

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 25th Ave, Ocala, FL 34471 (hereinafter referred to as "COUNTY") and **Kimley-Horn & Associates, Inc.**, located at located at 421 Fayetteville Street, Suite 600, Raleigh, NC 24501 whose mailing address is 101 E. Silver Springs Blvd., Suite 400, Ocala, FL 34470, possessing FEIN# 56-0885615 (hereinafter referred to as "FIRM") under seal for the Program Management Services for RESCUE Grant Projects, (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 #21Q-227 - Program Management Services for RESCUE Grant Projects, 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.

Should any conflict arise between the contract documents and the Agreement, the terms of the Agreement shall govern.

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 be in effect through December 31, 2026 ("Term"). **TIME IS OF THE ESSENCE.** All limitations of time set forth in the Contract Documents are of the essence. Work associated with any Task Order may be presumed abandoned after ninety (90) 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. All Work will proceed in a timely manner without delays.

Section 5 – Scope of Services. As per specifications and requirements of the Project 21Q-227, FIRM shall provide complete Professional Services as stated in Scope of Work, Exhibit A, hereto, "the Work." Individual projects shall be assigned to FIRM for American Rescue Plan Act (ARPA) funded projects (Task Orders), as required by COUNTY, shall be of varied size and complexity and shall include but not limited to those services outlined in the RFQ. TO's will be assigned a purchase order (PO) only, and a fee schedule and scope of work is required with each task assigned under this Agreement. TO's which exceed \$50,000 shall be subject to final review and approval by the Board of County Commissioners (BCC).

Section 6 – Compensation. COUNTY shall make payment, (the “Agreement Price”), to FIRM under COUNTY’s established procedure, and per the rate classification and hourly fee schedule identified below, upon completion of the Work.

CLASSIFICATION		HOURLY RATE
Program Management & Design	Principal	\$250
	Program Manager	\$220
	Senior Professional Engineer	\$220
	Project Manager	\$190
	Senior Planner	\$180
	Professional Engineer	\$175
	Senior Designer	\$150
	Senior Technical Support	\$125
	Engineer	\$125
	CADD Designer	\$110
	Administrative Assistant	\$60
CEI	Senior Construction Manager	\$150
	Senior Construction Inspector	\$105
	Construction Inspector	\$90

A consumer price index (CPI) rate increase may be requested every two-years, in writing, at least 60 days prior to the contract anniversary date. Requested increase shall be tied to the approved (CPI-U) for All Urban Consumers. 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.

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 25th Ave, Ocala, FL 34471

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

Email: publicrelations@marionfl.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.

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-. Self-Insured companies that cannot be rated, will also be considered. All policies must include all requirements listed below, reference the project number and show Marion County as additional insured. The Certificate should also provide for 30-day cancellation notice to the Procurement Director's address, set forth herein.

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws.

- Employer's Liability limits for not less than \$100,000 each accident \$500,000 disease policy limit and \$100,000 disease each employee must be included.

- The Contractor/Vendor, and its insurance carrier, waives all subrogation rights against Marion County, a political subdivision of the State of Florida, its officials, employees and volunteers for all losses or damages which occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not.
- The County requires all policies to be endorsed with WC00 03 13 Waiver of our Right to Recover from others or equivalent.

COMMERCIAL GENERAL LIABILITY

Coverage must be afforded under a Commercial General Liability policy with limits not less than

- \$1,000,000 each occurrence for Bodily Injury, Property Damage and Personal and Advertising Injury
- \$2,000,000 each occurrence for Products and Completed Operations

BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

- In the event the Contractor/Vendor does not own vehicles, the Contractor/Vendor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

PROFESSIONAL LIABILITY INSURANCE 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 this Agreement is for One Million Dollars or more, CONTRACTOR certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONTRACTOR 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 this Agreement is for any amount, CONTRACTOR certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONTRACTOR 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 this Agreement if it is for One Million Dollars and CONTRACTOR meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and CONTRACTOR is found to meet any of the following prohibitions:
 - 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.
2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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.

