

RESOLUTION NO. 2021- 2765

A RESOLUTION OF THE MAYOR AND THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE CONTINUING SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTINUING SERVICES AGREEMENT; AUTHORIZING THE TOWN MANAGER AND TOWN OFFICIALS TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE CONTINUING SERVICES AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 287.055, Florida Statutes (“CCNA”), on August 3, 2020, the Town of Surfside (the “Town”) issued Request for Qualifications (RFQ) No. 2020-06 requesting qualifications from professional engineering firms that could provide various engineering services for the Town’s projects and assignments (the “Services”); and

WHEREAS, in accordance with the RFQ, the Evaluation Committee evaluated, ranked and scored all proposals received, and recommended that the first tier or top eight (8) ranked firms be qualified to provide the Services and eligible for award at this time of a Continuing Services Agreement for the Services; and

WHEREAS, on December 8, 2020, the Town Commission adopted Resolution No. 2747 approving the rankings and recommendations of the Evaluation Committee as to qualified firms and authorizing negotiations for award of a Continuing Services Agreements to first tier or top eight (8) ranked and qualified firms for the Services; and

WHEREAS, Kimley-Horn and Associates, Inc., is one of the firms qualified to perform the Services and has agreed to provide the following services, specifically: survey, GIS, and

topography; civil engineering (general); environmental; site assessment; solid waste; stormwater; transportation; and water and sewer (utilities) (W&S); and

WHEREAS, the Town Commission finds that approval of the Continuing Services Agreement between the Town and Kimley-Horn and Associates, Inc. for the Services, substantially in the form attached hereto as Exhibit “A,” is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Continuing Services Agreement. The Continuing Services Agreement for professional engineering services between the Town and Kimley-Horn and Associates, Inc., in substantially the form attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable as to form and legality by the Town Attorney, is approved.

Section 3. Authorization to Execute Continuing Services Agreement. The Town Manager is authorized to execute the Continuing Services Agreement with Kimley-Horn and Associates, Inc. on behalf of the Town, and to execute any documents or amendments related thereto, subject to the approval as to form and legality by the Town Attorney.

Section 4. Implementation by Town Officials. The Town Manager and/or Town Officials are authorized to take all action necessary to implement the terms and conditions of the Continuing Services Agreement and this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9th day of February, 2021.

Motion By: Vice Mayor Paul

Second By: Commissioner Velasquez

FINAL VOTE ON ADOPTION:


Commissioner Charles Kesl Yes

Commissioner Eliana R. Salzhauer Yes

Commissioner Nelly Velasquez Yes

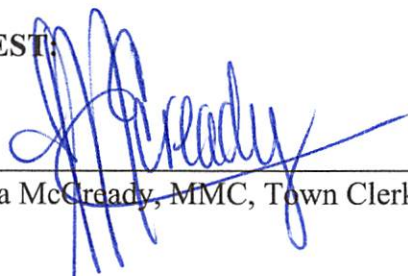
Vice Mayor Tina Paul Yes

Mayor Charles W. Burkett Yes




Charles W. Burkett, Mayor

ATTEST:



Sandra McCready, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

TOWN OF SURFSIDE, FLORIDA
CONTINUING SERVICES AGREEMENT
PROFESSIONAL ENGINEERING SERVICES



The Town of Surfside Commission:

Mayor Charles W. Burkett
Vice Mayor Tina Paul
Commissioner Charles Kesl
Commissioner Elianna Salzhauer
Commissioner Nelly Velasquez

Town of Surfside
9293 Harding Ave
Surfside, FL 33154

CONTINUING SERVICES AGREEMENT

Between

TOWN OF SURFSIDE, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

THIS CONTINUING SERVICES AGREEMENT is made between **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as the “Town”) and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation authorized to do business in the State of Florida (hereinafter referred to as the “Consultant”), whose principal place of business is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601.

