

RESOLUTION NO. 10-116

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR TRANSPORTATION DESIGN AND CONSTRUCTION ENGINEERING SERVICES CONSULTING FOR DUVAL STREET/TRUMAN ANNEX IMPROVEMENTS PROJECT #GN 0901 IN AN AMOUNT NOT TO EXCEED \$491,964.00; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 08-163, the City Commission ratified a FDOT LAP agreement for Duval Street/Truman Annex improvements FPN number 415406-2, Project #GN 0901 for design of multimodal transportation enhancements to corridors connecting Duval Street to the Truman Waterfront Parcel; and

WHEREAS, the City Manager has negotiated an Agreement with Kimley-Horn and Associates, Inc., pursuant to Resolution 09-302, which ranked firms and authorized staff to negotiate a contract with the top ranked firm;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Agreement between the City and Kimley-Horn and Associates, Inc. is hereby approved in an amount not to exceed \$491,964.00.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of April, 2010.

Authenticated by the presiding officer and Clerk of the Commission on April 7, 2010.

Filed with the Clerk April 7, 2010.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

Date: January 8, 2010
To: James Scholl, City Manager
From: Gary W. Bowman, General Services Department Director
Subject: **Approve contract for Duval St./Truman Annex Improvements - Project No. GN 0901**

Action Statement

A Resolution authorizing the City Manager to enter into a contract with Kimley-Horn and Associates, Inc. for Transportation Design and Construction Engineering Services Consulting – Duval Street / Truman Annex Improvements in the amount not to exceed \$491,964.00.

Background

The City of Key West and the FDOT have entered into a LAP agreement to support the Duval Street / Truman Annex Improvements Project #GN 0901. Resolution number 08-163 was approved by the City Commission on June 4th, 2008 ratifying the LAP agreement for Duval Street/ Truman Annex improvements FPN number 415406-2. FDOT has budgeted design money for this project in the amount of Four Hundred Ninety One Thousand Nine Hundred and Sixty Four Dollars (\$491,964). The City of Key West is proposing multimodal transportation enhancements to transportation corridors connecting Duval Street to the Truman Waterfront Parcel. The corridors addressed by this project include portions of two north/south roads (Duval Street and Fort Street), as well as portions of Southard Street, Angela Street, Geraldine Street, Petronia Street, Olivia Street, Truman Avenue, Julia Street, Virginia Street and Amelia Street. The project area includes the entirety of the Truman Waterfront Parcel itself in addition to the roadways and associated sidewalks and right-of-way listed above.

The contemplated project includes the identification of multimodal connectivity opportunities with an emphasis on “walk-able community” features, development of uniform design standards for the public realm including existing and proposed bicycle paths, streets, right-of-way, sidewalks, lighting, entry features, signage, landscaping, street furniture, drainage, sewer, electric, and related issues.

Key to the Caribbean - Average yearly temperature 77° F.

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FDOT does not allow Local Hiring Preferences (23 CFR 635.117) for LAP projects. The City's Local Preference Ordinance will not apply to this project.

Purpose and Justification

Resolution No. 09-302 approved staff ranking of RFQ No. 09-008 and authorized City staff to negotiate a contract with the highest ranked respondent. The City of Key West's legal staff have reviewed and approved the contract for signatures.

Options

Option #1 Reject proposed contract with Kimley-Horn and Associates, Inc. for Transportation Design and Construction Engineering Services Consulting – Duval Street / Truman Annex Improvements.

Option #2 Approve the proposed contract and authorize the City Manager to enter into an agreement with Kimley-Horn and Associates, Inc. for Transportation Design and Construction Engineering Services Consulting – Duval Street / Truman Annex Improvements.

Financial Issues

Funding for this project is available in account 102-4102-541-6300. The City match is 0%. The FDOT is designated by the Federal Government to manage and distribute the funding and oversee the project. Negotiated design contract shall not exceed \$491,964.

Recommendation

Staff recommends option #2, approve the proposed contract and authorize the City Manager to enter into an agreement with Kimley-Horn and Associates, Inc. for Transportation Design and Construction Engineering Services Consulting – Duval Street / Truman Annex Improvements.

