RESOLUTION No. 2009-46-991

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A NON-EXCLUSIVE CONTINUING CONTRACT WITH KIMLEY-HORN & ASSOCIATES, INC., FOR LANDSCAPE ARCHITECT, CIVIL, ENVIRONMENTAL, STRUCTURAL, AND TRAFFIC ENGINEERING; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City currently operates under continuing professional contracts for architectural engineering, and planning services, and

WHEREAS, these contracts will expire soon, and

WHEREAS, City staff has issued Request For Qualification #08-09-006 in accordance with Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act ("CCNA"), and

WHEREAS, the proposal was for various services including architectural services, engineering services, planning and surveying services, and

WHEREAS, the City received a total of twenty-two (22) proposals relating to architectural services, and

WHEREAS, a selection/evaluation committee consisting of City staff was formed and ranked the respondents, and

WHEREAS, City staff ranked the firms and scheduled oral presentations for each firm, and

WHEREAS, City staff is recommending that the City contract with Kimley-Horn & Associates, Inc., for landscape architect, civil, environmental, structural, and traffic engineering,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION. The City Council of the City of Miami Gardens hereby authorizes the City Manager to negotiate and execute a non-exclusive continuing contract with Kimley-Horn & Associates, Inc., for landscape architect, civil, environmental, structural, and traffic engineering .

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON FEBRUARY 25, 2009.

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert
SECOND BY: Councilman Bratton

Resolution No. 2009-46-991

VOTE: 6-0

Mayor Shirley Gibson	___(Yes)	___(No) (out of town)
Vice Mayor Barbara Watson	_X_(Yes)	___(No)
Councilman Melvin L. Bratton	_X_(Yes)	___(No)
Councilman Aaron Campbell	_X_(Yes)	___(No)
Councilman Oliver Gilbert, III	_X_(Yes)	___(No)
Councilwoman Sharon Pritchett	_X_(Yes)	___(No)
Councilman André Williams	_X_(Yes)	___(No)

SKD/teh
8351037_1.DOC

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	*February 25, 2009*		**Item Type:**	**Resolution**	**Ordinance**		**Other**	
				X				
Fiscal Impact:	Yes	No	**Ordinance Reading:**		**1st Reading**		**2nd Reading**	
	X		**Public Hearing:**		**Yes**	**No**	**Yes**	**No**
						X		
Funding Source:	All City Funds		**Advertising Requirement:**		**Yes**		**No**	
					X			
Contract/P.O. Required:	Yes	No	**RFP/RFQ/Bid #:**		*RFQ#08-09-006 Continuing Architectural, Engineering, Surveying & Planning Services – Architectural Services*			
	X							
Sponsor Name	Dr. Danny Crew, City Manager		**Department:**		*Procurement*			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A NON-EXCLUSIVE CONTINUING CONTRACT WITH KIMLEY-HORN & ASSOCIATES, INC., FOR LANDSCAPE ARCHITECT, CIVIL, ENVIRONMENTAL, STRUCTURAL, TRAFFIC ENGINEERING AND SURVEYING SERVICES; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

The City's current contracts for continuing professional architectural, engineering, planning services were awarded for five years and are due to expire, however the City continues to require the services of these professional consultants. Some of the projects requiring architectural services include City Hall, Fleet Facility, Parks. Council awarded architectural services on January 28, 2009. Staff recommends contracting with four firms for landscape architectural services and civil engineering services; and three firms for environmental, traffic, mechanical, electrical, structural, planning and surveying services

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Miami Gardens, Florida 33169

Staff prepared specifications to retain professional consultants to provide services required underd a non-exclusive services contract. The request for qualifications was prepared in accourdance with Florida Statute 287.055 Consultants' Competitive Negotiation Act. The RFQ 08-09-006 was advertised on November 16, 2008. A broadcast notice was sent to 2,998 vendors. One hundred forty proposal packages were requested. The proposals were opened on October 16, 2008. twenty-two proposals were received and publicity readfor architectural services. A copy of the proposal document and submittals are available at the assistant to the mayor and council's office for review.

A selection/evlatuion committee consisting of five two-member teams. Each team provided one score. The teams consisted of: Tom Ruiz, Public Works Director and Marianna Pitiriciu, City Engineer; Daniel Rosemond Intermin Asst. City Manager and Elizabeth Valera, Community Loan Program Manager; Vernita Nelson, Intermin Asst. City Manager; Jay Marder, Planning & Zoning Director and Bhairvi Pandya, Senior Planner; and Antranette Pierre, Special Projects Director and Jimmie Allen, Project Manager.

Each team was provided the evalution ranking sheet, proposals, copy of the solicitation and instructions as to the ranking process. The ranking sheets were returned to procurement on November 14, 2009. At which time the scores were combined and totaled. A committee meeting was held on November 21, 2009 to discuss how many firms should be short listed. Scheduling oral presentations for architectural firms, deciding questions to ask the short listed firms were also discussed. Oral presentations were scheduled for January 26, 2009 and January 27, 2009.

The individual committee members performed site visits to projects that the short listed architectural and engineering firms had either designed and or planned. Each member received favorable remarks from the owner or the owner's representative.

Procurement sent reference checks to the references of all of the firms that were short listed. References received were all favorable.

Each firm was given the list of questions and between thirty and ten minutes for their presentation the schedule was as follows:

Schedules of presentations on January 26, 2009, are as follows:

Time	Consultant	Discipline(s)
9:00-9:45 a.m.	Craven Thompson & Assoc. 30 Minutes presentation time	Landscape Architect; Civil; Environmental; Structural & Survey
10:00-10:45 a.m.	Kimley-Horn & Assoc. 30 Minutes presentation time	Landscape Architect; Civil; Environmental; Structural; Traffic; & Survey
11:00-11:45 a.m.	URS Corporation Southern 30 Minutes presentation time	Landscape Architect; Civil; Environmental; Electrical-Mechanical; Structural; Traffic; Planning & Survey
1:30-2:00 p.m.	CPZ Architect – 15 Minutes	Landscape Architect; Electrical-Mechanical

	presentation time	
2:15-2:45 p.m.	Chen & Assoc – 15 Minutes presentation time	Civil; Environmental & Traffic

Schedules of presentations on January 27, 2009, are as follows:

Time	Consultant	Discipline(s)
9:00-9:30 a.m.	Corradino Group – 15 Minutes presentation time	Traffic & Survey
9:45-10:15 a.m.	R.J. Behar & Company – 15 Minutes presentation time	Civil; Structural; & Traffic
10:30-11:00 a.m.	Triangle Assoc. – 15 Minutes presentation time	Electrical-Mechanical; & Planning
11:15-11:45 a.m.	Basulto & Assoc. – 10 Minutes presentation time	Electrical-Mechanical
1:30-1:50 p.m.	C3TS – 10 Minutes presentation time	Planning
2:00-2:25 p.m.	Calvin Giordano – 10 Minutes presentation time	Planning
2:30-3:00 p.m.	Glatting Jackson – 10 Minutes presentation time	Landscape Architect
3:10-3:30 p.m.	Iler Planning Group* – 10 Minutes presentation time	Planning

*The Iler Planning Group requested withdrawal from consideration

Upon conclusion of the oral presentations, the committee ranked the firms for each discipline The results are attached as Exhibit B.

