is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under this Agreement. COUNTY agrees that it will assist and cooperate actively with FEMA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist FEMA in the discharge of the agency's primary responsibility for securing compliance. COUNTY further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by FEMA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, COUNTY agrees that if it fails or refuses to comply with these undertakings, FEMA may take any or all of the following actions: cancel, terminate, or suspend in whole or in part the grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to COUNTY under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from COUNTY; and refer the case to the Department of Justice for appropriate legal proceedings.

**E. Davis-Bacon Act, as amended and supplemented [40 U.S.C. §§ 3141-3144 and 3146-3148, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)]:**

- 1. Where applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and §§ 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5), as may be applicable.
- 2. In accordance with the Davis-Bacon Act, contractors must pay wages to laborers and mechanics at a rate not less than prevailing wages specified in a wage determination made by the Secretary of Labor.
- 3. In addition, contractors must pay wages not less than once per week.
- 4. If the Davis-Bacon Act applies to this Agreement, COUNTY included in its solicitation a copy of the current prevailing wage determination issued by the Department of Labor and award of this Agreement to FIRM is conditioned upon FIRM's acceptance of the wage determination.
- 5. COUNTY will report all suspected or reported violations of the Davis-Bacon Act to FEMA.

**F. Copeland "Anti-Kickback" Act [40 U.S.C. § 3145, as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public**

**Work Financed in Whole or in Part by Loans or Grants from the United States]]:** Where applicable, all prime construction contracts over \$2,000 are subject to the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "FIRMS and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

1. **FIRM.** FIRM shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts.** FIRM shall insert in any subcontracts the clause set forth in paragraph (1) of this section and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. FIRM shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. **Breach.** A breach of the contract clauses set forth above in paragraphs (1) and (2) of this section may be grounds for termination of this Agreement, and for debarment as a FIRM and subcontractor as provided in 29 C.F.R. § 5.12.
4. **COUNTY** shall report all suspected or reported violations to FEMA.

**G. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708):** If this Agreement is in an amount over \$100,000 and involves the use of mechanics or laborers, FIRM shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Pursuant to 40 U.S.C. § 3702 of the Act, FIRM shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that FIRM compensates the worker at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Pursuant to 40 U.S.C. § 3704, FIRM shall ensure that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, FIRM and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** FEMA or COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by any contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. FIRM shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. FIRM shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
- H. **Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401):** If this Agreement is awarded by COUNTY under a "funding agreement," as defined in 37 C.F.R. § 401.2(a) and COUNTY wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under the "funding agreement," COUNTY agrees to comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FEMA.
- I. **Clean Air Act (42 U.S.C. §§ 7401-7671q):** If this Agreement is for an amount over \$150,000:
1. FIRM agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.
  2. FIRM agrees to report each violation to COUNTY and understands and agrees that COUNTY will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency ("EPA") Regional Office.
  3. FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- J. **Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended:** If this Agreement is for an amount over \$150,000:
1. FIRM agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.
  2. FIRM agrees to report each violation to COUNTY and understands and agrees that COUNTY will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.
  3. FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- K. **Debarment and Suspension [Executive Order 12549, "Debarment and Suspension" (1986) and Executive Order 12689, "Debarment and Suspension" (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's Regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension)]:** FIRM agrees:
1. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, FIRM is required to verify that none of FIRM's principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  2. FIRM shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C and shall include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  3. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that FIRM did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
  4. COUNTY's award of this Agreement is conditioned upon FIRM's current and continued eligibility. FIRM is eligible unless FIRM is listed on the government-wide Excluded Parties List System in the System for Award Management ("SAM"), in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System



in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. If FIRM is listed on the Excluded Parties List System in SAM, FIRM shall have the obligation to promptly inform a COUNTY contract manager, and this Agreement shall be immediately terminated without liability on the part of COUNTY or FEMA.

5. A copy of FIRM's signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Attachment H, is attached to this Exhibit as **Appendix 1**.

**L. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended):**

1. If this Agreement is for an amount over \$100,000, FIRM warrants it filed the required certification prior to award of this Agreement and any payment hereunder. A copy of FIRM's signed Certification Regarding Lobbying is attached to this Exhibit as **Appendix 2**.
2. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352.
3. FIRM shall require such certification and disclosure from any subcontractors used. Any further subcontractors must certify and disclose to the subcontractor awarding the subcontract. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures under this Agreement shall be forwarded up from tier to tier up to COUNTY who will, in turn, forward the certifications to FEMA.

**M. Procurement of Recovered Materials (Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, See 2 C.F.R. Part 200, Appendix II(J) and 2 C.F.R. § 200.322):** FIRM agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

1. In the performance of this Agreement, FIRM shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

**N. Access to Records (See DHS Standard Terms and Conditions: Version 8.1 (2018) and Section 1225 of the Disaster Recovery Reform Act of 2018):**

1. FIRM agrees to provide any Department of the State of Florida, COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of FIRM which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. FIRM agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. FIRM agrees to provide any of the foregoing parties access to construction or other work sites pertaining to the work being completed under this Agreement.