C. Termination, Any Amount. COUNTY may, entirely at its option, terminate this 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. CONTRACTOR 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 & Associates, Inc.
101 E. Silver Springs Blvd., Suite 400, Ocala, FL 34470
CONTACT PERSON: Alan Garri | Phone: 352-438-3000

COUNTY: Marion County Utilities
c/o Marion County, a political subdivision of the State of Florida
601 SE 25th 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@marionfl.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 and alan.garri@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 Work**

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 10/19/2021
MARION COUNTY CLERK OF COURT

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



JEFF GOLD, DATE 10/19/2021
CHAIRMAN


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

BCC APPROVED: October 5, 2021
21Q-227 | Program Management Services for
RESCUE Grant Projects



For: MATTHEW G. MINTER, DATE 10/15/2021
MARION COUNTY ATTORNEY


WITNESS:



SIGNATURE
Stacy Boney

PRINTED NAME

KIMLEY-HORN & ASSOCIATES, INC.




BY: DATE 10-5-2021
Riccardo V. Busceti

PRINTED:
SR. VICE PRESIDENT

ITS: (TITLE)

WITNESS:



SIGNATURE
Alan Harb

PRINTED NAME

EXHIBIT A

SCOPE OF WORK

DEFINITIONS

County or COUNTY– Marion County, Florida

Consultant - Professional Consultant or Consultant Team or Firm.

Design Professionals – Unless otherwise specified, definition shall encompass all designers on the project to include but not limited to professional engineers, architects and so forth and any subconsultants therewith.

PM – Program Manager

RFQ - Request for Qualification; this solicitation.

OVERVIEW

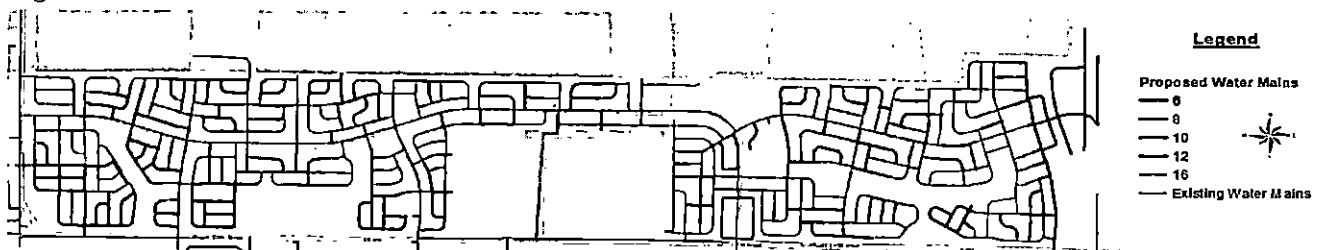
On March 11, 2021, the President of the United States signed the American Rescue Plan Act (RESCUE). This act provides for specific funding allocations directly to state, local, and municipal government agencies. The funds provide substantial flexibility for each jurisdiction to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities. These funds also deliver resources that recipients can invest in building, maintaining, or upgrading their water, sewer, and broadband infrastructure.

The RESCUE plan provides for Marion County to invest in water and sewer infrastructure, making necessary investments to improve access to clean drinking water and to support vital wastewater infrastructure.

Proposition 1: Marion Oaks – North Water Infrastructure System ~ \$10,000,000

- Utilizing the existing central water transmission/distribution system, connect and close all of the dead end mains within the North Marion Oaks System and provide a closed system that will service all of the properties within the Marion Oaks – North Area (reference Figure 1-1).
 - Approximately 132,036 linear feet of 6-inch, 8-inch, 10-inch, 12-inch, and 16-inch water mains to complete the central water system in the Marion Oaks – North Water Area.
 - Include valves, fire hydrants, water services, air releases assemblies and all required appurtenances to complete the central water system.

