

TAB 2

Palmetto Estuary Preserve, Phase III
FRDP Project # A08113
October 5, 2009

Issue: The City has a grant that must be completed, expensed, finalized and open to the Public by April 30, 2010 in order to retain the \$200,000 grant funding as well as retain the funds in the amount of \$150,000 previously awarded by FCT/LWCF.

Background:

In November, 2007, FDEP approved a series of amenities (attached) for the Palmetto Estuary Preserve, Phase Three. Part of the agreement was for Corvus, the Developer to contribute \$40,000.00 to clearing of the property (attached). Due to economic downturn, Corvus was unable to fulfill the obligation. The site was cleared sufficiently to navigate and cost estimates were obtained for clearing. No further action was taken due to desired design changes for the entries to the preserve, parking etc.

Alternatives:

- Alternative #1 – Take no action which result in loss of FRDP grant and funds of \$150,000 received from FCT/LWCF will be returned. We lose money, the residents lose park amenities and we lose credibility with State Agencies resulting in ineligibility for future grants.
- Alternative #2 – Decline the \$200,000 FRDP grant and return \$150,000 to FCT/LWCF for not fulfilling preservation initiatives as outlined in their agreement. With this alternative, we preserve our credibility with FRDP, residents lose park amenities.
- Alternative #3 – Take action by completing the grant as submitted. In order to complete the project in time, the approval of outside services is required to get the project completed. This alternative may not conform to the City's purchasing policy therefore legal avenues to allow the contracting of outside sources in order to meet the deadline should be pursued.. Implementing this alternative affords the City to maintain credibility with granting agencies and enhanced Estuary Preserve amenities that can be enjoyed in the very near future and can be built upon for future enhancements Even the slightest delay could result in affect of alternatives #1 and #2

Recommendation:

- Alternative #3
- **Budget Impact:**

Potential Impact with Recommendation #1 and #2:

Loss of FRDP grant funds in the amount of \$200,000
Repayment of FCT/LWCF acquisition award of \$150,000
Loss of future grant opportunities with FRDP

Impact with Recommendation #3:

Minimum of \$30,000 additional funds for loss of Corvus funding and payment to outside resources to complete the project.



Kimley-Horn
and Associates, Inc.

September 30, 2009

■
3675 Innovation Drive
Lakeland, Florida
33812-4106

City of Palmetto Community Redevelopment Agency
516 8th Avenue West
Palmetto, FL 34221

ATTN: Ms. Shirley Bryant, Presiding Officer
Mr. Jeff Burton, Interim CRA Director

**Re: Palmetto Estuary Preserve, Phase III, FRDAP Project No. A08113
(Grant Funds Preservation and Implementation)**

Dear Ms. Bryant and Mr. Burton:

Kimley-Horn and Associates, Inc. ("KHA" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Palmetto Community Redevelopment Agency ("the Client" or "CRA") for providing engineering, environmental planning, and landscape architectural services related to the preservation and implementation of an existing Florida Department of Environmental Protection (FDEP), Florida Recreation Development Assistance Program (FRDAP) development grant for improvements to Palmetto Estuary Preserve Phase III ("Park" or "Preserve"). Our project understanding, scope of services, schedule, and fee are below.

PROJECT UNDERSTANDING

Palmetto Estuary Preserve Phase III is an approximately 10-acre site located on the Manatee River at the intersection of U.S. Highway 41/301 and 7th Street, and extending southerly to Haben Boulevard and Phase II of the Preserve. The estuary contains protected habitats including a mangrove swamp and estuarine habitat utilized by listed species such as Roseate spoonbill, limpkin, little blue heron, snowy egret, tricolor heron, white ibis and wood stork.

In August 2007, the CRA received approval of a grant from FRDAP in the amount of \$200,000 with an in-Kind match from the City for an additional \$200,000 for development of the Preserve. The stated project improvements consisted of the following project elements: nature trail, picnic facilities, playground, parking, landscaping, restrooms and other related support facilities. According to the grant document, these project elements may be modified by the FDEP if the grantee shows good cause and the FDEP approves the modification.

■
TEL 863 701 8702
FAX 863 701 9832



Since the time of the grant award, no work has been performed on the site to implement the work described in the grant application, and it is reported that FRDAP has informed the Client that if the work is not undertaken and completed by April 1, 2010, the grant will be rendered inactive and the approval rescinded.

Since it is not known what effect such a rescission would have on the Client's ability to apply for and obtain FRDAP or other grants in the future, the Client has expressed the desire to preserve and use the allocated FRDAP funds if at all possible.