Proposed Action:

That the City Council approve the attached resolution authorizing the City Manager to negotiate and execute a non-exclusive continuing contract with with Kimley-Horn & Associates, Inc., located in Ft. Lauderdale, FL for landscape architect; civil; environmental; structural; and traffic engineering services.

Attachment:

A list of proposers are attached as Exhibit A. Results from the oral presentations are attached as Exhibit B.

CITY OF MIAMI GARDENS
PROCUREMENT DEPARTMENT

CUMULATION EVALUATION RANKING SHEET
(excluding Architectural services)
RFP#08-09-006 Continuing Architectural, Engineering, Surveying & Planning Services

Consultant	Landscape Architect	Civil Engineer	Electrical-Mechanical	Environmental	Structural	Traffic	Survey	Planning
Craven Thompson	434.0 – 2	442.5 - 1		425.5 - 2	436.0 - 1		447.0 - 1	
Kimley-Horn	411.0 – 4	431.0 -3		427.0 - 1	422.0 - 2	428.0 - 2	400.0 - 4	
URS Corp	399.5 – 5	433.0 - 2	420.5 - 3	423.0 - 3	411.0 - 3	412.0 - 3	401.0 - 3	368.0 - 3
CPZ Architect	424.0 – 3		431.5 - 2					
Glatting Jackson	445.0 - 1							
Chen & Assoc		415.5 - 4		396.5 - 4		403.0 -4		
R.J. Behar		400.0 - 5			389.5 - 4	375.5 - 5		
Triangle Assoc			342.0 - 4					247.0 - 4
Basulto & Assoc			434.5 - 1					
Corradino Group						442.0 - 1	421.5 - 2	
C3TS								411.5 - 2
Calvin Giordano								426.5 - 1

Committee recommendation is as follows:

Landscape Architect	Civil Engineer	Electrical & Mechanical	Environmental	Structural	Traffic
Glatting Jackson	Craven Thompson	Basulto & Assoc	Kimley-Horn	Craven Thompson	Corradino Group
Craven Thompson	URS Corp	CPZ Architect	Craven Thompson	Kimley-Horn	Kimley-Horn
CPZ Architect	Kimley-Horn	URS Corp	URS Corp	URS Corp	URS Corp
Kimley-Horn	Chen & Assoc				

Survey	Planning
Craven Thompson	Calvin Giordano
Corradino Group	C3TS
URS Corp	URS Corp

Consultant	e-mail	contact	Disciplines	REFERENCES	references	references
Zyscovich Architects	bernard@zyscovich.com	Bernard Zyscovich	all - subs	aaponte@wpb.org	oaluko@miamigov.com	kentbonde@ci.miami-beach.fl.us
Woolpert, Inc.	bryan.dejesus@woolpert.com	Bryan Dejesus	surveying			
Triangel Assoc. TAI	oquintana@triangleassociates.cc	Osiris Quintana	all - subs	giuseppe.noto@dot.state.fl.us	marcosr@miami.dade.gov	acarreno@rcpdesign.com
The Architects Group TAG	tagdbi@bellsouth.net	Pedro Ramos	A -LA-Elec E-Mech E- LEED			
Cubellis, Inc.	msynalovski@cubellis.com	Manual Synalovski	all - subs (except traffic)			
C3TS	rcastella@c3ts.com	Ramon Castella	all - 2 sub LA & survey	abalogun@cityofsouthmiami.net	oaluko@miamigov.com	bbutler@plantation.org
Metric Engineering	rantelo@metriceng.com	Enrique Antelo	Civ E-Env E-Struc E-Geo E			
Axioma3Architects	edc@axioma3.com	Eduardo Castineira	Architect			
Triangle Surveying & Mapping	john@trianglesm.com	John Liptak	Surveying			
Land Design South	bcurrie@landdesignsouth.com	Brad Currie	Planning			
Glatting Jackson KercherAngln	cperez@glatting.com	David Barth	Land Architect	hgregg@miamidade.gov	oluna@cityofhomestead.com	dabderhalden@cityofsunrise.org
Calvin, Giordano & Assoc	seichner@calvin-giordano.com	Shelley Eichner	all-subs (except arch & Mech E)	rbenford@cityofwestpark.org	dbarrett@westonfl.org	carpentere@cityofdoral.com
The Russell Partnership Inc.	tholt@trp-inc.com	Terry Holt	architect			
Chen & Associates	mbuick@chenandassociates.com	Michael Buick	Civ E-Env E-Traff E - GIS	carladixon@miamibeachfl.gov	zully.hemeyer@islamorada.fl.us	helen.gray@copbfl.com
EDAW Inc	ellen.heath@edaw.com	Ellen Heath	planning			
Mellgren Planning Group	michele@tmpgplanning.com	Michele Mellgren	planning			
The Corradino Group	jmcorradino@corradino.com	Joesph Corradino	Civ E-Env E-traff E-Geo - Survey	kogonn@cityofdoral-fl.gov	fernandovasquez@miamibeachfl.gov	rwilliams@palmettobay-fl.gov
Iler Planning Group	henry@ipgplan.com	Henry Iler	Land A- Survey-Planning	cbaia@deerfield-beach.com	mayor@floridacityfl.gov	kogonn@cityofdoral-fl.gov
BEA Architects	jc@beai.com	John Colao	Architect			
Craven Thompson & Assoc	rcole@craventhompson.com	Robert Cole	Land A-Struc E-Survey-Geo E	jfoglesong@broward.org	harrish@oaklandparkfl.org	agarcia@broward.org
EAC Consulting, Inc	rcrooks@eacconsult.com	Rick Crooks	Civ E-Env E-Struc E-Survey-Aqu-Geo E			
ACAI Associates, Inc.	cbaldwin@acaiworld.com	Cindy Baldwin	All (except traff & survey - Env E)			
Marlin Engineering Inc	rsoria@marlinengineering.com	Ramon Soria	Civ E-Traff E-Survey-Const E			
Spillis Candela DMJM	paul.reinarman@aecom.com	Paul Reinarman	Arch-Land A-Civ E-Elec E-Mech E- Struc E	jvera@sibfl.net	jkurlancheek@keybiscayne.fl.gov	skipcamp@colliergov.net
CPZ Architect, Inc.	chris@cpzarchitects.com	Chris Zimmerman	Arch-Land A-Civ E-Elec E-Mech E- Struc E	emilio_desimone@davie-fl.gov	rm@ci.coral-springs.fl.us	cbarbera@hollywoodfl.org
R.J. Behar & Company	bbehar@rjbehar.com	Robert Behar	Civ E-Env E-Struc E-Traff E	jehernandez@ci.hialeah.fl.us	hbarnes@fortlauderdale.gov	phila@lauderdalelakes.org
URS Corp Soutern	michael_nardone@urscorp.com	Michael Nardone	All	alnielson@bellsouth.net	hiep.huynh@citynmb.com	kingersoll@coralgables.com
Rodirguez Peterson & Porras Arch.	orodriguez@rpparchitects.com	Orestes Rodriguez	Arch-Land A-Elec E-Mech E-			
PBS&J	hpalonso@pbsj.com	Humberto Alonso	Arch-Land A-Elec E- Mech E-Traff E-Plan			
Keith & Schnars	rcohn@keithandschnars.com	Robert Cohn	All			
Nexus Design Group LLC	ghong@nexusdesigngroup.com	Gregory Hong	Architect			
GBF Engineering	michael.melendez@gbfinc.net	Michael Melendez	All Eng srv include aquatic eng			
Laakdas/Yohalem Engineering	lakdas22@bellsouth.net	Lakdas Nanayakkara	Struc E			
Bermello Ajamil & Partners	elamas@bermelloajamil.com	Eduardo Lamas	All	lferrer@coralgables.com	esoroka@cityofaventura.com	agarcia@palmettobay-fl.gov
Ideal Architectural Design	mariag05@idealarchitecturaldesign.cc	Maria Gonzalez	All			
McMahon Transportation Eng	john.kim@mcmtrans.com	John Kim	Traff E			
Basulto & Assoc.	rbasulto@basulto.com	Rene Basulto	MPE - E			
Design Tech Int'l Inc.	hermanc@dtiarchitects.com	Herman Chaviano	Arch - Land A - Plan & schedule			
CSA Group	allorente@csagroup.com	Albert Llorente	All Except traffic			
Kimley-Horn & Assoc	gary.ratay@kimley-horn.com	Gary Ratay	Land A-Civ E-Env E- Struc E-Traff E-Survey	phila@lauderdalelakes.org	rwillaims@palmettobay-fl.gov	rcasals@cutlerbay-fl.gov
Craig A. Smith & Assoc.	ssmith@craigasmith.com	Stephen Smith	Civ E-Survey -other			
BCC Engineering	mbenitez@bcceng.com	Manual Benitez	All Eng & surveying			
Southeast Design Assoc	mperez@architectmiami.com	Manual Perez-Vichot	Arch- Land A-Civ E-Elec E-Struc E-Mech E			
David Plumber & Assoc	dpa@dplummer.com	Timothy Plummer	Civ E - Traff E			
Red Design Gourp	rdg@reddesigngroup.net	Eduardo Muhina	Arch			

