
Agreement

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER) and Kimley-Horn and Associates, Inc. (hereinafter called CONSULTANT). OWNER and CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONSULTANT shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- Task 1. Evaluation and Appraisal Report (EAR)
- Task 2. Manatee Protection Plan Update

ARTICLE 2 - THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: Evaluation and Appraisal Report (EAR) and Manatee Protection Plan Update
RFP Number: 2023003
Project Address: 1801 27th Street, Vero Beach, FL, 32960

ARTICLE 3 - CONTRACT TIMES

3.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the specifications are of the essence of the Agreement.

3.02 Days to Achieve Substantial Completion, Final Completion and Final Payment

- A. The Work will be completed and ready for final payment on or before the 120th day after the date when the Contract Times commence to run.

ARTICLE 4 - CONTRACT PRICE

4.01 OWNER shall pay CONSULTANT for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A and summarized in paragraph 4.01.B, below:

- A. For all Work, at the prices stated in CONSULTANT's Price Proposal, attached hereto as Exhibit A.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$49,790

Written Amount: Forty-nine thousand, seven hundred ninety dollars

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Progress Payments.

- A. The OWNER shall make progress payments to the CONSULTANT on the basis of the approved partial payment request as recommended by County staff in accordance with the mutually agreed to schedule milestones and the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq.

5.02 Pay Requests.

- A. Each request for a progress payment shall contain the CONSULTANT’S certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed.

5.03 Paragraphs 5.01 and 5.02 do not apply to construction services work purchased by the County as OWNER which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act. In such event, payment and retainage provisions shall be governed by the applicable grant requirements and guidelines. 5.01 Method of Payment

ARTICLE 6 - INDEMNIFICATION

6.01 CONSULTANT shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of the Work.

ARTICLE 7 - CONSULTANT’S REPRESENTATIONS

7.01 In order to induce OWNER to enter into this Agreement CONSULTANT makes the following representations:

- A. CONSULTANT has examined and carefully studied the Contract Documents and the other related data identified in the Invitation to Bid documents.
- B. CONSULTANT is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. CONSULTANT has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONSULTANT has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONSULTANT.
- D. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- E. CONSULTANT is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S.. CONSULTANT is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:

- (1) This Agreement;
- (2) Certificate(s) of Liability Insurance;
- (3) Request for Proposals 2023003;
- (4) Addendum 1;
- (5) CONSULTANT'S submitted proposal, including all attached forms;
- (6) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;
 - b) Work Change Directives;
 - c) Change Order(s).

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Request for Proposals.

9.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. OWNER and CONSULTANT each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon

OWNER and CONSULTANT, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Venue*

A. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

9.06 *Public Records Compliance*

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the 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 or as otherwise provided by law.
- (3) 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 contract term and following completion of the contract if the CONSULTANT does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the CONSULTANT or keep and maintain public records required by the County to perform the service. If the CONSULTANT transfers all public records to the County upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

- C. Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement.

Article 10: TERMINATION OF CONTRACT

- A. The occurrence of any of the following shall constitute a default by CONSULTANT and shall provide the OWNER with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the OWNER may have under this Contract or under law:
- (1) if in the OWNER's opinion CONSULTANT is improperly performing work or violating any provision(s) of the Contract Documents;
 - (2) if CONSULTANT neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
 - (3) if in the OWNER's opinion CONSULTANT's work is being unnecessarily delayed and will not be finished within the prescribed time;
 - (4) if CONSULTANT assigns this Contract or any money accruing thereon or approved thereon; or
 - (5) if CONSULTANT abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONSULTANT or for any of his property.
- B. OWNER shall, before terminating the Contract for any of the foregoing reasons, notify CONSULTANT in writing of the grounds for termination and provide CONSULTANT with ten (10) calendar days to cure the default to the reasonable satisfaction of the OWNER.
- C. If the CONSULTANT fails to correct or cure within the time provided in the preceding Sub-Article B, OWNER may terminate this Contract by notifying CONSULTANT in writing. Upon receiving such notification, CONSULTANT shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the OWNER may authorize CONSULTANT to restore any work sites.
- D. The CONSULTANT shall be liable for:
- (1) any new cost incurred by the OWNER in soliciting bids or proposals for and letting a new contract; and
 - (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
 - (3) any court costs and attorney's fees associated with any lawsuit undertaken by OWNER to enforce its rights herein.
- E. The CONSULTANT shall have the right to terminate upon seven (7) days notice to the OWNER, upon breach by OWNER of any of its obligations under this contract. In the event of such termination, the consultant shall be paid for all services performed up to the effective date of the termination, and all damages, if any, resulting from the owner's breach of this contract.
- F. TERMINATION FOR CONVENIENCE: OWNER may at any time and for any reason terminate CONSULTANT's services and work for OWNER's convenience. Upon receipt of notice of such termination