The work proposed herein has as its goal the successful preservation of the FRDAP approved funding status and the construction implementation of the improvements contemplated in the initial FRDAP grant application.

The Client and the Consultant agree and acknowledge that the available time to accomplish these goals is short, and that success will depend in large part on the cooperation of the agencies and funding entities involved.

An additional factor bearing on the success of the project is the apparent need to seek modification of the site improvement plan originally submitted as part of the FRDAP application. After a review of this plan by Client and KHA personnel, it appears that the plan was prepared in error by inclusion of proposed improvements within the wetland jurisdictional areas of the site. Development within these areas will require considerably more time and additional cost to complete.

Having taken these considerations into account, the Client desires KHIA to undertake the tasks described herein, with the twofold aim of preserving the funding that has been allocated and by successfully implementing construction of the project within the time and other constraints of the FRDAP grant process and project-specific approvals.

The work contemplated herein constitutes the first phase of improvements to the northerly portion of the Park. Future improvements are anticipated to include South West Florida Water Management District (SWFWMD) Surface Water Improvement and Management (SWIM) Program modifications to the estuary waterways to enhance water quality, as well as specific improvements to improve public accessibility to, and utilization of, the waterway areas. Improvements may include kayak entry ramps, educational access areas for environmental study of the habitat and resident species, elevated boardwalks with educational signage, and implementation of an environmentally-based conservation and nature studies program in concert with Manatee County Public Schools.



Based upon this understanding, our proposed Scope of Services, Schedule and Fees are as follows:

SCOPE OF SERVICES

Task 1 – Conceptual Site Plan Modification, Meet with Agencies to Assess Modifications and Effects on Grant

Task 1 consists of preparation of a conceptual site plan sketch showing the modified improvements and their locations. It is anticipated that all the elements discussed in the FRDAP grant documentation will be incorporated into the modified plan, but in a different configuration that accounts for improvement locations relative to wetland boundaries. KHA will create this plan in consultation with the Client.

Once the conceptual site plan is complete, KHA will meet with the agencies involved to determine their willingness to accommodate the needed changes and to cooperate with the Client in their effort to meet the grant program time deadlines imposed by FRDAP. Although modifications are allowed under the FRDAP grant regulations, these modifications are approved at the agency's discretion, and the reasons for the modifications must be defined by the grant recipient (the Client) and reviewed by FRDAP before the modification is approved.

This task also consists of securing assurances from the agencies that they are willing to work with the Client to assist the Client in meeting the FRDAP construction date requirement of April 1, 2010. This will involve defining the conditions under which FRDAP will consider the grant work to be "complete," as well as an exploration of possible extension of the completion date due to extenuating circumstances and good faith performance by the Client in attempting to pursue implementation of the grant conditions.

Additional points of discussion may include the effects on the grant process of eliminating construction work from the wetlands areas and confining all construction work to the uplands portions of the site.

Meetings under this Task consist of one (1) scheduled meeting:

FRDAP: design modification and timeline clarification,

SWFWMD: stormwater permitting and Environmental Resource Permit

review

FDOT: access, driveway, drainage considerations, USACOE (US Army

Corps of Engineers): driveway permit (Nationwide) for 7th Street roadside ditch,

City: construction permits for site improvements, restrooms, trails, etc., City: City

Commission / CRA Advisory Board / CRA Board,



It should be noted that succeeding tasks can only go forward if the efforts described above under Task 1 are deemed to be successful by both the Client and KHA by mutual agreement. Without successful attainment of the agency cooperation and assistance discussed above, succeeding tasks will be rendered moot and the project may have to be abandoned and the grant money approvals refused and returned to FRDAP.

Task 2 – 60% site planning/design development package and Opinion of Probable Cost (OPC)

Based on the results achieved during the Task 1 work described above, KHA will proceed to develop 60% design plans for the Park improvements.

Preparation of *site planning/design development package* will include:

- Natural Resource Assessment technical memorandum to determine environmental factors that may require additional surveys or protection during the Park improvements.
- Gathering of existing data from the Client and readily available resources including: geotechnical data, boundary and wetland jurisdictional survey information, and topographic information. Detailed site plan which will locate the proposed improvements in a schematic manner.
- A design development level package for the project which will include site and landscape plans, along with an alternatives board to include photos, or drawings of alternatives for the various park fixtures and furnishings, and hardscape finishes.

At this point in development of the construction design plans, an opinion of probable construction cost (OPC) will be developed, as a cross-check tool to attempt to maintain expected project costs within the range of expected grant funding limits.