WHEREAS, pursuant to Section 287.055, Florida Statutes, on August 3, 2020, the Town issued Request For Qualifications (RFQ) No. 2020-06 requesting qualifications from professional engineering firms and selected the Consultant to provide professional engineering services with respect to various Town projects and assignments (“Services”); and

WHEREAS, the Consultant is willing and able to perform such Services for the Town in accordance with the terms and conditions set forth in this Agreement (hereinafter referred to as this “Continuing Services Agreement” or this “Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Consultant to perform a specific project, but to set forth certain terms and conditions which shall govern and be incorporated into subsequent supplemental agreements or work orders for specific projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Town and Consultant agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the Town for the Consultant’s professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** The direct non-salary expenses directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project;

actual cost of reproduction, printing, binding, and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** A purchase order or specific agreement to provide services for a particular Project, substantially in the form attached hereto and incorporated herein by reference as Exhibit "A."

1.4 **Subconsultant Fee:** The direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** One-half Consultant's hourly rate as indicated on Exhibit "B", meals and lodging expenses incurred directly for the specific project for travel outside of Miami-Dade and Broward Counties. No travel expenses or overnight travel outside of Miami-Dade and Broward Counties shall be reimbursed unless Consultant has secured advance written authorization for such travel from the Town Manager or his designee.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act (Section 287.055, Florida Statutes), the Consultant shall be eligible to provide professional services listed under Exhibit "C," which is attached hereto and incorporated by reference, for Specific Projects authorized from time to time by the Town Commission and/or Town Manager pursuant to subsection 2.6 (hereinafter, the "Specific Project" or the "Project"). The Town intends to retain and may retain more than one (1) firm, if possible and as necessary, that is qualified to perform professional services for Specific Projects, which may include, without limitation: professional engineering services listed under Exhibit "C," program management services, and construction management.

2.2 When the need for services for a Specific Project occurs, the Town Manager or his designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The Town shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager or his designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The Town and Consultant shall utilize as the agreement for each Specific Project, a Purchase Order or standard Project Agreement ("Project Agreement") in substantially the form attached hereto and incorporated herein as Exhibit "A." Each supplemental purchase order or agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;

- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation setting forth whether the Town agrees to pay Consultant a lump sum fee as compensation for the services, or hourly based on approved rates up to a maximum amount not to be exceeded;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 If the Town Manager determines that the Consultant's services in its capacity as architectural and/or engineering consultant for a particular project are needed on an hourly basis, in lieu of a lump sum compensation package, the Consultant shall charge the Town for professional services at those hourly fees as specified in Exhibit "B." The Project Agreement shall specify that the Consultant's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 Commencing with the fourth year term of this Agreement or on or after the anniversary date of this Agreement (February, ____, 2024), the Consultant's hourly fees/rates set forth in Exhibit "B" shall be subject to CPI adjustment annually effective on the anniversary date of the Agreement and annually thereafter. Fees/Rates shall be increased each year thereafter by the same percentage by which the Revised Consumer Price Index U.S. City Average for All Urban Consumers All Items, 1982-84 ("CPI") shall have increased since the previous year of this Agreement. After consultation and agreement with the Town Manager as to any adjustment to the Fees/Rates, Consultant shall provide an updated Fee/Rates Schedule to be attached as Exhibit "B" to the Agreement commencing with fourth year term and annually thereafter.

2.6 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of services by Consultant prior to execution of a Project Agreement shall be at Consultant's sole risk.

2.6 The Town Manager is authorized to negotiate and execute a Project Agreement for Projects in which the Consultant's services do not exceed \$25,000.00 for the fiscal year.

2.7 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall govern and apply.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement/Contract Time.** This Agreement shall commence on the date this instrument is fully executed by all parties (“Commencement Date”) and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2, 3.5, 3.6, or other applicable sections of this Agreement.

3.2 **Termination For Convenience.** This Continuing Services Agreement may be terminated by the Town for convenience upon thirty (30) calendar days written notice to the Consultant.

3.3 **Non-Exclusive Agreement.** Notwithstanding the provisions of Subsection 3.1, the Town Manager or his designee may issue request for qualifications, requests for proposals, or other similar procurement documents for this professional discipline at any time and may utilize the services of any other consultants retained by the Town under similar continuing services agreements. Nothing in this Agreement shall be construed to give the Consultant a right to perform services for a Specific Project.