4. In compliance with the Disaster Recovery Act of 2018, COUNTY and FIRM acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**O. Changes:**

No change, modification, change order, or constructive change under this Agreement, may proceed if its cost is not allowable, allocable, within the scope of COUNTY's grant agreement providing funding for this Agreement, and reasonable for the completion of the Project scope. This Agreement addresses more specifically how, if at all, changes can be made by either Party to alter the method, price, or schedule of the Work without breaching this Agreement at:

SECTION #	TITLE
Section 9	Amendments.

- P. Department of Homeland Security Seal, Logo, and Flags [See DHS Standard Terms and Conditions: Version 8.1 (2018)]:** FIRM shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific pre-approval by FEMA.
- Q. Compliance with Federal Law, Regulations and Executive Orders.** This is an acknowledgement that Federal and/or State financial assistance may be used to fund some or all of this Agreement. FIRM shall comply with all applicable Federal laws, regulations, executive orders, as well as policies, procedures, and directives of FEMA.
- R. No Obligation by Federal Government:** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to COUNTY, FIRM, or any other party pertaining to any matter resulting from this Agreement. FIRM agrees to hold FEMA and COUNTY harmless against all claims arising out of FIRM's performance of this Agreement to the extent allowed and required by law.
- S. Program Fraud and False or Fraudulent Statements or Related Acts (31 U.S.C. Chap. 38):** FIRM acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this Agreement.
- T. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216):** FIRM must comply with 2 C.F.R. § 200.216, which implements Section 889 of the Fiscal Year (FY) 2019 NDAA (Pub. L. 115-232) and forbids Federal award recipients from using government funds to enter into contracts (or extend or renew them) with entities utilizing covered telecommunications equipment or services even if the contract is not for the purchase of such equipment or services. Covered telecommunications equipment or services is defined as telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); Telecommunications or video surveillance services provided by such entities or using such equipment; Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- U. Domestic Preferences for Procurements (2 C.F.R. § 200.322):** FIRM shall, to the greatest extent practicable, perform this Agreement with a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel,

cement, and other manufactured products). The requirements of this section must be included in all subcontracts, including all contracts and purchase orders for work or products under this Agreement.

- V. **Affirmative Steps (2 C.F.R. § 200.321):** FIRM shall take the following six (6) affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are included in the procurement process:
1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  2. Assuring that small and minority businesses and women's businesses enterprises are solicited whenever they are potential sources;
  3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  6. Requiring lower tier contractors to take the affirmative steps listed in paragraphs (1) through (5) of this section in subcontracting.
- W. **Duplicative or Unnecessary Purchase (2 C.F.R. § 200.318):** FIRM shall review procurement requests to avoid duplicative or unnecessary purchases. FIRM shall consider consolidating or breaking out procurements to obtain a more economical purchase. FIRM shall consider lease versus purchase where appropriate.
- X. **Licensure.** FIRM certifies it has a current and valid occupational license/business tax receipt issued for the type of services being performed.
- Y. **Compliance of Reporting Requirements.** FIRM acknowledges that COUNTY has the responsibility for providing required reporting, including financial information, program progress, and real property status in accordance with 2 C.F.R. § 200.327, 2 C.F.R. § 200.328, and 2 C.F.R. § 200.329 on a schedule established by FEMA. FIRM shall not interfere with COUNTY's compliance with this requirement.
- Z. **Energy Policy and Conservation Act (42 U.S.C. § 6201):** FIRM shall comply with all applicable standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- A. **Never Contract with the Enemy (2 C.F.R. § 200.183):** FIRM must comply with 2 C.F.R. § 200.183, which implements Title VIII, Subtitle E of the FY 2015 NDAA (Pub. L. 113-291), as amended by Sec. 822 of the FY 2020 NDAA (Pub. L. 116-92), and prohibits recipients from providing funds to persons or entities actively opposing United States or coalition forces involved in contingency operations.

ATTACHED TO THIS EXHIBIT		
APPENDIX #	Copy of FIRM's signed Certification Regarding:	TITLE
1		Debarment, Suspension, Ineligibility and Voluntary Exclusion
2		Lobbying



**APPENDIX 1**

**N. ATTACHMENT H – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**Attachment H**

**Certification Regarding  
Debarment, Suspension, Ineligibility  
And Voluntary Exclusion**

**Subcontractor Covered Transactions**

- (1) The prospective subcontractor, Kimley-Horn and Associates, Inc., of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

**SUBCONTRACTOR**

Kimley-Horn and Associates, Inc.

By: 

Signature

Richard V. Busche, P.E., Senior Vice President

Name and Title

101 East Silver Springs Boulevard, Suite 400

Street Address

Ocala, FL 34470

City, State, Zip

August 25, 2020

Date

Marion County

Sub-Recipient's Name

H0445

DEM Contract Number

4337-358-R

FEMA Project Number



**APPENDIX 2**

**M. CERTIFICATION REGARDING LOBBYING**

RFQ FOR SW 52<sup>ND</sup> STREET FLOOD RELIEF PROJECT

**44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING**

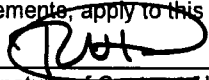
**Certification for Contracts, Grants, Loans, and Cooperative Agreements (for agreements exceeding \$100,000)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned Contractor hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

Richard V. Busche, P.E., Senior Vice President

\_\_\_\_\_  
Typed Name and Title of Contractor's Authorized Official

August 25, 2020

\_\_\_\_\_  
Date