We will provide the CRA with the required drawings to submit to the City to attain Site Plan Approval. We will assist the CRA in preparing the Site Plan Application and attend up to two Site Plan Review Committee meetings and one City Commission meeting as a part of this process.

Task 3 – 100% design plans, permit application

Once the 60% construction plans have been agreed to by the Client and the outside agencies, KHA will proceed to complete the plans to the 100% level.

This task includes the preparation and submittal of the necessary documentation to request the following permits necessary for construction of the Park improvements:



- SWFWMD stormwater permit
- USACOE driveway crossing Nationwide permit
- City of Palmetto construction permits

It is assumed that no driveway access to the Park will be made through the Florida Department of Transportation at Haben Blvd during this Phase of the Park improvements since it is located outside the Park boundaries. It is expected that there will be minimal involvement from FDOT, as site access will be taken from 7th Street and not from SR-41. If FDOT coordination turns out to be required, those activities will be considered as additional services as discussed below.

We will provide responses to up to two (2) rounds of reasonable comments from permitting agencies during this task.

In this regard, it is anticipated that the lack of wetlands impact or other wetlands involvement will limit the depth to which the permitting agencies will need to be involved with the project. As discussed above, agency cooperation will be sought to streamline the process and shorten the time requirements generally associated with the permits involved, but these actions are discretionary with the agencies involved and cannot be guaranteed.

Once the Client and FRDAP have approved the Design Development plans, we will proceed with the preparation of construction plans for the project. This drawing set will include, but is not limited to the following:

Site Plan

Paving, Grading, and Drainage Plans and Details

Utility services plan and details

Landscape and Hardscape Plans and Details

Furnishings and Fixtures Schedule and Details

Erosion Control Plan

Restroom/Picnic Shelter Plans (provided to us by Client)

Task 4 – Completion of Construction Documents; Assistance with documents and bid process if used

KHA will work with the Client to develop a final document package for issue to interested contractors, including plans, specifications, and documentation normally used for bidding of construction work. The assembly of this package will recognize the Client's alternatives of either contracting the work to private contractors or electing to self-perform the work using City forces.



It is anticipated that the Client will use existing City procurement procedures in soliciting and receiving bids for construction of the park improvements, and KHA will assist the City to assemble complete document sets to accomplish this goal. KHA will assist the City in selection of contractors, geotechnical or other testing labs, suppliers of material and/or equipment, trades for construction, and others as requested.

Construction period services, if requested, will be considered as additional services as discussed below.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Geotechnical engineering
- Architecture
- Surveying
- Construction management
- Permitting, application, and similar project fees. Any such fees or costs will be paid directly by the Client.

Additional Services

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Meetings in addition to those described above;
- Assistance with public/community meetings and other outreach activities to assess and refine project goals and neighborhood/user expectations;
- Construction phase services such as observation and owner's representative services during construction, responding to contractor questions regarding design, creation and implementation of design modifications, and creation of as-built drawings;
- Assistance with grant writing, administration, and reporting;
- Assistance in negotiations with owners of adjacent properties regarding transfer of ownership to the Client or the City of Palmetto;
- Coordination or other interaction and meetings with FDOT;
- Traffic and transportation studies related to the 7th Street/SR41 and Haben Boulevard/SR41 intersections and/or access to the site from SR41;
- Design and analysis related to traffic signal installation or modification at either the 7th Street/SR41 or Haben Boulevard/SR41 intersections.
- Wetland mitigation/monitoring plans and permits



- Species surveys and permitting
- Assistance with negotiations with the SWIM program for design/improvements to the Park.

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The Client shall provide all information requested by KHA during the project, including but not limited to the following:

- Topographical survey (AutoCAD)
- Geotechnical information
- Parcel boundary and ownership records (AutoCAD)
- Wetland jurisdictional boundary survey (AutoCAD)
- City utility information, including as-builts (AutoCAD)

SCHEDULE

We will provide our services as expeditiously as practicable to meet a mutually agreed upon schedule.

FEE AND BILLING

KHA will perform the Scope of Services for the following fees:

Task 1: lump sum labor fee of \$4,965

Task 2: lump sum labor fee of \$11,858

Task 3: lump sum labor fee of \$9,445

Task 4: lump sum labor fee of \$3,486

Total of all four tasks: \$29,754

Direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. An amount will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing. Technical use of computers for design, analysis, GIS, and graphics, etc. will be billed at \$25.00 per hour. All permitting, application, and similar project fees will be paid directly by the Client.

