

**TAB 6**



# City of Palmetto Agenda Item

**Meeting Date**

12/16/09

**Presenter:** Allen Tusing

**Department:** Public Works

**Title:**

Kimley Horn Letter of Agreement  
Palmetto Estuary Park, Tasks 1 through 4

The City Commission approved Kimley Horn to perform Task 1 for the Estuary Park project on October 5, 2009.

The City has an FRDP Grant that will be expiring in April, 2010. In order to implement the plan, we need to perform engineering and obtain permits and provide FDEP with design drawings. Since Kimley Horn completed Task 1, it is advantageous to continue with the same engineering firm to complete the project.

Staff is requesting approval of a contract to finish this project in an amount not to exceed \$20,200.

**Budgeted Amount:** \$20,200.00    **Budget Page No(s):**    **Available Amount:** \$0.00    **Expenditure Amount:** \$0.00

**Additional Budgetary Information:** FRDP Grant will fund the project in its entirety

**Funding Source(s):** FRDP Grant    **Sufficient Funds Available:**  Yes  No    **Budget Amendment Required:**  Yes  No    **Source:**

**City Attorney Reviewed:**  Yes  No  N/A    **Advisory Board Recommendation:**  For  Against  N/A    **Consistent With:**  Yes  No  N/A

**Potential Motion/Direction Requested:** Motion to approve and authorize the Mayor to execute the Kimley Horn- and Associates, Inc. Letter of Agreement for the Palmetto Estuary Park, in an amount not to exceed \$20,200.

**Staff Contact:** Allen Tusing

**Attachments:** Letter of Agreement



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The work proposed herein has as its goals 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.

A contract was implemented on October 20, 2009 between the City and Consultant to prepare a conceptual site plan that would include improved modifications to be submitted to FRDAP. A conceptual site plan has been designed and approved by the City council. The approved plan was submitted to FRDAP and has received subsequent approval. The City has requested the Consultant provide engineering and permitting services to complete the development of the Park based on this approved conceptual plan.

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

### SCOPE OF SERVICES

#### *Site design plans, permitting and element facilities opinion of probable costs (OPC)*

**Task 1:** As discussed, 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. One (1) pre-application meeting will be scheduled with the following agencies involved in the final design and permitting of the Park plans:

FRDAP: design modification and reimbursement approvals

SWFWMD: storm water permitting and Environmental Resource Permit review

SWIM: presentation of proposed design of estuary improvement plans

FDOT: drainage considerations

USACOE (US Army Corps of Engineers): driveway permit (Nationwide) for 7<sup>th</sup> Street roadside ditch

**Task 2:** KHA will proceed to develop design plans for the Park improvements.

Preparation of site planning/design development package will include:

- Coordination with Survey contractor to determine required information to proceed with engineering design within the north development area only as shown on Exhibit A.
- Gathering of existing data from the Client and readily available resources including: boundary and wetland jurisdictional survey; existing utility locations; furniture and fixture details; restroom/picnic shelter plans and details.



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- Preparation of engineered construction plans for the north development area only as shown on Exhibit A. 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 (provided to us by Client)
  - Landscape Plans and Details
  - Natural resource protection plan
  - Furnishings and Fixtures Schedule and Details (provided to us by Client)
  - Erosion Control Plan
  - Restroom/Picnic Shelter Plans (provided to us by Client)

**Task 3:** Preparation and submittal of the necessary documents to request the following permits necessary for construction of the Park improvements. We will provide responses to up to one (1) round of reasonable comments from permitting agencies during this task.

1. SWFWMD Notice General Stormwater permit with Best Management Practices swales (stormwater modeling not required)
2. USACOE Nationwide driveway crossing permit
3. FDEP – Mangrove trimming

**NOTE:** Driveway access to the Park will be made through the City controlled 7<sup>th</sup> Street access. The access from the Florida Department of Transportation (FDOT) signal controlled Haben Boulevard will be shown on the plans conceptually during this Phase of the Park improvements. FDOT coordination and permit requirements will NOT be determined as part of the scope of this contract. Construction Plans for the access improvements and signalization (if required) will be considered as additional services to this contract.

**Task 4:** Coordination of effort between the City for all Park improvements will be required to insure the timely completion of the grant contract. The following schedule of components will be instituted into the program to assist in completion of this time sensitive project.

- Monthly site visits to meet with contractors, permitting agencies, City Public Works personnel and City staff as needed. (total of 5)
- Opinion of Probable Cost of each elemental facility (primary and secondary) to assist with reimbursement of grant funds
- Monthly reports regarding project status (total of 5) to assist in status reporting to the grant administrator



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### **ADDITIONAL SERVICES**

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

- Geotechnical engineering
- Architecture
- Surveying
- Construction management
- Wetland jurisdictional determination and permitting
- Species surveys and natural resource assessment
- Stormwater modeling (Drainage Calculations)
- Meetings in addition to those described above;
- Community involvement
- Assistance with grant writing, administration, and reporting;
- 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.
- 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 available 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 Task 1 through Task 4 for the lump sum labor fee of \$20,200.

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



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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.

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.



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and Associates, Inc.

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.**

Lisa Leger Frazier, AICP  
Project Manager

Brian A. Good, P.E.  
Vice President

Attachment – Modified Standard Provisions

Agreed to this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF PALMETTO**

\_\_\_\_\_

(Print or Type Name and Title)

\_\_\_\_\_, Witness

(Print or Type Name)

**KIMLEY-HORN AND ASSOCIATES, INC.**  
**STANDARD PROVISIONS (sections 4 and 10 modified per client request)**

- (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 45 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 45 days at 12 per cent, as provided for in the Florida Prompt Payment Act, F.S. 285.735 (7). If the Client fails to make any payment due the Consultant under this or any other agreement within 50 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. The Consultant agrees to add the Client as a named insured on Consultant's general liability insurance policy.

(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 \$300,000, 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.



**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	Agent for Owner	Unrelated to Owner

**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*