CITY OF MIAMI GARDENS
NONEXCLUSIVE CONTINUING PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this 25th day of FEBRUARY, 2009, between the City of Miami Gardens, a Florida municipal corporation, (City), and Kimley-Horn & Associates, Inc., a Florida for profit Corporation (Consultant).

WITNESSETH:

WHEREAS, the City desires to hire the Consultant on a continuing, nonexclusive basis to provide continuing landscape architectural; civil; environmental; structural; traffic engineering services and other related services (Services) as expressed in the City's Request for Qualifications No.08-09-006, which was advertised on September 16, 2008 , and to which Consultant responded a copy of which is also incorporated herein by reference and as more particularly described below; and

WHEREAS, the Consultant has expressed the capability and desire to perform the Services described in Exhibit "1" attached hereto and by this reference incorporated herein as described in the City's Request for Qualifications and Consultant's response thereto; and

WHEREAS, the City's Request for Qualifications No. 08-09-006 was undertaken in accordance with Section 287.055, Florida Statutes, Florida's Consultant Competitive Negotiation Act and the parties hereto have complied with all the requirements therein.

WHEREAS, the Consultant and City desire to enter into the foregoing Agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions, the Parties agree as follows:

ARTICLE 1

1.1 The following documents are incorporated and made part of this Agreement:

- Specifications prepared by the City in its Request for Qualifications No. 08-09-006 (Exhibit 1).
- Proposal for the City prepared by the Consultant dated October 16, 2008 (Exhibit 2).
- The above Recitals are incorporated herein by reference.

1.2 All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specification or instruction, the following priority is established:

- Specific direction from the City Manager (or designee).
- This Agreement and any attachments.
- Exhibit 1
- Exhibit 2

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 General

2.1.1 The Consultant agrees, upon issuance of a written work authorization, to perform for the benefit of the City part or all of the Services set forth and described in this Agreement and as provided for in Sections 2 through 5 and the Documents including, but not limited to, traffic, environmental, architectural, civil engineering services, surveying and landscape architectural services, on various projects within the City. Consultant shall perform the Services in accordance with standard industry practice. The Consultant shall guard against defects in its work or its consultants or sub-consultants work.

2.2 Preliminary Services

2.2.1 The Consultant shall, when so directed and as authorized by the City, prepare preliminary studies and reports, feasibility studies, utility rate studies, financial and fiscal studies and evaluation of existing facilities; preparation of schematic layouts and sketches where required; opinions of Construction Cost, and shall consult and confer with the City as may be necessary for the City to reach decisions concerning the subject matter. The Consultant shall attend meetings with the City Council and City staff as may be required.

During this phase, the Consultant shall advise the City, based on Consultant's professional opinion and the current project conditions and reasonably foreseeable conditions, of the completeness of existing data and its suitability for the intended purposes of the project; advise the City on the necessity to obtain data from other sources; identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the project; provide analyses of the City's needs for surveys, site evaluations and comparative studies of prospective sites

and solutions; and prepare and furnish six (6) copies of a report setting forth the Consultant's findings and recommendations.

2.2.2 Preliminary design services to be performed by the Consultant shall include consultation and advice concerning the extent and scope of proposed work and preparation of preliminary design documents consisting of design criteria, preliminary drawings, and outline specifications as well as preliminary estimates of probable Construction Costs. This phase will also include preparation of a preliminary site plan or schematic drawings when appropriate. Up to six (6) copies of the preliminary design documents shall be furnished to the City, the exact number needed shall be determined by the City.