RESOLUTION NO. 09-302

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RANKING SIX (6) TRANSPORTATION DESIGN, ENGINEERING AND CONSTRUCTION ENGINEERING SERVICES CONSULTANTS RESPONDING TO RFQ 09-008 FOR THE DUVAL STREET/TRUMAN ANNEX IMPROVEMENTS DESCRIBED IN PROJECT NO. GN0901; AUTHORIZING STAFF TO NEGOTIATE WITH THE TOP RANKED FIRM AND EACH FIRM THEREAFTER AS NECESSARY IN ACCORDANCE WITH THE CONSULTANTS' COMPETITIVE NEGOTIATION ACT UNTIL AN ACCEPTABLE CONTRACT IS BROUGHT BEFORE THE COMMISSION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued RFQ 09-008 regarding project number GN0901 Duval Street/Truman Annex Improvements; and

WHEREAS, City staff conducted a review at a properly noticed meeting and proposed to have the top six firms appear at a City Commission meeting regarding their qualifications.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That top ranked firms based on qualifications as determined in order by the Commission are:

1. Kimley-Horn & Associates
2. Jacobs Engineering & the Craig Co.
3. Corrandino Group, Inc.
4. Bermello Ajamil & Partners
5. TIE VOTE* C3TS and David Plummer & Associates
6. _____

Section 2: That City Staff is authorized to negotiate a contract in accordance with the Consultants' Competitive Negotiation Act, starting with the topped ranked firm. The City Manager is directed to bring the contract before the City Commission for consideration.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 17 day of November, 2009.

Authenticated by the presiding officer and Clerk of the Commission on November 18, 2009.

Filed with the Clerk November 18, 2009.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

CITY OF KEY WEST

**MASTER AGREEMENT TO FURNISH
TRANSPORTATION DESIGN, ENGINEERING AND
CONSTRUCTION ENGINEERING SERVICES
CONSULTING – DUVAL STREET/ TRUMAN ANNEX
IMPROVEMENTS**

PROJECT NO. GN 0901

**TO THE
CITY OF KEY WEST**

February 2010

Consulting Engineers:

**Kimley-Horn and Associates, Inc.
1691 Michigan Avenue
Suite 400
Miami Beach, Florida 33139**

Master Agreement to Furnish Transportation Design, Engineering and Construction Engineering Services Consulting to the City of Key West

This AGREEMENT made and entered into this 25th day of April, 2010 between the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040, hereafter referred to as the "CITY" and Kimley-Horn and Associates, Inc. a Florida corporation, whose address is 1691 Michigan Avenue, Suite 400, Miami Beach, Florida 33139, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

The CONSULTANT'S primary responsibilities include but are not limited to providing consulting, professional and construction services relating to the City's professional engineering, construction, economics, planning, specialty consulting and any other lawful professional engineering or other consulting services which the CONSULTANT is qualified to provide and which the CITY authorizes the CONSULTANT to undertake in connection with the CITY's present and planned activities in the areas identified below. The specific services, which the CONSULTANT agrees to furnish are set forth as follows:

- 1.1 Provide bid documents and specifications for construction improvements on a federally funded roadway transportation project. This work is for improvements as described in Attachment B.
- 1.2 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, chairing community meetings, construction documents and assisting the City with technical review and ranking of the same to attain qualified contractors for work, construction administration and owner project representation services relating to new construction, permit modification, construction improvements on a federally funded roadway transportation project.

CONSULTANT shall provide the above-mentioned Scope of Services as tasked by the CITY for the project specifically identified in RFQ No. 09-008 / Proj. No. GN 0901 and any other tasks as assigned under this scope.

Article 2. Compensation

The types of compensation methods which shall be used to pay for the CONSULTANT's services are limited to the following:

- A. Hourly Per Diem Rates are provided in Attachment A to this Agreement. Per Diem Rates are those hourly rates charged for work performed on the PROJECT by CONSULTANT 's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to fiscal year adjustments and shall be based on the Data Resources, Inc. (DRI) forecast of wage and price escalation.