CONSULTANT shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination CONSULTANT shall be entitled to payment only as follows:

- (1) the actual cost of the work performed in conformity with this Contract and the specifications; plus,
- (2) such other costs actually incurred by CONSULTANT as are permitted by the prime contract and approved by the OWNER.

CONSULTANT shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

G. TERMINATION IN REGARDS TO F.S. 287.135: TERMINATION IN REGARDS TO F.S. 287.135: CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not 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 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONSULTANT is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONSULTANT, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

IN WITNESS WHEREOF, OWNER and CONSULTANT have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONSULTANT. All portions of the Contract Documents have been signed or identified by OWNER and CONSULTANT or on their behalf.

This agreement is effective November 15, 2022.

OWNER:

INDIAN RIVER COUNTY _____

By: _____
Peter D. O'Bryan, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

(SEAL)

Designated Representative:
Rebeca A. Guerra, AICP, LEED-AP, CPD
Chief Planner
1801 27th Street, Vero Beach, FL 32960
772-226-1258
rguerra@ircgov.com

CONSULTANT:

Kimley-Horn and Associates, Inc. _____

By: _____
(CONSULTANT)

(CORPORATE SEAL)

Attest _____

Designated Representative:
Mr. Kelley Klepper, AICP, Vice President
Kimley-Horn and Associates, Inc.
1777 Main Street, Suite 200
Sarasota, FL 34236
941-379-7673
Kelley.klepper@kimley-horn.com

(If CONSULTANT is a corporation or a partnership,
attach evidence of authority to sign.)

Exhibit A – Price Proposal

PROPOSAL PRICING FORM– RFP 2023003 - Evaluation and Appraisal Report (EAR) and Manatee Protection Plan Update

Proposer submits the following prices for the work described in this solicitation:

Deliverable	Total Not to Exceed Cost
State-mandated Evaluation and Appraisal Report (EAR)	\$ 32,310.00
Updated Manatee Protection Plan (MPP)	\$ 17,480.00
Total Proposal Price	\$ 49,790.00

The following loaded hourly rates are used to determine the total not to exceed cost for each deliverable, and facilitate progress payments during the course of work:

Position/Role	Hourly Rate	Hours for EAR	Total Cost for EAR
See attached.	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Total Deliverable Cost for EAR (must equal the sum of all columns and must be the same as the amount provided in the Deliverable Table above)			\$

Position/Role	Hourly Rate	Hours for MPP	Total Cost for MPP
Jacque Levine, Environmental	\$ 155.34	80	\$ 12427.20
Briana Hazel, Environmental	\$ 129.73	40	\$ 5189.20
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Total Deliverable Cost for MPP (must equal the sum of all columns and must be the same as the amount provided in the Deliverable Table above)			\$ 17,616.40



Evaluation Appraisal Report (EAR)

Position/Role	Hourly Rate	Hours for EAR	Total Cost for EAR
Kelley Klepper, AICP, Project Manager	345	24	\$ 8,280.00
William Roll, AICP, CNU-A, Client Manager	280	10	\$ 2,800.00
Allison Megrath, AICP, CNU-A, QA/QC	210	4	\$ 840.00
Heather Glisson, Land-Use	160	40	\$ 6,400.00
Monet Moore, Land-Use	160	16	\$ 2,560.00
Adam Kerr, P.E., Transportation/Mobility	210	12	\$ 2,520.00
Tori Bacheler, PWS, Environmental	160	18	\$ 2,880.00
Kevin Roberson, P.E., CPESC, LEED AP, Stormwater	280	7	\$ 1,960.00
Molly Williams, P.E., Stormwater	280	3	\$ 840.00
Madeline Kender, P.E., Utilities	190	9	\$ 1,710.00
Macy Falcon, AICP, CFM, Coastal	190	8	\$ 1,520.00
Total Deliverable Cost for EAR			\$ 32,310.00