



Marion County Board of County Commissioners

MODIFICATION OF AGREEMENT
WITH MARION COUNTY (“COUNTY”)

AGREEMENT NUMBER/TITLE: 16Q-020 SW 49th Court Rd - Phase 1A (from CR 484 to SW 128th St) Post Design Services

MODIFICATION NUMBER: 5 MODIFICATION EFFECTIVE DATE: August 17, 2021

DESCRIPTION OF MODIFICATION:

1. Firm shall complete the services set forth in the Scope of Services, hereto Exhibit A, for eleven (11) months coinciding with roadway construction activity including rate changes for professional positions per Table A, Cost Estimate for Services.
2. COUNTY shall make payment of Eighty-Five Thousand, One Hundred Fifty-Five Dollars and Zero Cents (\$85,155.00) (the "Agreement Price") to Firm under COUNTY's established procedure and according to Table A, Cost Estimate for Services.
3. This Modification adds/changes language in the Agreement to conform with current Florida Statues as reflected on Exhibit B, hereto, and shall be deemed to amend and become part of the Agreement in accordance with Project 16Q-020 and remain in full force and effect until the completion of all services required under the Agreement.

NOTE! All provisions of the Agreement not specifically modified herein shall remain in full force and effect.

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

PCA/BUYER: DELIA FROSOLONO

E-MAIL: delia.frosolono@marionfl.org

PHONE: 352-671-8444

NAME: Kimley-Horn & Associates, Inc.

ADDRESS: 421 Fayetteville Street, Suite 600, Raleigh, NC 27601

ATTN: Richard Busche

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

MARION COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

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

JEFF GOLD
CHAIRMAN

DATE

ATTEST:

**GREGORY C. HARRELL
MARION COUNTY CLERK OF THE COURT**

MATTHEW G. MINTER
MARION COUNTY ATTORNEY

COMPANY NAME:

Kimley-Horn & Associates, Inc.

BY:

DATE

PRINTED NAME

ITS:

EXHIBIT A
SCOPE OF SERVICES

Kimley»Horn

**AMENDMENT NO. 8 TO AGREEMENT BETWEEN COUNTY (MARION COUNTY)
AND ENGINEER (KIMLEY-HORN AND ASSOCIATES, INC.)**
DATED JULY 19, 2016 – PROJECT #16Q-020

SW 49TH AVENUE SOUTH PHASE ONE

PHASE 1A – POST DESIGN ENGINEER OF RECORD (EOR) SERVICES

PROJECT UNDERSTANDING

The COUNTY has requested an Amendment to the Agreement with Kimley-Horn and Associates, Inc. (the ENGINEER) for the SW 49th Avenue South Phase One Project.

INTRODUCTION

Under a separate Agreement, the ENGINEER provided design and permitting services for the Project. The COUNTY has requested the ENGINEER to provide Engineer of Record (EOR) services during the construction of the Project. Under this Agreement the ENGINEER will provide post design EOR services to the COUNTY as noted herein.

SCOPE OF SERVICES

TASK 1 – POST DESIGN EOR SERVICES

Under this task, the ENGINEER will generally perform the following services to support the COUNTY's staff. The COUNTY will have direct day-to-day control and responsibility for the management of the construction activities.

- 1) Attendance of pre-construction and construction progress meetings.
- 2) Review of shop drawing submittals for structures and materials.
- 3) Respond to Contractor requests for additional information (RAI).
- 4) Conduct site visits as requested during construction.
- 5) Provide construction plan revisions as needed to address changed site conditions.
- 6) Review as-built survey information for conformance with the approved plans and permits as provided by the Contractor.
- 7) Prepare construction certifications for the COUNTY and the SWFWMD upon project completion.

The ENGINEER will provide the construction phase services specifically stated below:

- A. *Drawing Control* – ENGINEER will prepare and issue "Issued for Construction" design plans and electronic files. Throughout the construction of the Project, the ENGINEER shall maintain a drawing control index and track all revisions issued to the COUNTY.
- B. *Pre-Construction Conference* – ENGINEER will prepare for and attend a Pre-Construction Conference prior to commencement of construction activity.
- C. *Monthly Progress Meetings* – ENGINEER will attend monthly progress meetings conducted by the COUNTY during the construction phase of the project. A total of eleven (11) progress meetings are included in this scope.
- D. *Shop Drawings* – ENGINEER will review and approve or take other appropriate action in respect to Shop Drawings and other data which Contractor is required to submit but only for conformance

with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.

E. *Contractor RFIs and Site Visits* – ENGINEER will issue necessary interpretations and clarifications of the Plans and Specifications to the COUNTY.

ENGINEER will make site visits to assist in responding to Contractor RFIs and to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, ENGINEER will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents.

For the purposes of this Amendment, ENGINEER has assumed a total of ten site visits, not including final punch list and project closeout activities.

F. *Construction Plan Revisions* – As directed by the COUNTY, ENGINEER will perform plans production services to revise the construction plans to address changed field conditions or unforeseen conditions that may be encountered.

G. *As-Built Review* – ENGINEER will, after notice from the COUNTY that it considers the Work ready for its intended use, conduct a site visit and review draft as-built surveys to determine if the Work is substantially complete. The ENGINEER will provide review markups of the as-built surveys and review updated surveys provided by the COUNTY.