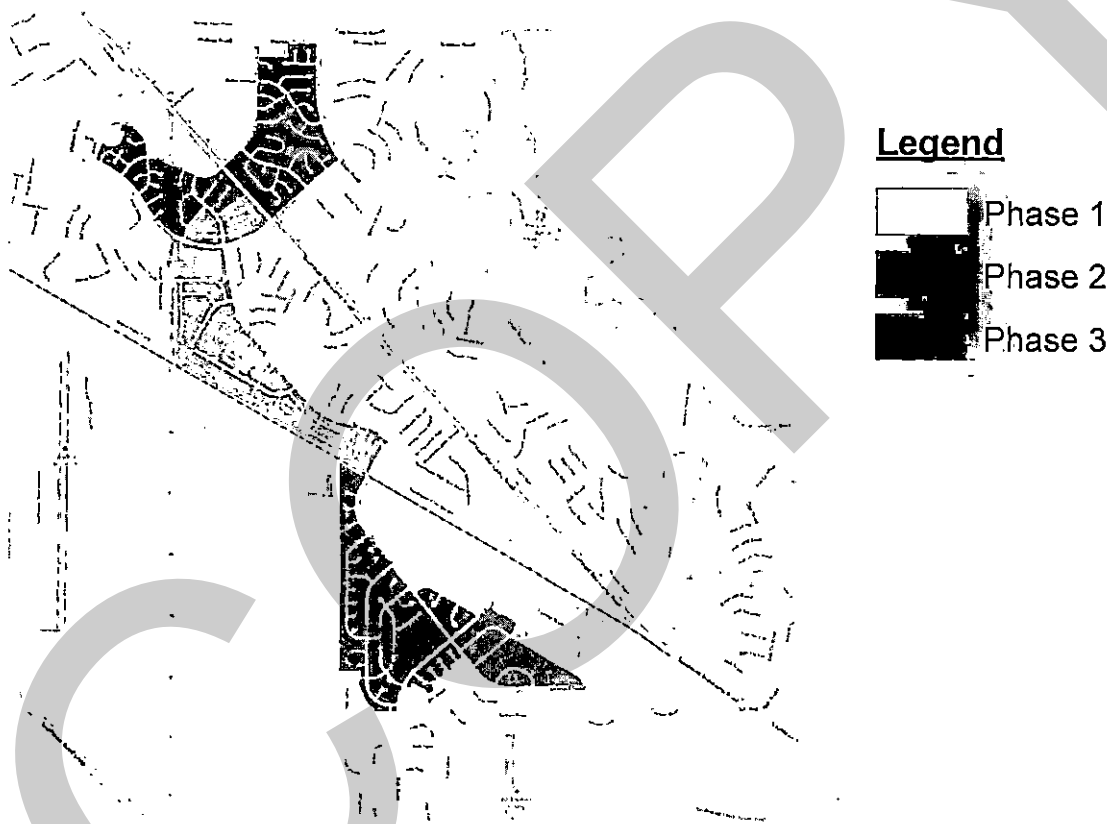
Figure 1-1 Marion Oaks – North Water Infrastructure In-Fill



Proposition 2: Silver Springs Shores Water and Wastewater System Improvements ~ \$40,000,000

- Initiate Septic to Sewer conversion in the Silver Springs Shores (SSS) area of Marion County through three (3) phases of work that will include approximately 500 properties in each phase. Each project would include lift stations, manholes, gravity sewer mains, force mains, sewer services to each property in the phases, and all required appurtenances to complete the central sewer system.
- The projects will also include water mains (varies sizes), valves, fire hydrants, water services, air releases assemblies and all required appurtenances to complete the central water system with the installation of the sewer system.

Figure 1-2 Silver Springs Shores Wastewater Infrastructure In-Fill



The PM will work closely with County staff, County's financial, procurement teams and other applicable parties in packaging projects for issuance to maximize the grant funding associated with the program.