3.4 **Term of Project Agreement/Contract Time.** Each Project Agreement shall commence on the date the instrument is fully executed by all parties (“Commencement Date of Project Agreement”) and shall specify the period of service or Contract Time agreed to by the Town and Consultant for services to be rendered under said Project Agreement, unless otherwise terminated pursuant to this Section. The Town Manager, in his sole discretion, may extend the Term of a Project Agreement through written notification to Consultant. Such extension shall not exceed ninety (90) days. No further extensions of the Project Agreement shall be effective unless authorized by the Town Commission. Upon the Commencement Date of the Project Agreement, the Consultant shall commence services to the Town, and shall continuously perform services to the Town, without interruption, in accordance with the Term and time frames set forth in the “Project Schedule” included therein. The number of calendar days from the Commencement Date of the Project Agreement, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.5 **Termination For Cause; Project Agreement.** A Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that Consultant abandons a Project Agreement or causes it to be terminated by the Town, the Consultant shall indemnify the Town against any loss pertaining to this termination. In the event that the Consultant is terminated by the Town for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 3.6 of this Agreement and the provision of Section 3.6 shall apply.

3.6 **Termination For Convenience; Project Agreement.** A Project Agreement may be terminated by the Town for convenience upon fourteen (14) calendar days’ written notice to

the Consultant. In the event of termination, the Consultant shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the Town and for reimbursable expenses incurred prior to the date of termination. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement and the Project Agreement for payment. Under no circumstances shall the Town make any payment to the Consultant for services which have not been performed or performed subsequent to the termination date.

3.7 **Assignment upon Termination.** Upon termination of a Project Agreement, a copy of all of the Consultant's work product shall become the property of the Town and the Consultant shall, within ten (10) working days of receipt of written direction from the Town, transfer to either the Town or its authorized designee, a copy of all work product in its possession, including but not limited to designs, plans, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Project Agreement. Further, upon the Town's request, the Consultant shall assign its rights, title and interest under any subcontractor's agreements to the Town.

3.8 **Suspension for Convenience.** The Town shall have the right at any time to direct the Consultant to suspend its performance of a Specific Project, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the Town, the Consultant shall immediately comply with same. In the event the Town directs a suspension of performance as provided for herein through no fault of the Consultant, the Town shall pay to the Consultant its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the Town by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the Consultant executed by the Town, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the Town and the Consultant shall constitute conclusive evidence of the Consultant's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Consultant, by executing the Change Order, waives and forever releases any claim against the Town for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT.

5.1 **Lump Sum Compensation and Reimbursable Expenses.** Pursuant to a Project Agreement, Consultant shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the Project, the nature of the work performed, the phase of work, the payment due, and the estimated percent of work accomplished in accordance with the approved Payment Schedule set forth in the Project Agreement. If compensation is based on hourly rates, invoices shall also identify the name and title of personnel who performed the work with applicable hourly rates. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. All requests for reimbursable expenses payment must be accompanied with relevant documentation which substantiates the cost. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the Town. The Town shall pay Consultant within forty-five (45) calendar days of approval by the Town Manager or his designee of any invoices submitted by Consultant to the Town.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the Town for payment to the Consultant pursuant to a Project Agreement is disputed, or additional backup documentation is required, the Town shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The Consultant shall provide the Town with additional backup documentation within five (5) working days of the date of the Town's notice. The Town may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. The Town, at its sole discretion, may pay to the Consultant the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the Town becomes credibly informed that any representations or invoices of the Consultant, provided pursuant to this Agreement and/or any Project Agreement, are wholly or partially inaccurate, or in the event that the Consultant is not in compliance with any term or condition of this Agreement and/or a Project Agreement, the Town may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other breach of this Agreement and/or the Project Agreement, and the cause thereof, is corrected to the Town's reasonable satisfaction.

5.5 **Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the Town that, upon receipt from the Town of the amount invoiced, all obligations of the Consultant to others, including its consultants, incurred in connection with the Project, shall be paid in full. The Consultant shall deliver to the Town all documents requested by the Town evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the Town by the Consultant.

SECTION 6. SURVIVAL OF PROVISIONS

6.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

7.1 Assist Consultant by placing at its disposal all available information as may be requested in writing by the Consultant and allow reasonable access to all pertinent information relating to the services to be performed by Consultant.