Fees will be invoiced monthly based upon the percentage of services performed as of the invoice date. Payment will be due within 25 days of your receipt of the invoice.



CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to the City of Palmetto CRA.

KHA, in an effort to expedite invoices and reduce paper waste, offers its clients the option to receive electronic invoices. These invoices come via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please select a billing method from the choices below:

_____ Please email all invoices to _____@_____.

_____ Please email invoices to _____@_____ AND provide a hard copy to the address listed above (please note below if it should be to someone else's attention or an alternative address).

_____ Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to someone else's attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

(this space intentionally left blank)



We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Glenn Clover
Senior Project Manager

Mark E. Wilson, P.E.
Vice President

Attachment – Standard Provisions
Attachment – Request for Information

Agreed to this ____ day of _____, _____.

CITY OF PALMETTO COMMUNITY REDEVELOPMENT AGENCY

(Print or Type Name and Title)

_____, Witness

(Print or Type Name)

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client						
Mailing Address for Invoices						
Federal ID Number						
Contact for Billing Inquiries						
Contact's Phone and e-mail						
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner	<input type="checkbox"/>

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$25.00 per hour.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.

(c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultant may rely.

(d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.

(e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

(f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.

(g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require or the Consultant may reasonably request in furtherance of the project development.

(h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.

(i) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of an executed copy of this Agreement and will complete the services in a reasonable time. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

(a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.

(b) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing.

(c) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Only printed copies of documents conveyed by the Consultant may be relied upon. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a

fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable to the Client or those claiming by or through the Client for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(12) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) **Hazardous Substances and Conditions.**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(14) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction

contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(15) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(16) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(17) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM
Commencement Certification

Grantee City of Palmetto Project Number: A08113

Project Name: Palmetto Estuary Preserve, Phase III

A list identifying the quantity and type of primary outdoor recreation areas and facilities and support facilities to be constructed, and cost estimate for each item.

<u>Primary Facilities/Areas:</u>	<u>Estimated Cost:</u>
3,000 lf Recreational Trail	\$100,000
2 Trailheads	\$ 3,000
2 covered picnic areas	\$ 25,000
1 playground area	\$ 20,000
LAND VALUE	\$ 160,000

<u>Support Facilities/Areas:</u>	
parking area	\$ 30,000
1 restroom	\$40,000
1000 lf Landscaped Buffer	\$ 18,000
6 rest areas	\$ 4,000

Total Project Cost \$ 400,000

The GRANTEE certifies that all final plans and specifications (i.e.; site, architectural, engineering) to be used in conjunction with the above referenced project will be prepared and certified by an insured, registered architect, engineer, or landscape architect (as appropriate) and will meet all applicable federal, state and local codes, and current engineering practices; that health, safety, durability and economy will be considered and incorporated in these plans consistent with the scope and objectives of the project; that equal access pursuant to the requirements of Federal law and Chapter 553 Florida Statutes, is incorporated in the design of all facilities for individuals with disabilities; that the proposed development is compatible with its surrounding environment; **that all required local, state and federal environmental permits and approvals have been obtained;** and that provisions have been made to insure adequate supervision of construction by competent personnel.

11/2/07
Date

Project Liaison Agent



September 8, 2006

Tanya Lukowiak
Grants Coordinator
City of Palmetto
516 8th Avenue West
Palmetto, FL 34221

Dear Ms. Lukowiak:

I am writing to thank you, on behalf of Corvus International and the Riviera Dunes homeowners, for meeting with us on September 7th, and sharing information regarding the continued development of the Palmetto Estuary Park.

As you know, we are all excited about the improvements and the future connectivity of the Estuary Park to our planned recreational trail. We support the plans and feel certain that the development will enhance the aesthetics of the community, as well as provide additional recreational opportunities.