- B. A budgetary amount will be established as four hundred ninety one thousand nine hundred sixty-four dollars (\$491,964.00). This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. CONSULTANT will make reasonable efforts to complete the work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.
- C. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay CONSULTANT beyond these limits.
- D. When any budget has been increased, CONSULTANT 's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
- E. The CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the CONSULTANT. Direct expenses are those necessary costs and charges incurred for the PROJECT including, but not limited to: 1) the costs of express courier charges, mail, supplies and field equipment incurred directly for the PROJECT, printing and reproduction of drawings, documents, and other material, laboratory tests and analyses, and subcontracts and other outside services; and 2) special health and safety requirements of OSHA and telecommunication services; and 3) the costs of travel, including the use of CONSULTANT's vehicles, subsistence, lodging and related expenses of personnel while traveling in connection with the PROJECT in accordance with CITY policy and Florida Statute FS 112.061. Required Documentation: All requests for travel reimbursement must provide enough detail to clearly indicate the reason (s) for travel, date (s) of travel, exact time (s) of travel, and mode (s) of travel. If travel is by privately owned vehicle, exact mileage traveled with odometer readings must be submitted. All receipts for which reimbursement is requested are subject to Florida Statute rates applicable at the time of travel. CONSULTANT is obligated to minimize all expenses incurred in the execution of this AGREEMENT.
- F. All reimbursement requested must be supported by a receipt except where a receipt could not be obtained such as an unattended toll booth or parking meters. In those situations where receipts cannot be obtained, reimbursement requested must be supported by documents that show dates, parking meter numbers and locations, toll booth locations, and signature of employee. Travel requested by CITY'S AUTHORIZED REPRESENTATIVE and travel associated with permitting and grants, as required by state and federal agencies, will be reimbursed in accordance with this section.
- G. Transportation by passenger vehicles supplied by CONSULTANT in connection with the work will be reimbursed in accordance with Florida Statute 112.061. Required Documentation: Mileage log stating point of departure, point of destination, and odometer reading for both.

Article 3. Invoicing and Payment

Monthly invoices will be issued by CONSULTANT for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

The items described in Article 1.1 must be billed and complete by March 15, 2011.

Article 4. Obligations of the Consultant

4.1. General

- A. The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing professional engineering and related consultation and advice and furnishing customary services incidental thereto.

4.2. Standard of Care

- A. The standard of care applicable to CONSULTANT 's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

4.3. Subsurface Investigations

- A. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics and the location of underground features may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

4.4. Consultant 's Personnel at Construction Site

- A. The presence or duties of the CONSULTANT 's personnel at a construction site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CITY and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity(s) or any other persons at the site except CONSULTANT 's own personnel.
- B. The presence of CONSULTANT 's personnel at the construction site is for the purpose of providing the CITY a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor

assumes responsibilities for Contractor'(s) failure to perform their work in accordance with the Contract Documents.

- C. Construction sites include places of manufacture for materials incorporated into the construction work. Construction contractors include manufacturers of materials incorporated into the construction work.

4.5. Opinions of Cost, Financial Considerations, and Schedules

- A. In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for design projects, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the CONSULTANT makes no warranty that the CITY'S actual PROJECT costs, financial aspects, economic feasibility or schedules will not vary from the CONSULTANT 's opinions, analyses, projections, or estimates.
- B. If CITY wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, CITY will employ an independent cost estimator, contractor, or other appropriate advisor.

4.6. Construction Progress Payments

- A. Recommendations by the CONSULTANT to the CITY for periodic construction progress payments to the construction contractor will be based on the CONSULTANT 's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that exhaustive, continuous or detailed examinations or reviews have been made by the CONSULTANT to ascertain that the construction contractor has completed the work in exact accordance with the contract documents; that the final work will be acceptable in all respects; that the CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CITY and the construction contractor that affect the amount that should be paid.