2.2.3 Upon authorization of the City, the Consultant will provide advice and assistance relating to operation and maintenance of project or other systems; evaluate and report on operations; assist the City in matters relating to regulatory agency operations review or operating permit noncompliance; assist with startup and operator training for newly installed or modified equipment and processes, and in the preparation of operating, maintenance and staffing manuals for the project.

2.3 Basic Services

2.3.1 The Consultant shall, when so directed and authorized by the City, consult and advise the City in the following manner: specifying the extent and scope of the work to be performed; preparing detailed construction drawings and specifications; revising and updating, where necessary, previously designed construction plans and specifications, whether in whole or in part, to be incorporated into the proposed work, and preparing contract documents and a final estimate of Construction Cost. The final design services shall be provide in an electronic format, and shall also include furnishing up to (6) copies of plans and specifications to the City; the exact number needed shall be determined by the City.

Final design services shall also include preparation of permit applications as may be required by such agencies as have legal review authority over the project. These applications shall include, but not be limited to site plan approvals, driveway permits or other permits and work efforts and shall also consist of meeting at the staff level and meetings with the appropriate governing body and the City. Unless specifically provided for under the final design phase, permit application services do not include applications requiring environmental impact statements or environmental assessments, consumptive use permits or landfill permits.

2.3.2 The Consultant, based upon the approved Design Documents and any adjustments authorized by the City in each Project, project schedule or construction budget, shall prepare, for approval by the City, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of each Project's architectural, structural, mechanical and electrical systems and any other requirements or systems, materials and such other elements as may be appropriate. The Consultant shall also advise the City of any adjustments to the preliminary estimate of Construction Costs.

2.3.3 The Consultant, based upon City approved Design Development Documents and any further adjustments in the scope or quality of each Project or in the construction budget, shall prepare Construction Documents within the number of calendar days specified within any notice issued by the City. The Construction Documents shall consist of Drawings and Specifications setting forth in detail the requirements for the construction of each Project.

2.3.4 The Consultant shall assist the City in the preparation of the necessary proposal information and forms.

2.3.5 The Consultant shall advise the City of any adjustments to previous preliminary estimates of Construction Costs indicated by changes in requirements or general market conditions.

2.3.6 The Consultant shall submit to the City, for each project, electronic format and six (6) copies of the Construction Documents, and a further revised estimate of total Construction Cost.

2.3.7 Consultant shall include in the Construction Documents a requirement that the Construction Contractor shall provide a final as-built survey of each Project by a Registered Surveyor, and provide marked up construction drawings to Consultant so that the Consultant can prepare and deliver to the City the record drawings in the form required by the City and as required.

2.3.8 Prior to final approval of the Construction Documents by the City, the Consultant shall conduct a preliminary check of any Work Products to ensure compliance with requirements of any local, state or federal agency from which a permit or other approval is required. The Consultant shall insure that all necessary approvals have taken place.

2.3.9 The Consultant shall signify responsibility for the Construction Documents and drawings prepared pursuant to this Agreement by affixing a signature, date and seal as required by Chapters 471 and 481, Florida Statutes, if applicable. The

Consultant shall comply with all of its governing laws, rules, regulations, codes, directives and other applicable federal, state and local requirements.

2.4 The Consultant, following the City's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall, when so directed and authorized by the City, assist the City in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.4.1 The Consultant shall review and analyze the proposals received by the City, and shall make a recommendation for any award based on the City's Procurement Ordinance.

2.4.2 Should the lowest responsible, responsive proposal, as recommended by Consultant, exceed the Estimated Total Construction Cost of the Final Design Plan that exceeds 25% for small projects (equal to or less than $1 million) or 10% for large projects (more than $1 million), Consultant, at no additional cost to the City, shall meet with the City's representatives to identify ways to reduce costs to bring the Project cost to within the Estimated Total Construction Cost of the Final Design Plan. Should the lowest responsible, responsive proposal, as recommended by Consultant, exceed 25% for small projects or 10% on large projects, Consultant shall meet with the City to identify ways to reduce costs to bring the Project cost within the Estimated Total Construction Cost, and if after meeting with the City, the City determines that they can not identify ways to reduce costs, Consultant will be required to redesign portions of the Project to bring the cost of the Project within the Estimated Total Construction Cost of the Final Design Plan, at no additional expense to the City. If the Project is not advertised for bids within 3 months after delivery of Final Design Plans, through no fault of Consultant or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit may be adjusted as determined by the City's representative and as approved by the City if necessary. If a Project scope of work is expanded by the City after the Consultant renders the Estimated Construction Cost of the Final Design Plans, the Consultant shall not be responsible for any redesign without compensation which shall be mutually agreed to by the parties hereto. Under no circumstances shall the Consultant be held liable for damages or be required to perform any services without compensation if the lowest responsive proposal is less than the Estimated Total Construction Cost of the Final Design Plan.

2.4.3 The Consultant shall provide the City with a list of recommended, prospective bidders.

2.4.4 The Consultant shall attend all pre-proposal conferences.

2.4.5 The Consultant shall recommend any addenda, through the City's representative, as appropriate to clarify, correct, or change Proposal Documents.

2.4.6 If Pre-Qualification of bidders is required as set forth in the Request for Proposal, Consultant shall assist the City, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the bidders.

2.4.7 If requested, Consultant shall evaluate proposals and bidders, and make recommendations regarding any award by the City.

2.5 The City shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the Work after receiving a recommendation from the Consultant. The Consultant shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The Consultant shall also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of Work completed.

2.5.1 The City shall maintain a record of all change orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful and necessary for its purpose. Among those shall be change orders which are identified as architectural/engineering errors or omissions. An error determined to be caused solely by the Consultant and the costs of which would not otherwise have been a necessary expense to the City for the project, shall be considered for purposes of this agreement to be an additional cost to the City which would not be incurred without the error.

If the Consultant is not the Construction Manager for the construction, the City shall notify the Consultant within 3 days of the discovery of any architectural/engineering error or omission so that the Consultant can be part of the negotiations resolving the claim between the City and the Contractor. So long as the total additional cost of construction for all errors caused solely by the Consultant remain less than Five Percent (5%) of the total construction cost of the project, the City shall not look to the Consultant and/or its insurer for reimbursement for additional costs caused by errors and omissions. However, the Consultant shall be required to provide, at no cost to the City, services including redesign if necessary to resolve the error or omission. Should the sum of the additional construction costs for errors in total exceed Five Percent (5%) of the total construction cost, the City shall be entitled to recover the full and total additional cost to the City as a result of Consultant errors and omissions from the Consultant. To obtain such recovery, the

City shall deduct from the Consultant's fee a sufficient amount to recover all such additional cost to the City up to the amount of the Consultant's insurance deductible. Should additional costs incurred by the City exceed the Consultant's insurance deductible, the City shall look to the Consultant and the Consultant's insurer for the remaining amount of additional construction costs incurred by the City. The recovery of additional costs to the City under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the City may otherwise incur.