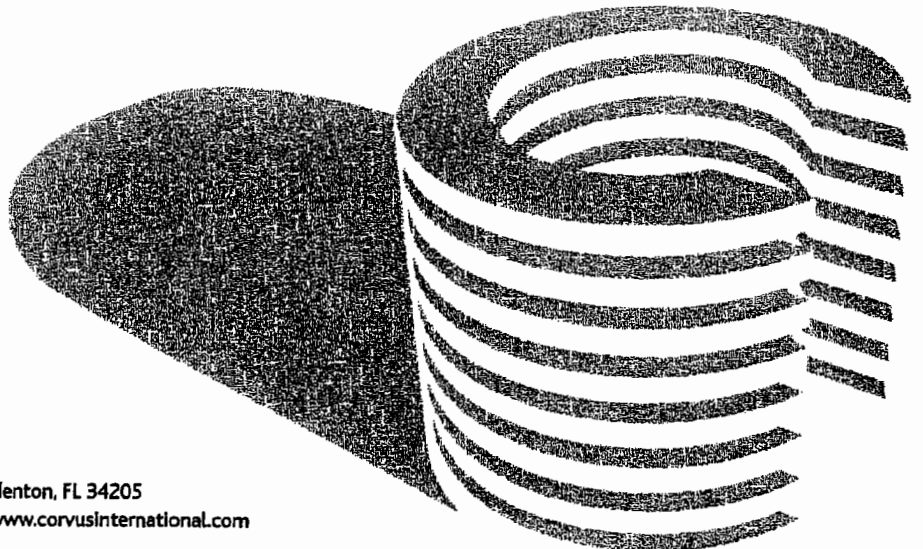
I look forward to continuing to work with you.

Sincerely,

CORVUS INTERNATIONAL

A handwritten signature in black ink, appearing to read "C. Timothy Vining", is written over the printed name.

C. Timothy Vining
Principal





September 14, 2006

Tanya Lukowiak
Grants Coordinator
City of Palmetto
516 8th Ave W.
Palmetto, FL 34221

Dear Ms. Lukowiak,

By way of this letter, I am confirming my participation in the enhancement of the Palmetto Estuary Park.

Corvus is prepared to contribute \$40,000 for site clearing, wetland mitigation and enhancement, and any other aspects of the project which are necessary to complete the development of this Park.

Please advise me if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Timothy Vining', with a stylized flourish at the end.

C. Timothy Vining
Principal
Corvus International

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM

PROJECT STATUS REPORT

Project Name: Estuary Park Development FRDAP Number: A08113

Project Sponsor: City of Palmetto

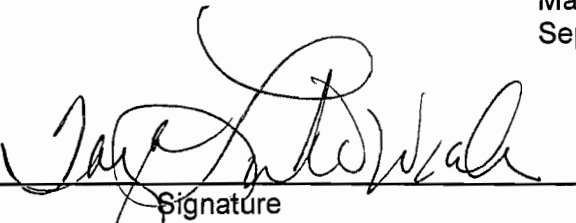
<u>PROJECT ELEMENTS</u>	<u>WORK ACCOMPLISHED</u>	<u>% COMPLETED</u>
Clearing of site	Site cleared sufficiently to navigate	10

PROBLEMS ENCOUNTERED

Developer was going to clear property for mitigation credit but cannot do so at this time.. Parks Dept seeking additional cost estimates for clearing.

Period Covered
(Check Appropriate Period)

January through April : Due May 5th _____
May through August: Due September 5th _____
September through December: Due January 5th X

IAISON: 
Signature

January 5, 2009
Date



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

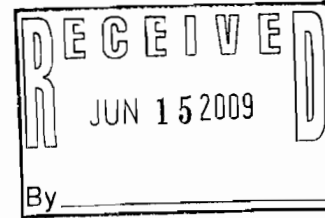
Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

June 10, 2009

Ms. Tanya Lukowiak
Grants Coordinator
City of Palmetto
516 8th Avenue West
Palmetto, FL 34221



Re: Florida Recreation Development Assistance Program (FRDAP)
FRDAP Project Name: Palmetto Estuary Preserve, Ph. III
Project No.: A08113

Dear Ms. Lukowiak:

This letter is to remind you that you now have less than (1) year for the development or acquisition of the above referenced project. All grant related costs must be completed by **April 30, 2010**. All completion documents must be received and approved within 30 days of this date and the project open and available to the general public.

Under the current Administrative Rule, 62D-5.58 (7) (a) "The grantee will have up to three years from the start of the fiscal year in which funds are appropriated to complete the project. If the project is not completed within three years from the start of the fiscal year in which funds are appropriated, the contract shall be terminated and the project funds shall be reverted to the revenue fund from which they were appropriated." Under this rule, staff has no authority to extend the grant beyond this completion date.

Please remember that primary facility costs must be equal to or greater than 50% of the total project cost. If you think you may encounter any problems with this deadline or project scope, please contact our office immediately at 850/245-2501.

Sincerely,

Leanne Zimmerman
Community Assistance Consultant
Office of Information and Recreation Services
Division of Recreation and Parks

Handwritten note:
FRDAP - Acquisition for
Estuary Improvement
Project