4.7. Record Drawings

- A. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, including the CITY or contractors for the work, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
- B. Record drawings will consist only in hard copy form. Any computer-generated files on diskettes or tapes furnished by CONSULTANT are for the CITY's and other's convenience and are to be utilized at users sole risk. Record Drawings

will be signed and sealed were applicable based on CITY and/or regulatory requirements.

4.8. Access to Consultant 's Accounting Records

- A. The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to CITY during CONSULTANT 's normal business hours for a period of 1 year after CONSULTANT 's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may only audit accounting records applicable to cost-reimbursable and cost plus fixed fee type compensation.

4.9 Consultant 's Insurance

- A. The CONSULTANT will maintain throughout this AGREEMENT the following insurance:
1. Worker's compensation and employer's liability insurance as required by the state where the work is performed.
 2. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
 3. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the CONSULTANT or of any of its employees, agents, or subcontractors, with \$2,500,000 per occurrence and in the aggregate.
 4. Professional liability insurance of \$2,500,000 per occurrence and in the aggregate
 5. CITY will be named as an additional insured with respect to CONSULTANT 's liabilities hereunder in insurance coverage's identified in items 2 and 3, and CONSULTANT waives subrogation against CITY as to said policies.

4.10 Subconsultants

- A. The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.

Article 5. Obligations of the City

5.1. Authorization to Proceed

- A. Authorization to proceed will be considered to be given upon execution of this AGREEMENT.

- 5.2. City-Furnished Data
 - A. The CITY will provide to the CONSULTANT all data in the CITY'S possession relating to the CONSULTANT 's services on the PROJECT including, but not limited to, information on any pre-existing documents including but not limited to underground utility locates, geotechnical reports, surveys, and previously submitted plans. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.
- 5.3. Access to Facilities and Property
 - A. The CITY will make its facilities accessible to CONSULTANT as required for CONSULTANT 's performance of its services and will provide labor and safety equipment as required by CONSULTANT for such access. CITY will perform, at no cost to CONSULTANT, such tests of equipment, machinery, pipelines, and other components of the CITY'S facilities as may be required in connection with CONSULTANT 's services, unless otherwise agreed to. CITY will be responsible for all acts of CITY'S personnel.
- 5.4. Advertisements, Permits, and Access
 - A. Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses, except those required by the bid documents, required by local, state, province, or federal authorities; and land, easements, rights-of-way, and access necessary for the CONSULTANT 's services or PROJECT construction.
- 5.5. Timely Review
 - A. The CITY will examine the CONSULTANT 's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.
- 5.6. Prompt Notice
 - A. The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT 's services, or any defect in the work of the ENGINEER or construction contractors.
- 5.7. Contractor Indemnification and Claims
 - A. CITY agrees to use its best efforts to include the following in all construction contracts with contractors not affiliated with CONSULTANT:
 - 1. The provisions of Article 4.4, CONSULTANT's Personnel at Construction Site
 - 2. Provisions proving contractor indemnification of CITY and CONSULTANT as additional insureds on the contractor's general liability insurance policy

- B. CITY will use its best efforts to require construction contractor(s) to name CITY and CONSULTANT as additional insureds on the contractor's general liability policy

5.8. Exclusion of Contractor Claims

- A. CITY agrees to use its best efforts to include the following clauses in all contracts with other construction contractors and equipment or material suppliers:

Contractors, subcontractors, and equipment and material suppliers on the PROJECT, or their sureties, shall maintain no direct action against the CONSULTANT, its officers, employees, affiliated corporations, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed, unless construction contractors, subcontractors and equipment or material suppliers first gain the CITY's consent.

5.9. City's Insurance

- A. CITY will maintain property insurance on all pre-existing physical facilities associated in any way with the PROJECT.
- B. CITY will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all PROJECT work, including the value of all onsite CITY-furnished equipment and/or materials, associated with the CONSULTANT's services.

5.10 Services of Consultant

- A. Unless this AGREEMENT is modified or terminated, the CITY will have all services specified in this AGREEMENT performed by the CONSULTANT, employing CONSULTANT's standard form and content of drawings, specifications, and Contract Documents, generally conforming to the standards, recommendations, and content of the Construction Specifications Institute (CSI) and Engineers Joint Contract Documents Committee (EJCDC), and subject to the CITY's review and approval.