2.6 The Consultant shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation. The purpose of such review and examination will be to protect the City from an unbalanced Schedule of Values which allocates greater value to certain elements of each Project than is indicated by industry standards, supporting documentation, or data. If the Schedule of Values is not found to be appropriate, it shall be returned to the Contractor for revision or supporting documentation. After making such examination, when the Schedule of Values is found to be appropriate, the Consultant shall sign the Schedule of Values indicating informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract price to the Contractor.

2.7 The Consultant shall perform on-site construction observation of each Project based on the Construction Documents in accordance with Paragraph 2.12 of this Agreement. The Consultant's observation shall determine the progress and quality of the work, and whether the work is proceeding in accordance with the Construction Documents. The Consultant will provide the City with a written report of each site visit in order to inform the City of the progress of the Work. The Consultant shall endeavor to guard the City against defects and deficiencies in the work of Contractors, and make written recommendation to the City where the Work fails to conform to the Construction Documents. Based on such observation and the Contractor's Application for Payment, the Consultant shall determine the amount due to the Contractor and shall issue Certificates for Payment in such amount. These Certificates will constitute a representation to the City, based on such observations and the data comprising the Application for Payment, that the work has progressed to the point indicated. By issuing a Certificate for Payment, the Consultant will also represent to the City that, to the best of its information and belief, based on what its observations have revealed, the work is in accordance with the Construction Documents. The Consultant shall conduct observations to determine the dates of substantial and final completion and issue a recommendation for final Payment.

2.8 The Consultant shall revise the Construction Drawings and submit record or corrected drawings to the City to show those changes made during the construction process, based on the marked up prints, drawings and other data furnished by the Contractor.

2.9 The Consultant shall attend regularly scheduled progress meetings on site.

2.10 The Consultant shall prepare construction Change Orders for the City's approval. Consultant shall not authorize any changes in the work or time, no matter how minor, without prior written approval of City.

2.11 Each project's construction or demolition shall be considered complete upon compilation of a punch list by Consultant, written notification to Contractor by Consultant of all releases of lien and written recommendation by Consultant of final payment to the Contractor, which shall be the sole decision of the City.

2.12 Resident Project Services. During the construction progress of any work the Consultant will, if authorized by the City, provide resident project inspection services to be performed by one or more authorized employees ("Resident Project Representative") of the Consultant. Resident project representatives shall provide extensive inspection services at the project site during construction. The Resident Project Representative will endeavor to provide protection for the City against defects and deficiencies in the work of the Contractor(s). Resident project inspection services shall include, but is not limited to, the following:

- ❑ Conducting all preconstruction conferences;
- ❑ Conducting all necessary construction progress meetings;
- ❑ Observation of the work in progress, to the extent authorized by the City;
- ❑ Receipt, review coordination and disbursement of shop drawings and other submittals;
- ❑ Maintenance and preparation of progress reports;
- ❑ Field inspection and approval of materials for conformance to the specifications;
- ❑ Field observation and verification of quantities of equipment and materials installed;
- ❑ Verification of contractors' and subcontractors' payrolls and records for compliance with applicable contract requirements;
- ❑ Maintenance at each Project site, on a current basis, of all drawings, specifications, contracts, samples, permits, and other Project related documents, and at the completion of each Project, deliver all such records to the City;

- ❑ Preparation, update and distribution of a Project Budget with each Project Schedule;

- ❑ Notification to the City immediately if it appears that either each Project Schedule or each Project Budget will not be met;

- ❑ Scheduling and conducting monthly progress meetings, at which City, Engineer, General Contractor, Trade Contractor, Utilities Representative, Suppliers, can jointly discuss such matters as procedures, progress, problems and scheduling;

- ❑ Recommending courses of action, and enforcing courses selected by the City, if so directed by the City, if the General and/or Trade contractors are not meeting the requirements of the plans, specifications, and construction contract;

- ❑ Development and implementation of a system for the preparation, review, and processing of Change Orders;

- ❑ Maintenance of a daily log of each Project;

- ❑ Recording the progress of each Project, and submission of written monthly progress reports to the City, including information on the Contractors' Work, and the percentage of completion;

- ❑ Determination of substantial and final completion of work and preparation of a list of incomplete or unsatisfactory items and a schedule for their completion;

- ❑ Securing and transmitting to the City required guarantees, affidavits, releases, key manuals, record drawings, and maintenance stocks; and

- ❑ Providing artwork, models, or renderings as requested by the City.

The Resident Project Representative shall also investigate and report on complaints and unusual occurrences that may affect the responsibility of the Consultant or the City in connection with the Work. The Resident Project Representative shall be a person acceptable to the City, and the City shall have the right to employ personnel to inspect the work in progress, provided, however, that such personnel as are employed by the City and such personnel will be responsible directly to the City in the performance of work that would otherwise be assumed and performed by the Consultant.

ARTICLE 3

ADDITIONAL SERVICES

3.1 When authorized pursuant to a written Work Authorization, the Consultant shall furnish the following additional services:

- ❑ Preparation of applications and supporting documents for private or governmental grants, loans or advances in connection with any particular project.

- ❑ Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by or to the City.

- ❑ Services resulting from significant changes in the general scope, extent or character of any particular project or its design including, but not limited to, changes in size, complexity, the City's schedule, character of construction or method of financing, and revising previously accepted studies, reports, design documents or Construction Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond the Consultant's control.

- ❑ Providing renderings or models for the City's use.

- ❑ Preparing documents for alternate bids requested by the City for work which is not executed or documents for out-of-sequence work.

- ❑ Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for a project; evaluating processes available for licensing and assisting the City in obtaining process licensing; detailed quantity surveys of material, equipment and labor, and audits or inventories required in connection with construction performed by the City.

- ❑ Assistance in connection with bid/proposal protests, rebidding or renegotiating contracts for construction, materials, equipment or services, unless the need for such assistance is reasonably determined by the City to be caused by the Consultant (e.g., defective plans and/or specifications which inhibit contractors from submitting bids), in which event there shall be no additional cost for the provision of such services.

- ❑ Providing any type of property surveys or related engineering services needed for the transfer of interests in real property, and field surveys for design purposes and engineering surveys and staking to enable Contractor to proceed with their work, and providing other special field surveys.

- ❑ Preparing to serve or serving as a Consultant or witness for the City in any litigation, arbitration or other legal or administrative proceeding.

- ❑ Additional services in connection with a project not otherwise provided for in this Agreement.

- ❑ Services in connection with a work directive change or change order requested by the City.

