

**AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
KIMLEY-HORN AND ASSOCIATES, INC.
PURSUANT TO RFQ 2015-115-JR
FOR PROGRAM MANAGEMENT SERVICES FOR AN
INTELLIGENT TRANSPORTATION AND PARKING MANAGEMENT SYSTEM**

This Amendment No. 1 (“Amendment”) to the Professional Services Agreement (“Agreement”), dated October 23, 2015, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (“City”), and Kimley-Horn and Associates, Inc., a North Carolina corporation, whose address is 1221 Brickell Avenue, Suite 400, Miami, Florida 33131 (“Consultant”).

RECITALS

WHEREAS, on October 23, 2015, the City and Consultant (collectively, the “parties”) executed the Agreement pursuant to RFQ 2015-115-JR, for an Intelligent Transportation and Parking Management System for an Intelligent Transportation and Smart Parking System (“ITS/SPS”), for an initial term of three (3) years and two (2) one-year renewal terms; and

WHEREAS, on September 16, 2020, the Mayor and City Commission authorized a month-to-month extension of the Agreement for a period of one year, which extension is set to expire on October 22, 2021; and

WHEREAS, the parties desire to extend the Term of the Agreement, to be consistent with the term of the contract between the City and Transcore ITS, LLC, for the implementation of the ITS/SPS, and add other miscellaneous provisions to the Agreement; and

WHEREAS, the extension of the Term of the Agreement shall not serve to increase the not-to-exceed Fee amount, as described in Section 4 of the Agreement; however, it will allow Consultant to complete the Program Management Services under the Agreement in connection with the ITS/SPS Project; and

WHEREAS, on October 13, 2021, the Mayor and City Commission approved Resolution No. _____, approving this Amendment, approving the extension of the Term through a date that is six months from the City’s acceptance of the ITS/SPS, without exceeding the original not-to-exceed contract sum of \$2,250,000.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Consultant hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. **MODIFICATIONS.**

The Contract is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

- (a) Section 3 of the Contract, entitled "Term", shall be modified as follows:

The term of this Agreement (Term) shall commence upon execution of the Agreement by all parties hereto, and shall ~~have an initial term of three (3) years, with a two (2), one (1)-year renewal options, to be exercised at the City Manager's sole option and discretion, by providing Consultant with written notice of same no less than thirty (30) days prior to the expiration of the initial term expire on the day that is six (6) months from the date in which the City accepts the ITS/SPS, as evidenced from written notice to the Consultant of the final acceptance of the ITS/SPS.~~

Notwithstanding the Term provided herein, Consultant shall adhere to any specific timelines, schedules, dates and/or performance milestones for completion and delivery of the Services, as same as/are set forth in the timeline and/or schedule referenced in a Consultant Service Order.

- (b) Section 12.4 (Consultant's Compliance with Florida Public Records Law) is hereby deleted in its entirety and replaced with the following:

- A. Consultant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- B. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- C. Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:
1. Keep and maintain public records required by the City to perform the service;
 2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Consultant does not transfer the records to the City;
 4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service.

If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

D. REQUEST FOR RECORDS; NONCOMPLIANCE.

1. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Consultant of the request, and the Consultant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
2. Consultant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
3. A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

E. CIVIL ACTION.

1. If a civil action is filed against a Consultant to compel production of public records relating to the City's contract for services, the court shall assess and award against the Consultant the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - a. The court determines that the Consultant unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Consultant has not complied with the request, to the City and to the Consultant.
2. A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Consultant at the Consultant's address listed on its contract with the City or to the Consultant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
3. A Consultant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

F. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING**

TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

- c. A new Section 12.5 (INSPECTOR GENERAL AUDIT RIGHTS) is hereby incorporated into the Agreement as follows:

12.5 INSPECTOR GENERAL AUDIT RIGHTS

- A. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- B. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- C. Upon ten (10) days written notice to the Consultant, the Consultant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- D. The Inspector General shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files,

worksheets, proposals and agreements from and with successful subconsultants and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

- E. The Consultant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Contract, for examination, audit, or reproduction, until three (3) years after final payment under this Contract or for any longer period required by statute or by other clauses of this Contract. In addition:
 - 1. If this Contract is completely or partially terminated, the Consultant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - 2. The Consultant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.
- F. The provisions in this section shall apply to the Consultant, its officers, agents, employees, subconsultants and suppliers. The Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Consultant in connection with the performance of this Contract.
- G. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Consultant or third parties.

d. A new section 12.6 (E-Verify) is hereby added to the Agreement:

10.6 E-VERIFY

- A. Consultant shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Consultant shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Consultant shall expressly require any subconsultant performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant during the contract Term. If Consultant enters into a contract with an approved subconsultant, the subconsultant must provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

B. TERMINATION RIGHTS.

1. If the City has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Consultant for cause, and the City shall thereafter have or owe no further obligation or liability to Consultant.
2. If the City has a good faith belief that a subconsultant has knowingly violated the foregoing Subsection 10.6(A), but the Consultant otherwise complied with such subsection, the City will promptly notify the Consultant and order the Consultant to immediately terminate the contract with the subconsultant. Consultant's failure to terminate a subconsultant shall be an event of default under this Agreement, entitling City to terminate the Consultant's Agreement for cause.
3. A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
4. The City or Consultant or a subconsultant may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
5. If the City terminates the Agreement with Consultant under the foregoing Subsection (B)(1), Consultant may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
6. Consultant is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.6.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date