The PM will develop an expedited project delivery method to meet the schedule associated with the grant funding program.

The PM shall group projects to streamline processes, minimize costs, to increase productivity, and to complete projects on schedule and within the budget.

SCOPE OF SERVICES

The consultant shall have a highly skilled and experienced project team comprised of seasoned, well-rounded team members with related experience in the following areas discussed below. Program Manager (PM) team shall have the design criteria package development, planning, design and construction management experience in managing civil projects (retro existing subdivisions with new transmission and distribution water mains with services, new wastewater collection systems with services, and combined water distribution and wastewater collection systems) and supporting civil skills to include roadways, stormwater and associated skills to support the water and wastewater projects. Services shall include all general leadership and management functions required of a PM including but not limited to: development of design criteria package to support alternate delivery methods that may be available under Florida Statutes, recommendations for project delivery, procurement validating programming results, tracking budgets, preparing cost estimates, providing Construction Engineering & Inspection (CEI) services, providing support related to specific grant requirements and additional grant applications, to include but not limited to Build American or Davis Bacon, auditing requirements, validating construction cost/cost of work, monitoring schedules, maintaining County electronic files and hard files for auditing purposes and public records; overseeing quality of all aspects of the project; communication with the project team; coordinating all issues, documentation, minutes, action items, and approvals to move the projects through all the various phases; providing direct interface with end-users and other stakeholders as required; briefing officials, Boards/Commissions, adhoc committees, and being more particularly described as follows:

1. Maintain a single point of contact for the County.
2. Create a comprehensive project plan to include design criteria packages and schedules providing the best delivery approach to package and implement such projects at various phases to meet the grant schedules associated with any grants that may support the County, to include the RESCUE Program, while minimizing issuance costs implications. Such plan shall include but not limited to:
 - a. Provide plan to establish, lead and coordinate all project related meetings to include updates, status reports related to grants that support the County, to include the RESCUE Program. Establish, lead and coordinate all project related meetings.
 - b. Work with staff and County Commission on prioritization and phasing of projects.
 - c. Provide best procurement methods to projects and suggest best practices in industry on oversight, cost control, quality control/quality assurance and related.
 - d. Update and revise accordingly overall program budget including hard and soft costs for each project meeting all goals/objectives for each project and staying within the prescribed budgets as set forth with each project. Provide for cost-saving measures such as value engineering, savings in procurement methods, and streamlining measures to support the projects.
 - e. Where applicable, provide a public communication/notification plan for projects affecting not only immediate neighborhoods but also community-wide citizens. Some projects will have a more immediate impact than others. The Plan needs to assess and measure each project and its area impact and include meetings, design programs and fully execute neighborhood notifications to the area, through personalized invitations, telephone contact, email, door hangers or other means determined by County staff and/or County Commission so as to ensure proper notification of affected citizens.

3. Work with County staff and the financial team to include the Financial Advisor, Bond Counsel and Marion County Clerk's Office to determine the following:
 - a. Appropriate number of issues and the necessary materials for the associated grants supporting the Program.
 - b. Track project costs, project cash flows, monitor, and manage all payments to consultants and contractors.
 - c. Assist County in developing the financial procedures, programs, and support documents to manage and monitor the grant program for auditing purposes and compatible with the County's financial software.
 - d. Provide recommended maintenance and operations costs for future Utility budgeting purposes.
 - e. Work with County staff and/or financial team to develop alternative capital funding options, if necessary, and provide cash flow projections.
4. Assist in coordination and production of public information about the grant program and coordinate with County staff with a public outreach program to allow the public an overall view of the grant-related infrastructure improvements. This will include:
 - a. Work with County's public outreach team with web-based information and illustrations, exhibits, maps, signs, press releases, pictures, videos, interviews, Power Point presentations, and other types of educational material.
 - b. Assist staff to create a timeline monologue on certain projects through pictures, videos, interviews and so forth.
 - c. Assist in presentations not only to the Board of County Commissioners but also local civic organizations, other governmental bodies, Chamber of Commerce, neighborhood groups, church groups and so forth.
 - d. Assist staff in coordination and scheduling of ground-breaking activities, milestone presentation announcements and press conferences.
 - e. Coordinate design and placement of appropriate project signage for all projects ensuring consistent theme, branding and recognition of stakeholders across all projects.
5. Draft and/or modify Request for Qualifications/Proposals for Progressive Design Build Teams. Oversee the process and assist the County in the selection of the best qualified Progressive Design Build Team(s). Follow up with and de-brief, if necessary, non-selected firms. Create and/or modify existing standardized professional service and construction contracts for review and final drafting by County Procurement staff. Assist in incorporating all necessary insurance levels, bonds and so forth in the appropriate agreement/contract. Oversee that all submittals are received and approved prior to starting work on these items.
6. Create and/or modify existing standardized professional service and construction contracts for review and final drafting by County Procurement and Legal staff. Assist in incorporating all necessary contract requirements, grant requirements and so forth in the appropriate agreement/contract. Oversee that all submittals are received and approved prior to starting work on these items.