H. *Agency Certifications* – Following completion of all work and receipt of signed and sealed as-built surveys and testing reports, the ENGINEER will prepare agency permit certifications to the following agencies and submit them for processing:

- 1) Marion County Office of the County Engineer
- 2) Southwest Florida Water Management District (SWFWMD)

SCHEDULE

The ENGINEER will provide these services to coincide with the roadway construction activity. For the purposes of this Amendment, ENGINEER has assumed an active construction duration of eleven (11) calendar months.

FEE

The ENGINEER will provide the services described in the Scope of Services for a lump sum amount of \$85,155.00 as detailed on attached TABLE A.

Attachment: TABLE A

KIMLEY-HORN AND ASSOCIATES, INC.

By: 
(Signature)

Amber L. Gartner, PE – Assistant Secretary
(Print Name and Title)

Date: July 1, 2021

G:\New Business\Public Sector\Marion County\2021\SW 49th Cl Rd 1A Post Design\Amd 8_SW 49th Cl Rd 1A.docx

EXHIBIT B

16Q-020-CA-05

SW 49th Court Rd - Phase 1A (from CR 484 to SW 128th St) Post Design Services

1. INSURANCE.

A. Section '10' of the Agreement requiring in part that the company issuing the required Certificate of Insurance have an A.M. Best Company rating of at least a B+ is modified solely to delete the words "at least a B+" and replace them with "at least an A-."

2. DAMAGE TO PROPERTY.

A. Section '14' of the Agreement regarding Damage to Property is deleted in its entirety and replaced with the following:

Section 14 – Damage to Property. ENGINEER 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, ENGINEER shall replace the same or be returned to original state without additional cost to COUNTY, as applicable.

3. EMPLOYEE ELIGIBILITY VERIFICATION

Section '17' of the Agreement regarding E-Verify is deleted in its entirety and replaced with the following:

Section 17 – E-Verify, pursuant to Section 448.095, F.S. 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 ENGINEER to register and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits ENGINEER from entering into this Agreement unless it is in compliance therewith. Information provided by ENGINEER is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement.

By previously signing the ITB Acknowledgment and Addenda Certification Form, and this Agreement, ENGINEER 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 ENGINEER if COUNTY has a good faith belief that ENGINEER has knowingly violated Section 448.09(1), F.S., that is, that ENGINEER 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 ENGINEER enters into a contract with a subcontractor, ENGINEER shall obtain from the subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
- d) ENGINEER shall maintain a copy of such affidavit for the duration of this Agreement and provide it to COUNTY upon request.
- e) ENGINEER shall immediately terminate the subcontractor if ENGINEER 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 ENGINEER's subcontractor has knowingly violated Section 448.09(1), F.S., but that ENGINEER has otherwise complied, COUNTY shall promptly order ENGINEER to terminate the subcontractor. ENGINEER agrees that upon such an order, ENGINEER shall immediately terminate the subcontractor. ENGINEER agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate ENGINEER.
- g) If COUNTY terminates this Agreement with ENGINEER, ENGINEER may not be awarded a public contract for a least one (1) year after the date of termination.
- h) ENGINEER 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 Agreement and may not be considered as such.
- j) ENGINEER 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 Agreement and COUNTY may treat a failure to comply as a material breach of this Agreement.

4. DEFINITIONS.

- A. Adds Section '27'** of the Agreement is modified to include Purchase Orders in the definition of Contract Documents; to add that should any conflict arise between the Contract Documents and the Agreement, the terms of the Agreement shall govern.

5. SCRUTINIZED COMPANIES. Adds Section '28' to the Agreement with the following:

Section 28 – Scrutinized Companies, pursuant to Section 287.135, F.S. **A. Certification.**

1. If the Agreement is for One Million Dollars or more, ENGINEER certifies that at the time it submitted its bid or proposal for the Agreement or before entering the Agreement or renewing same, ENGINEER was not the 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, ENGINEER certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, ENGINEER 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 and ENGINEER meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and ENGINEER is found to meet any of the following prohibitions:
 2. 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.

Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and ENGINEER is found to meet any of the following prohibitions:

 - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
 - 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
 - c. Been engaged in business operations in Cuba or Syria.

3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and ENGINEER is found to meet any of the following conditions:
 - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
 - 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.;
 - c. Been engaged in business operations in Cuba or Syria; or
 - d. 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.

4. Was entered into or renewed on or after July 1, 2018, and ENGINEER is found to meet any of the following prohibitions:
 - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
 - 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
 - c. Been engages in business operations in Cuba and Syria.
- 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. ENGINEER is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
- D. **Comply; Inoperative.** The Parties agree to comply with Section 287.135, F.S., as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

6. **SOVEREIGN IMMUNITY.** Adds Section '29' to the Agreement with the following:

Section 29 – 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 ENGINEER, if provided, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Section shall survive the termination on the Agreement.

7. **ON-GOING COMPLIANCE.** Adds Section '30' to the Agreement with the following:

Section 30 – 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 the governing laws, statutes and regulations, as same may change from time to time.