5.11 Litigation Assistance

- A. The Scope of Services does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONSULTANT by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that CONSULTANT's sole negligence caused CITY's damage.

Article 6. General Legal Provisions

6.1 Agreement Period; Time for Performance; Penalty

- A. The duration of the agreement shall be two (2) years commencing from the date this Agreement was entered into, with an additional two-year option to extend on behalf of the CITY, which must be approved by Resolution of the City

Commission. This Agreement shall continue in effect from year to year thereafter, until terminated by the CITY.

- B. The services described in Article 1.1 shall be completed and billed no later than the 15th day of March 2011. In that CONSULTANT's failure to complete performance hereunder by March 15, 2011, may jeopardize the CITY's grant funding for the project, in the event CONSULTANT fails to complete Article 1.1 on or before March 15, 2011, CONSULTANT shall pay to CITY the sum of four hundred ninety one thousand nine hundred sixty-four dollars (\$491,964.00), representing the amount of grant funds contemplated for this project.

6.2. Reuse of Project Documents

- A. Reports, drawings, specifications, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the City. All specifications and plans shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. The CITY agrees to indemnify and defend the CONSULTANT and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change, or alteration.

6.3 Ownership of Work Product and Inventions

- A. All of the work product of CONSULTANT in executing this Project shall remain the property of CONSULTANT. The CITY shall receive a perpetual, royalty-free, non-transferable, non-exclusive license to use the deliverables for the purpose for which they were intended. Any inventions, patents, copyrights, computer programs or other intellectual property developed during the course of, or as a result of, the Work shall remain the property of the CONSULTANT.

6.4 Force Majeure

- A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, failure of City to provide timely review and response regarding Consultant's submittals or other events beyond the control of the CONSULTANT.
- B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

6.5 Termination

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the Director of General Services of the City of Key West.
- B. On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits

- 6.6 Suspension, Delay, or Interruption Of Work
- A. The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONSULTANT for work performed to date. An equitable adjustment in the PROJECT'S schedule and CONSULTANT 's compensation will be made as agreed to by both parties.
 - B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.
- 6.7 Third Party Beneficiaries
- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project.
 - B. All work products will be prepared for the exclusive use of CITY for specific application to the property described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.
- 6.8 Indemnification
- A. The CONSULTANT shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONSULTANT, its employees or agents, in the performance of this Agreement.
 - B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONSULTANT shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONSULTANT shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONSULTANT, or by persons employed or used by CONSULTANT.
 - C. In no event shall CONSULTANT, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this Agreement or CONSULTANT's performance or non-performance of services pursuant to this Agreement. Limitations of liability provided in this paragraph apply whether the

liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

6.9 Limitation of Liability

- A. CONSULTANT services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.
- C. This limitation of liability will apply whether CONSULTANT's liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONSULTANT's officers, affiliated corporations, employees, and subcontractors.

6.10 Assignment

- A. CONSULTANT shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

6.11 Jurisdiction

- A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.12 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.13 Attorney's Fees

- A. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

6.14 Local Hiring Preference

- A. Per 23 CFR 635.117, local hiring preferences will not be allowed in this contract.

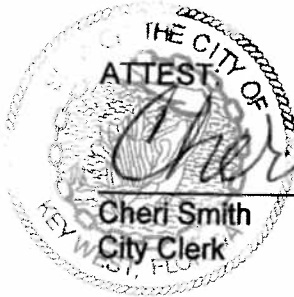
Article 7. Schedules, and Signatures

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST, FLORIDA

By: J. K. Scholl
Jim Scholl, City Manager



Cheryl Smith

Cheri Smith
City Clerk

Kimley-Horn and Associates, Inc.

By: [Signature]

~~Aaron E. Buchler, PE, Vice President~~

Russell Barnes, PE, SR. V.P.

RB
3/1/10

Vendor Firm's Resolution
Signature Is Acceptable.