7. Negotiate terms with consultants, design professional, contractors, Progressive Design Build Team(s) and so forth that are favorable to the County providing not only the best value and meeting the goals of the program but also a fee that is within the individual project's budget. If terms are unacceptable to the County, re-bid, renegotiate or select another firm that will meet the County's terms. Coordination with County Procurement will be required for this effort.
8. If required, assist with easement, purchase in fee lands that support future lift stations, and/or right-of-way acquisition in the coordination of acquisition services and the timely acquisition of easements, land in fee and/or right-of-way. This would include providing preliminary cost estimates and a priority acquisition schedule.
9. Provide design professional program activities related to establishing the systems and procedures necessary to implement the design and construction bond projects, ensuring consistency across the County, including:
 - a. Meet and coordinate with various entities to establish goals, constraints, priorities, and responsibilities.
 - b. Prepare a Master Schedule for the program, including developing design criteria packages, developing a schedule for individual projects, land to include right-of way, easement and fee acquisition, and construction phase services. The Master Schedule will be updated as needed throughout the duration of the Program.
 - c. Develop and maintain a filing system to include program management materials, planning documents, design criteria package documents, design documents, right-of-way/easement documents, and bid documents.
 - d. The PM shall recommend to staff any forms, procedures or standards that should be implemented to aide in project delivery. Particular attention should be given to items that expedite project delivery and/or reduce project expenditures.
10. Provide services associated with the preparation of the project delivery methods to include Progressive Design Build Delivery Method with support in each task such as Task I Design and Task II Guaranteed Maximum Price ("GMP") Phase, including:
 - a. Prepare the design criteria package which will include a concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.
 - b. Prepare independent design professional fee estimate for each project within the Program.
 - c. Ensure that all necessary design professionals (i.e. geotechnical, survey and/or environmental) are included on the project design team.
 - d. Negotiate contracts with selected firms to include both Task I and Task II contracts.

- e. Conduct kick-off meeting with project firm/team.
 - f. Perform design reviews in accordance with any established procedures.
 - g. Assist with developing and negotiating the Guaranteed Maximum Price (GMP) to support the Task II portion of the Progressive Design Build delivery method.
 - h. Review invoices.
 - i. Conduct progress meetings, as needed.
 - j. If required, oversee Design, Bid, and Build project bid phase activities, including:
 - i. Preparing bid documents.
 - ii. Advertisement of projects.
 - iii. Prepare and distribute addendums, as necessary.
 - iv. Conduct a pre-bid meeting.
 - v. Conduct a tabulation and evaluation of bids and contractors.
 - vi. Recommend a contract award.
 - k. Provide project close out, including obtaining final as-built plans received from contractor, once project construction is completed.
 - l. Assist in developing the required protocol to track utility connections (both water and sewer) under the mandatory connection requirements. Implement such programs and assist in the implementation of the program.
11. Conduct, as necessary, a constructability review and provide a value engineering service for projects outside of scope and budget.
12. Manage all contracts (County, Progressive Design Build Teams, special consultants, etc.) related to the projects.
13. Conduct site visits and inspections to review work in place and report in a standard format to the County with reference to utilities standards/specifications, schedules and budgets. Monitor construction progress and advise the County of any observations of non-conforming scope or workmanship quality concerns. Administrate construction contract and general conditions and serve as County's representative.
- a. Provide field and quality control/ quality assurance oversight.
 - b. Provide on-sight construction inspection services.