3.2 When required by the Construction Contract Documents in circumstances beyond the Consultant's control, and upon the City's authorization, it will furnish the following additional services:

- ❑ Services in connection with work changes necessitated by unforeseen conditions encountered during construction.

- ❑ Services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of claims submitted by Contractor, except to the extent such claims are caused by the errors or omissions of the Consultant.

- ❑ Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or negligent work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any Contractor; provided, however, if a fire occurs as a direct result of errors or omissions in the design by the Consultant or if the Consultant negligently fails to notify the Contractor of the status of their workmanship pursuant to Consultant's duties as described in the Contract Documents, the Consultant's additional construction services related to the remedy shall be deemed part of Basic Services and compensated as such.

- ❑ Services in connection with any partial utilization of any part of a project by City prior to Substantial Completion.

- ❑ Services to evaluate the propriety of substitutions or design alternates proposed by the Contractor and involving methods of construction, materials, or major project components either during Bidding and/or Negotiation services or Construction Contract Award. The cost of such services shall be borne by the Contractor, and this requirement shall be included in the construction contract.

- ❑ Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by the Contractor, unless such substitutions are

due to a design error by the Consultant, in which case such services shall be deemed Basic Services. Except when caused by a design error by the Consultant, the cost of such services shall be borne by the Contractor, and this requirement shall be included in the construction contract.

3.3 Miscellaneous Architectural Services. From time to time the City may require assistance from the Consultant for miscellaneous small projects, inspections and attendance at meetings if requested by the City, which are unrelated to any ongoing project for which a Work Authorization has been approved, and to review developers' plans, or on other matters. The Consultant will provide these services only when authorized by the City Manager or his designee. The Consultant shall invoice the City on a monthly basis for such miscellaneous services.

ARTICLE 4

CITY'S RESPONSIBILITIES

4.1 The City shall do the following in a timely manner so as not to delay the services of the Consultant:

4.1.1 Designate in writing a person to act as the City's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information with respect to the Consultant's services for a particular project.

4.1.2 Provide all criteria and full information as to the City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

4.1.3 Assist the Consultant by placing at the Consultant's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4.1.4 Furnish to the Consultant, if required for performance of the Consultant's services (except where otherwise furnished by the Consultant as Additional Services), the following:

4.1.4.1 Data prepared by, or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

4.1.4.2 Appropriate professional interpretations of all of the foregoing;

4.1.4.3 Environmental assessment and impact statements;

4.1.4.4 Property, boundary, easement, right-of-way, topographic and utility surveys;

4.1.4.5 Property descriptions;

4.1.4.6 Zoning, deed and other land use restrictions;

4.1.4.7 Approvals and permits required in the City's jurisdiction and those from outside agencies unless such approvals and permits are the responsibility of the Consultant, all of which the Consultant may use and rely upon in performing services under this Agreement; and

4.1.4.8 Arrange for access to and make all provisions for the Consultant to enter upon the City's property as required for the Consultant to perform services under this Agreement.

ARTICLE 5

SEQUENCE OF SERVICES AND TIME FOR PERFORMANCE

5.1 This Agreement shall commence upon the execution by both parties and shall continue for an initial period of three (3) years, unless terminated sooner as provided for in this Agreement. The Consultant understands and acknowledges that the Services to be performed during the three (3) year term will be governed by this Agreement, and that there is no guarantee of future work being given to the Consultant.

5.2 Parties agree and understand that this Agreement shall be renewable after the expiration of the initial three (3) year period with terms and conditions to be agreed upon by City and Consultant.

5.3 Following receipt of any written work authorization the Consultant shall submit to the City, at least five (5) days prior to actually commencing services, a schedule of services and expenses for approval by the City before any services commence. The City reserves the right to make changes to the sequence as necessary to facilitate the services or to minimize any conflict with operations.

Work authorizations will be issued to the Consultant in the order in which the City wishes, and shall be performed and completed in the order they are issued, unless otherwise specifically permitted by the City. Minor adjustments to the timetable for

completion approved by City in advance, in writing, shall not constitute non-performance by Consultant pursuant to this Agreement.

5.4 When the City issues work authorizations to the Consultant, each authorization will contain a stated completion schedule. Failure of the Consultant to meet the stated schedule will constitute a default, for which payment for services may be withheld until default is cured. Time extensions will be reviewed, upon request, for extenuating circumstances.

It is anticipated and intended that the Consultant will be authorized to begin new work authorizations on a "rolling" basis, as some already assigned work authorizations near timely completion. If a subsequent work authorization is issued to the Consultant before it has competed the current work authorization, the completion date for each work authorization will remain independent of each other, so that the Consultant will prioritize the uncompleted work authorization from the first work authorization and finish them as soon as practical. Failure to complete these "older" work authorizations in a timely manner may adversely impact upon continued early authorization to start a subsequent work.

5.5 When the Consultant has exceeded the stated completion date, including any extension for extenuating circumstances which may have been granted, a written notice of Default will be issued to the Consultant and payment for services rendered shall be withheld.

5.6 Should the Consultant exceed the assigned completion time of an individual work authorization, the City reserves the right not to issue to the Consultant any further work authorizations until such time as there is no longer in a Default and the Consultant has demonstrated, to the City's satisfaction, that the reasons for tardy completion have been addressed and are not likely to be repeated in subsequent work authorizations. This restricted issuance provision may result in the Consultant not being issued all of the planned work the City anticipated in this Agreement. The Consultant shall have no right to the balance of any work, nor to any compensation associated with these non-issued work authorizations, due to the Consultant being in Default.

5.7 Should the Consultant remain in Default for a time period of fifteen (15) consecutive calendar days, the City may, at its option, retain another Consultant to perform any Work arising out of this Agreement and/or terminate this Agreement.

ARTICLE 6

DELAY IN PERFORMANCE/SUSPENSION OR ABANDONMENT

6.1 City shall be entitled to withhold progress payments to Consultant for services rendered until completion of services to the City's satisfaction.

6.2 A delay due to an Act of God, fire, lockout, strike or labor dispute, manufacturing delay, riot or civil commotion, act of public enemy or other cause beyond the control of Consultant, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and with City's power to concede, partial or complete suspension of City's operations, compliance with any order or request of any governmental officer, department, agency, or committee shall not subject City to any liability to Consultant. At the City's option, the period specified for performance of services shall be extended by the period of delay occasioned by any such circumstance, and services omitted shall be made or performed during such extension, or the services so omitted shall extend this Agreement for a period equal to such delay. During this period such delay shall not constitute a delay by the Consultant.