ATTACHEMENT "A"

HOURLY PER DIEM RATES



Kimley-Horn
and Associates, Inc.

City of Key West
Duval Street/Truman Annex Improvements
*Transportation Design, Engineering and Construction
Engineering Services Consultant*

■
Suite 400
1691 Michigan Avenue
Miami Beach, Florida
33139

**HOURLY RATE SCHEDULE
KIMLEY-HORN AND ASSOCIATES, INC.**

CLASSIFICATION	YEARS EXPERIENCE	\$/Hr
Principal	Over 20-years of experience	220.00
Project Manager	Min 15-years of experience	180.00
Senior Engineer, P.E.	Min 10-year as P.E.	175.00
Project Engineer, P.E.	5-10 years of experience	145.00
Design Engineer, P.E.	0-5 years of experience	120.00
Engineer Analyst	EIT	95.00
Sr. Landscape Architect	Over 15-years of experience	150.00
Landscape Architect II	5-15 years of experience	120.00
Landscape Architect I	0-5 years of experience	100.00
Landscape Analyst	0-5 years of experience	80.00
CAD Drafter/Designer	0-8 years of experience	85.00
Secretary/Clerk II	Over 5-years of experience	75.00
Secretary/Clerk I	0 to 5 years experience	55.00

The above hourly rates include day-to-day direct expenses incurred for advancement of the work including working copies, reproductions, shipping, communications, and computer charges. Costs for copies of multiple plan sets and/or specifications will be reimbursed at the rates paid by COUNTY for Annual Contract reproduction vendors.

The hourly billing rate for personnel classifications not listed shall be negotiated as the need arises.

Costs for Professional Associates (whose expertise is required to complete the project) shall be charged at actual costs plus an administrative charge of ten (10) percent.

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Attachment B

Scope of Services: DUVAL STREET/ TRUMAN ANNEX IMPROVEMENTS

The purpose of the project is to increase multimodal connectivity on and between Duval Street and the Truman Waterfront Parcel in order to facilitate movement between the existing historic community fabric and the proposed waterfront development area. The project includes the identification of multimodal connectivity opportunities with an emphasis on "walk-able community" features, development of uniform design standards (including existing and proposed bicycle paths, streets, right-of-way, sidewalks, lighting, entry features, signage, landscaping, street furniture, drainage, sewer, electric, and related issues), bid specifications and plans. Services to be provided for the project include planning, public involvement, traffic analysis, urban design, engineering design, permitting and possibly construction phase services for roadway, streetscape and multimodal transportation enhancements to a limited number of rights-of-way connecting Duval Street to the Truman Waterfront Parcel. The corridors addressed by this project may include some portions of two north/south roads (Duval Street and Fort Street), as well as some portions of Southard Street, Angela Street, Geraldine Street, Petronia Street, Olivia Street, Truman Avenue, Julia Street, Virginia Street or Amelia Street, which are generally located between the Truman Waterfront Parcel and Duval Street. The project also includes addressing connectivity between future improvements to the Truman Waterfront Parcel and marina (proposed by others) and the rights-of-way listed above.

Construction Documents

The CONSULTANT will prepare a coordinated set of plan documents and specifications predicated on the information outlined above. The number and overall length of roadways to be covered under the bid documents are defined in EXHIBIT A of the RFQ and the scope of services outlined above. Final design of the project will consist of the following:

- Meet with stakeholders (Chamber of Commerce, Duval Street Committee, Truman Waterfront Advisory Board, etc.) to discuss the project and obtain feedback
- Conduct two public meetings (advertising and notifications by the City) with the community and other stakeholders to discuss project purpose and goals, and obtain feedback
- Construction phasing and maintenance of traffic plans
- Street pavement marking plan and details as defined in the scope of services
- Provide final design for sidewalks, streets, bike paths, signage, lighting, landscaping, streetscape and utility additions and alterations
- Technical specifications
- Special provisions unique to the project
- Final contract documents suitable for bidding
- A project schedule and cost estimate based upon final design documents

Fees for all work performed will be based on "Hourly Rate Schedule" listed in Attachment A