The County has the option to either perform all or parts of construction inspection services at their discretion with the PM adjusting their resources accordingly. The PM shall not duplicate or waste resources where it is not needed.

In addition to the requested services, the PM shall be tasked with looking at alternative procurement or delivery methods such as construction manager-at-risk (CMAR) or design-build to expedite project delivery and reduce costs. Additional items that may be considered are described in more detail under below.

Additional Services

In addition to the aforementioned overview of requested services, the PM shall be tasked in looking at other procurement or delivery methods such as Construction Manager-at-Risk (CMAR) or Progressive Design Build to expedite project delivery and reduce costs. Once a firm is selected, the following will be considered on final scope of services:

1. Draft and/or modify existing agreement/contract with best qualified contractor and/or consultant.
2. Maintain appropriate confidentiality and comply with Open Records Requests.
3. Provide the draft agreement/contract in order to eliminate extended negotiation of terms after selection.
4. Guide the selection process consistent with a construction management approach acceptable to owner.
5. Negotiate financial and related issues to finalize the agreement/contract with selected contractor and/or consultant.
6. Coordinate with the County to insure all procedures are in compliance with statutes and regulations.
7. Provide follow-up and de-briefing sessions with non-selected firms.
8. Collect and process all required documents from contracted firms before proceeding with work. (i.e., bonds, insurance, etc.).
9. Issue "Notices to Proceed" on appropriate phases when all necessary requirements have been completed.
10. Carry out necessary contractual actions and transactions during the various contract phases.
11. Review standard contract for billing, procurement, timelines, change orders, applications for payment and all processes required.
12. Oversee contractor or consultant selection criteria and review of contractor qualifications and capability to perform scope of work and comply with schedule and specifications. PM shall be tasked in qualifying contractor or consultant in checking work history, references, financial background and so forth on the contract.
13. Negotiate terms with contractors or consultants favorable to the County; re-bid, re-negotiate or select another for the project if best value proposal is greater than project budget after selection of contractor or consultant by County.
14. After selection of contractor or consultant by County, work with design professional with transmitting standard procurement requirements to contractors and subcontractors.
15. Review information submitted by contractor or consultant to include insurance, employee pay scales (compliance with grant requirements, if any), material suppliers, subcontractors list, bonds and financing.
16. Provide overall project management of each consultant and work task.
17. Conduct regular meetings between County, design professionals and all concerning parties to review and evaluate design documents for compliance with County requirements.