7.2 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the Town.

7.3 Arrange for access to and make all provisions for Consultant to enter upon public property as required for Consultant to perform services.

SECTION 8. CODE OF ETHICS

8.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

8.2 Consultant warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, Miami-Dade County's Code of Ethics and the Town's Ethics Code.

SECTION 9. COMPLIANCE WITH LAWS; POLICY OF NON-DISCRIMINATION/WAGES; LICENSES AND PERMITS

9.1 The Consultant shall comply with all federal, state and Town and local laws and ordinances applicable to the services or work or payment for such work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

9.2 If the Project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, Consultant shall be required to comply with the same.

9.3 The Consultant shall at all times during the term of this Agreement and any Specific Project Agreement maintain in good standing all licenses, certifications and permits required under applicable federal, state and local laws and regulations for performance of the work or services.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the Town or furnished by the Consultant pursuant to any Project Agreement, shall become the property of the Town, whether the Project for which they are made is completed or not, and shall be delivered by Consultant to the Town within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the Town's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the Consultant for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the Town.

10.3 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

10.4 All deliverables should be provided in electronic format to the Town. Drawings should be provided in CADD and written documentation should be provided in Microsoft Word.

SECTION 11. PUBLIC RECORDS ACT COMPLIANCE

11.1 Consultant acknowledges Consultant agrees to keep and maintain public records in Consultant possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall 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 Agreement, and following completion of the Agreement until the records are transferred to the Town.

11.2 Upon request from the Town custodian of public records, Consultant shall provide the Town 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.

11.3 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

11.4 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

11.5 Any compensation due to Consultant shall be withheld until all records are received as provided herein.

11.6 Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

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

Custodian of Records:	SANDRA MCCREADY, MMC TOWN CLERK
Mailing Address:	9293 Harding Avenue, Surfside, FL 33154
Telephone Number:	(305) 861-4863
Email:	smccready@townofsurfside.gov

SECTION 12. NO CONTINGENT FEE

12.1 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the Consultant violates this provision, the Town shall have the right to terminate this Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

13.1 The Consultant is an independent contractor under this Agreement and any Project Agreements. Personal services provided by the Consultant shall be by employees of the Consultant and subject to supervision by the Consultant, and not as officers, employees, or

agents of the Town, Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services or work rendered under this Agreement or any Project Agreements shall be those of the Consultant.

SECTION 14. ASSIGNMENT; AMENDMENTS

14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Consultant, without the prior written consent of the Town.

14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

15.1 Pursuant to Section 725.08, Florida Statutes, the Consultant shall indemnify and hold harmless the Town and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees at all trial and appellate levels, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant or any persons employed or utilized by the Consultant in the performance of this Agreement or any Project Agreement.

SECTION 16. INSURANCE

The Consultant shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The Town may from time to time review existing insurance coverages and limits and require CONSULANT to add coverages, increase limits or amend insurance policies. The insurance coverages shall include at a minimum:

16.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident.

16.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Consultant and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Consultant's use of motor vehicles or any other equipment and shall cover operation with

respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

16.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Consultant and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Consultant or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from services or work performed by or on behalf of Consultant in performance of this or any Project Agreement. Consultant's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Consultant's insurance. Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

16.4 **Professional Liability:** The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a maximum deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the Town, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the Town, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.

16.5 **Certificate of Insurance:** Prior to the execution of this Agreement, Consultant shall provide the Town Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the Consultant shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and any Project Agreement and shall

state that such insurance is as required by this and any Project Agreement. The Town reserves the right to require the Consultant to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

16.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager or his designee. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the Consultant, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the Consultant's deductible for Professional Liability Insurance.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

17.1 **Town Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The Town designates the Town Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

17.2 **Consultant's Representative.** Consultant shall inform the Town Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement and Project Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

18.1 If either the Town or Consultant is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees, in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this Agreement or any Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

19.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document.

Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

20.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable Town Codes, state and federal laws, rules and regulations.