6.3 If a project is suspended for the convenience of the City for more than six months, or abandoned in whole or in part for the convenience of the City under any phase, the City will give written notice to the Consultant of such project abandonment or suspension. The Consultant will be compensated only for work completed prior to abandonment or suspension. The City will not be liable for stand-b7, overhead, or any other cost direct or indirect, that the Consultant may incur outside of any direct costs associated with a project. If a project is resumed after having been suspended for an excess of six months, the Consultant's further compensation may be renegotiated, but the City shall have no obligation to complete the project.

ARTICLE 7

COMPENSATION AND METHOD OF PAYMENT

7.1 City agrees to compensate Consultant for the services performed pursuant to the provisions of this Agreement based on the hourly rates, a copy of which is attached as **Exhibit "A"**, or as otherwise agreed to between the parties and set forth in a written amendment to this Agreement.

7.2 The Consultant shall submit to the City for approval, prior to actual performance, the anticipated number of hours to be expended and the personnel to be assigned to each Project. If the services are performed in accordance with the City's approved expenditure of hours and utilization of personnel, the Consultant shall be entitled to invoice for work authorizations as they are completed. The Consultant shall submit an original invoice and one copy to the City. This will be considered the official request for payment. The invoices shall include the following information:

Invoice number for each work order and date;

Amount previously billed;

Amount due this invoice.

7.3 The City shall pay Consultant within thirty (30) days of receipt of any invoice the total shown to be due on such invoice, provided the City has accepted the Consultant's performance.

ARTICLE 8

OWNERSHIP OF DOCUMENTS

8.1 All documents, design plans and specifications resulting from the professional services rendered by the Consultant under this Agreement shall be deemed the sole property of the City, and the City shall have all rights incident to the sole ownership. The reuse of any such documents, design plans, and specifications by the City or any project not covered by this Agreement without the written authorization of Consultant shall be at City's sole risk. Consultant agrees that all documents maintained and generated pursuant to this contractual relationship between City and Consultant shall be subject to all provisions of Chapter 119.01 et. seq. Florida Statutes.

8.2 The Consultant shall agree to indemnify and hold harmless the City, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant.

ARTICLE 9

COURT APPEARANCE, CONFERENCES AND HEARINGS

9.1 This Agreement shall obligate the Consultant to prepare for and appear in litigation or any other proceeding on behalf of the City for any dispute arising out of this Agreement. Except for litigation caused by errors or omissions of the Consultant, Consultant shall be compensated for such litigation support services at its prevailing rates for such services.

9.2 The Consultant shall confer with the City during the performance of the Services regarding the interpretation of this Agreement, the correction of errors and omissions, the preparation of any necessary revisions to correct errors and omissions or the clarification of service requirements, all without compensation.

ARTICLE 10

REPRESENTATIONS

10.1 The Consultant shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be done in a professional manner.

10.2 The Consultant represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Consultant, that the Consultant has the professional expertise, experience and manpower to perform the services as described in this Agreement.

10.3 The Consultant shall be responsible for technically deficient designs, reports or studies due to Consultant's errors and omissions, for four years after the date of final acceptance of the Services by the City or as provided under Florida law, which ever is greater. The Consultant shall, upon the request of the City, promptly correct or replace all deficient work due to errors or omissions which fall below the recognized standard of care, without cost to City. The Consultant shall also be responsible for all damages resulting from the Consultant's documents. Payment in full by the City for services performed does not constitute a waiver of this representation.

10.4 All services performed by the Consultant shall be to the satisfaction of the City. In cases of disagreement or ambiguity, the City shall decide all questions, difficulties and disputes of whatever nature that may arise under this Agreement. All disputes will be decided by a court of competent jurisdiction.

10.5 The Consultant warrants and represents that all of its employees, other consultants and sub-consultants are treated equally during employment or retention without regard to race, color, religion, gender, age or national origin.

10.6 The Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this contract. For breach or violation of this representation, the City shall have the right to cancel this Agreement without liability to the Consultant or any third party. Execution of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate certifying that wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of this Agreement

ARTICLE 11

NOTICES

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated or as may be changed from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt.

Consultant:	Gary Ratay, P.E. Kimley-Horn & Associates, Inc. 5200 NW 33rd Avenue, Suite 109 Ft. Lauderdale, FL 33309
City:	City of Miami Gardens 1515 N W 167th Street; Bldg. 5 Suite 200 Miami Gardens, Florida 33169 Attention: City Manager
With a copy to:	City Attorney 1515 N W 167th Street; Bldg. 5 Suite 200 Miami Gardens, Florida 33169

ARTICLE 12

AUDIT RIGHTS

The City reserves the right to audit the records of the Consultant covered by this Agreement at any time during the execution of the Services and for a period three (3) years after final payment is made for any Work performed.

ARTICLE 13

SUBCONTRACTING

13.1 No Services shall be subcontracted, assigned, or transferred under this Agreement without the prior consent of the City, which consent maybe withheld.

13.2 The Consultant shall be fully responsible to the City for all acts and omissions of any agents or employees, or approved subcontractors. Subcontractors shall have appropriate general liability, professional liability, and workers' compensation insurance, or be covered by Consultant's insurance. Consultant shall furnish the City with appropriate proof of insurance and releases from all subcontractors in connection with the work performed.

ARTICLE 14

TERMINATION

14.1 The City retains the right to terminate Consultant's services and/or this Agreement, with or without cause, upon ten (10) days written notice, at any time prior without penalty. City shall only be responsible to pay the Consultant for any service actually rendered up to the date of termination. Consultant shall not be entitled to any other amounts or damages, including but not limited to anticipated profits or consequential damages, special damages or any other type of damages upon termination by the City pursuant to this Article.

14.2 It is understood by the City and Consultant that any payment to Consultant shall be made only if Consultant is not in default under the terms of this Agreement.

14.3. Upon receipt of a Termination Notice and except as otherwise directed by the City, Consultant shall:

14.3.1 Stop work on the date and to the extent specified.
14.3.2 Terminate and settle all orders relating to the terminated work.
14.3.3 Transfer all work in progress, completed work, and other materials related to the terminated work to the City.

ARTICLE 15

DEFAULT

15.1 An event of default shall mean a breach of this Agreement by the Consultant. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

Consultant has not performed services on a timely basis;

Consultant has refused or failed to supply enough properly skilled Personnel;

Consultant has failed to make prompt payment to subcontractors or suppliers for any services after receiving payment from the City for such services or supplies;

Consultant has failed to obtain the approval of the City where required by this Agreement;

Consultant has failed in any representations made in this Agreement; or

Consultant has refused or failed to provide the Services as defined in this Agreement.

Consultant has filed bankruptcy or any other such insolvency proceeding and the same is not discharged within 90 days of such date.