18. Conduct review of schedule. If a benefit and cost-effective to the County, conduct schedule optimization or best practice.
19. Provide preliminary design review for code compliance or best practice.
20. Conduct reviews of consultant/contractor or designer's cost estimate, reconcile, and take action to keep cost within budget.
21. Oversee preparation of project documents addressing all project elements.
22. Conduct design review meetings and project management meetings with the County to update on progress, financial status, construction issues and use of project contingencies.
23. Coordinate with government entities for any building or statutory reviews and other approvals.
24. Participate in drawing/plan reviews for completeness, constructability, and cost savings. Coordinate, review, and evaluate all construction documents submitted by design professionals and sub consultants for compliance with owner's design guidelines, detailed program needs and performance specifications before procurement of sub-contractors.
25. Develop/and or modify existing Projects Procedures Manual.
26. Develop/and or modify existing Projects Standard Forms.
27. Develop/and or modify existing Projects Engineering Design Criteria.
28. Develop/and or modify existing Projects Plan Preparation Criteria.
29. Develop/and or modify existing Develop Projects Standards for CADD and CADD procedures.
30. Review County-adopted Standard Detail sheets for projects, and revise, as necessary. Create new Standard Detail sheets, as needed for the Program.
31. Review County-adopted Construction Specifications and revise, as necessary. Create new Construction Specifications, as needed for the Program.
32. The PM shall recommend to staff whether such aforementioned or any documents might be unnecessary or of little value in view of the scope or complexity of programmed projects.
33. Manage the Geotechnical Investigations and develop contracts for geotechnical firms, and review and disseminate results from the geotechnical investigations.
34. Manage and oversee design and survey firm activities, including:
 - a. Aerial photography.
 - b. Benchmark and project control data.
 - c. Profile of existing structures, right-of-way, driveways, stormwater improvements, and utilities.
 - d. Boundary and topographic survey as needed for each project.
35. Update and detail any master program plan and schedule including any project plan and schedule within such master program, including major construction elements, and, if a benefit and cost effective to the County, conduct optimization session(s) or best practice.

36. With alternative delivery methods, such as Progressive Design Build or CMAR project delivery method, the PM shall receive, Guaranteed Maximum Price (GMP) proposal, evaluate, negotiate, and provide recommendation for acceptance.
37. If cost-effective, perform a formal constructability program or best practice.
38. Implement a project change management system to control "scope creep" or best practice. Nevertheless, the PM will be responsible for quality control/quality assurance on all projects and will be responsible for controlling scope creep and provide the County a plan, oversee, and show results to control "scope creep".
39. Serve as the County's point of contact during construction. Conduct construction update meetings at construction sites with the frequency of such meetings based upon the recommendation of the PM subject to approval by the County. Meeting frequency is subject to change at the discretion of the County.
40. Review required documents/outlines from contractor or consultant including quality control/quality assurance plan, safety plan, environmental compliance plan, and any other applicable plan related to the project and report to contractor/consultant and County.
41. Conduct site visits and inspections to review work in place and report in a standard format to County with reference to facilities standards/specifications, schedules and budgets. Monitor construction progress and advise County of any observations of non-conforming scope or quality workmanship. Administrator construction Contract and General Conditions and serve as County's representative. To include, but not be limited to:
 - a. Provide Field Inspection and Quality Assurance Oversight.
 - b. Provide on-sight construction inspection services. The County shall have the option to either perform all or part thereof construction inspection services at their discretion with the PM adjusting their resources accordingly. The PM shall not duplicate or waste their resources where it is not needed.
42. Review compliance with all plans, specifications and required terms and conditions and report to County on status.
43. Review approved submittals. Obtain the County approvals where needed.
44. If GMP contract, track savings balance and plan for its use or recapture.
45. Monitor Requests for Information (RFI's) and design professional, contractor, consultant's responsiveness.
46. Coordinate vendors under separate contract to County, such as security, data, telecom, move management and so forth.
47. If applicable, review contractor's building permits and turnover plan as part of planning for start-up.
48. Evaluate payment applications and make recommendations to County on approval of requests for progress payments.
49. Perform final inspections and review punch list work.
50. Monitor all pre-functional testing and check-out for compliance with commissioning plan.

51. Oversee turnover of all certification documentation and submittals to proper agencies on behalf of the County. Submit as-builts, inventory, and documentation for auditing purposes to the County in an approved form compatible to the County's financial software.
52. Review all contractual and warranty obligations for compliance including the issuance of all documents such as operations and maintenance manuals.
53. Generate and deliver tickler file of all warranty deadlines for each project.
54. Coordinate reviews of warranty items after a determined date by the County.
55. Provide the County applicable future maintenance and operation cost estimates for budgeting purposes.
56. Perform other duties as assigned by the County to support the Program.