20.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering or architectural services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the Town, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the Town for any other services and expenses made necessary thereby, save and expect any costs and expenses which the Town would have otherwise paid absent the Consultant's error or omission. The Town's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

20.3 The Consultant's obligations under Paragraph 20.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

SECTION 21. SUBCONSULTANTS

21.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the Town Manager or his designee. The Consultant shall utilize his/her best efforts to utilize Subconsultants whose principal place of business is located within Miami-Dade County, Florida.

21.2 Any subcontract with a Subconsultant shall afford to the Consultant rights against the Subconsultant which correspond to those rights afforded to the Town against the Consultant herein, including but not limited to those rights of termination as set forth herein.

21.3 No reimbursement shall be made to the Consultant for any subconsultants that have not been previously approved by the Town for use by the Consultant.

SECTION 22. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONSULTANT:

Kimley-Horn and Associates, Inc.
Attention: Derrick Lewis, P.E.
355 Alhambra Circle, Suite 1400
Coral Gables, Florida 33134
Telephone: (305) 535-7752

FOR TOWN:

Town of Surfside, Florida
Attention: Town Manager
9293 Harding Avenue
Surfside, Florida 33154
Telephone: (305) 861-4863

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.,
Attention: Lillian M. Arango, Town Attorney
2525 Ponce De Leon Blvd., Suite 700
Coral Gables, Florida
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

SECTION 23. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the Town determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

SECTION 24. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Miami-Dade County, Florida.

SECTION 25. GOVERNING LAW

25.1 This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

25.2 The Consultant represents that it is not currently engaged in, and will not engage in, a boycott, as defined in Section 3-1.1 of the Town of Surfside Code of Ordinances.

SECTION 26. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 27. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 28. SEVERABILITY

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 29. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute the same instrument.

SECTION 30. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT INTO PROJECT AGREEMENTS.

30.1 Each Project Agreement shall incorporate the terms and conditions set forth in this Continuing Services Agreement between the parties as though fully set forth therein. In the

event that any terms or conditions of a Project Agreement conflict with this Continuing Services Agreement, the provisions of the specific Project Agreement shall prevail and apply.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The Town, signing by and through its Town Manager, attested to by its Town Clerk, duly authorized to execute same and by Consultant by and through its _____, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

TOWN:

ATTEST:

TOWN OF SURFSIDE, FLORIDA, a
Florida Municipal Corporation

TOWN CLERK

By: _____
Andrew Hyatt, Town Manager

Date: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



TOWN ATTORNEY

CONSULTANT:
Kimley-Horn and Associates, Inc., a North Carolina
corporation

By: _____

Name: _____

Title: _____

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT "A"

**PROJECT AGREEMENT
[Purchase Order]**

Between

TOWN OF SURFSIDE, FLORIDA

And

KIMLEY-HORN AND ASSOCIATES, INC.

for

Purchase Order No. ____

[INSERT NAME OF PROJECT]

EXHIBIT "B"

CONSULTANT'S FEES / HOURLY BILLING RATES



Kimley-Horn and Associates, Inc.

Billing Rates

Classification	Billing Rate
Analyst	\$125.00
Clerical	\$81.00
Principal	\$298.00
Professional 1	\$145.00
Professional 2	\$175.00
Senior Professional 1	\$225.00
Senior Professional 2	\$260.00
Senior Support Staff	\$170.00
Support Staff	\$110.00

EXHIBIT "C"

PROFESSIONAL ENGINEERING SERVICES PROVIDED

Consultant is qualified to provide the professional engineering services marked below with an "X" for the Town's Specific Projects.

	Professional Engineering Services Categories	Qualification
1	AERIAL / LAND PHOTOGRAPHY	
2	SURVEY, GIS, TOPOGRAPHY	X
3	ASBESTOS REMOVAL	
4	CHEMICAL ENGINEERING	
5	CIVIL ENGINEERING (GENERAL)	X
6	COMMUNICATIONS	
7	ELECTRICAL	
8	ARCHITECTURAL	
9	ENVIRONMENTAL	X
10	MECHANICAL (ALL)	
11	SITE ASSESSMENT	X
12	SOLID WASTE	X
13	STORMWATER	X
14	STRUCTURAL	
15	TRANSPORTATION	X
16	WATER AND SEWER (UTILITIES) (W&S)	X