15.2 In an Event of Default, the Consultant shall be liable for all damages resulting from the default, including:

- ❑ The difference between the amount that has been paid to the Consultant and the amount required to complete the Consultant's work, provided the fees by the firm replacing the Consultant are reasonable and the hourly rates do not exceed the Consultant's rates. This amount shall also include procurement and administrative costs incurred by the City.

- ❑ Consequential damages and Incidental damages.

15.3 The City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the City in law or in equity.

ARTICLE 16

INDEMNIFICATION

16.1 Consultant shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the negligence, recklessness, or intentionally wrongful performance of this Agreement by the Consultant or its employees, agents, servants, partners, principals or sub-Consultants. Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Consultant shall in no way limit the responsibility to indemnify, keep and save harmless the City or its officers, employees, agents and instrumentalities as herein provided. One percent (1%) of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

ARTICLE 17

INSURANCE

17.1 Throughout the term of this Agreement, the Consultant shall maintain in force at its own expense, insurance as follows:

17.1.1 Workers' Compensation: Workers' Compensation Insurance with statutory limits, including coverage for Employer's Liability, with limits not less than $1,000,000.

17.1.2 General Liability: Commercial General Liability with limits not less than $1,000,000 each occurrence combined single limit for Bodily Injury and Property damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. This coverage is required by the Consultant and any subcontractor or anyone directly or indirectly employed by either of them. The City shall be named additional insured.

17.1.3 Automobile Liability: Comprehensive or Business Automobile Liability Insurance with not less than $500,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for owned, hire and non-owned vehicles as applicable. The Consultant and any of its approved subcontractors shall take out and maintain this insurance coverage against claims for damages resulting from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired or non-owned automobiles and/or equipment used in any endeavor in connection with the carrying out of this Agreement. The City shall be named as an additional insured.

17.1.4 Professional Liability: The Consultant, its officers, employees and agents will provide the City a Certificate of Insurance evidencing professional liability insurance with limits of not less than $1,000,000 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement and any deductible is not to exceed $25,000 for each claim. Consultant represents it is financially responsible for the deductible amount.

The Consultant shall maintain professional liability insurance during the term of this Agreement and for a period of four (4) years from the date of completion of each Project. In the event that Consultant goes out of business during the term of this Agreement or the four (4) year period described above, Consultant shall

purchase Extended Reporting Coverage for claims arising out of Consultant's negligent acts errors and omissions during the term of the Professional Liability Policy.

17.1.5 Subcontractors Insurance: Each subcontractor shall furnish to the Consultant two copies of the Certificate of Insurance and Consultant shall furnish one copy of the Certificate to the City, and shall name the City as an additional insured.

17.2 All insurance policies required of the Consultant shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Consultant and the insurance carrier.

17.3 The required insurance shall be proved under occurrence based policies, which Consultant shall maintain continuously throughout the term of this Agreement

17.4 Any deductibles or self-insured retentions must be declared to and approved by the City Manager or designee prior to the start of work under this Agreement. The City reserves the right to request additional documentation, financial or other such documentation as well as such additional insurance as the City Manager deems appropriate, prior to giving approval of the deductible or self-insured retention and prior to executing the Agreement. The City manager or designee, prior to the change taking effect, must approve any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy.

ARTICLE 18

ATTORNEYS FEES

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses and court costs, including appellate fees incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 19

CODES, ORDINANCES, AND LAW

The Consultant shall abide and be governed by all applicable local, state and federal codes, ordinances, and laws, rules, regulations and directives regarding the Consultant's Services.

ARTICLE 20

ENTIRETY OF AGREEMENT

This Agreement and its attachments constitute the sole and only Agreement of the parties and sets forth the rights, duties, and obligations of each party. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

ARTICLE 21

NON-EXCLUSIVE AGREEMENT

The professional services to be provided by the Consultant pursuant to this Agreement shall be nonexclusive, and nothing shall preclude the City from engaging other firms to perform similar professional services.

ARTICLE 22

GOVERNING LAW; VENUE

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue shall be in Miami-Dade County, Florida.

ARTICLE 23

INDEPENDENT CONTRACTOR

Consultant and its employees and agents shall be deemed to be independent contractors, and not City agents or employees. The Consultant, its employees or agents shall not attain any rights or benefits under the City's retirement plan nor any rights generally afforded the City's classified or unclassified employees. The Consultant shall not be deemed entitled to the Florida Workers' Compensation benefits as a City employee.

ARTICLE 24

NONDISCRIMINATION

Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

ARTICLE 25

AMENDMENTS

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

ARTICLE 26

CONDUCT/CONFLICT OF INTEREST

Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, direct or indirect, with contractors or vendors providing professional services on projects assigned to the Consultant, except as fully disclosed and approved by the City. Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 27

OTHER PROVISIONS

27.1 Title and paragraph headings are for convenient reference and are not a part of this Agreement.

27.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same of any other provision, and no waiver shall be effective unless made in writing.

27.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida by a court of competent jurisdiction, such provision, paragraph, sentence, word or phrase shall be deemed modified in order to conform with Florida law. If not modifiable to conform with such law, then it shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force an effect.

27.4 This Agreement is binding upon the parties hereto their heirs, successors and assigns.

27.5 This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have had legal and business advisory's review the adequacy of the same.

27.6 This Agreement may not be assigned by the Consultant without the express written consent of the City, which consent may be withheld.

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

Consultant: KIMLEY-HORN AND ASSOCIATES, INC.

By: Gary R Ratay
Name: GARY R RATAY
Title: SENIOR ASSOCIATE

WITNESS:

Corporate Secretary

CITY OF MIAMI GARDENS

By:
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

CONSULTANT COMPENSATION RATES

1. Fee Estimate for projects with a total construction cost up to $1,000,000.00 for project profiles as stated in the scope of projects:

   Civil Engineering – Roads, Parking Lots, Utilities - 15% Lump Sum of the Construction Cost

   New Construction /Buildings – 15% Lump Sum of the Construction Cost

   Renovations/Buildings – 15% Lump Sum of the Construction Cost

   Fee Estimate of projects with a total construction cost in excess of $1.2 million up to $10 million for project profiles as stated in the scope of projects:

   New Construction/Buildings – 15% of Lump Sum of the Construction Cost

2. Hourly Rate Schedule for personnel including overhead and profit.*

Principals	$210.00
Project Manager	$190.00
Consultant/Engineer	$150.00
CADD Operator	$ 90.00
Junior Consultant/Engineer	$115.00
Drafting	$ 75.00
Clerical	$ 60.00

Subconsultant @ cost +5% overhead & 5% profit

Please add personnel not included above

*Note: Beginning on July 1, 2010, Consultant's hourly rates may be increased by three (3%) per year on July 1st of each year.

No reimbursement for normal office procedures including but not limited to facsimiles, photo copies, regular postage, local mileage, blueprints and digital copies.