



March 8, 2023

Ms. Andria Wingett
Assistant Director Development Services
City of Hollywood
2600 Hollywood Blvd.
Hollywood, Florida 33022

Re: City of Hollywood – Property Rights Element (PRE)

Dear Ms. Wingett:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Hollywood, Florida (“Client” or “City”) for providing services related to the Property Rights Element of the Comprehensive Plan.

Project Understanding

The City submitted their Evaluation and Appraisal (EAR) Notification Letter to the Florida Department of Economic Opportunity (DEO) dated January 31, 2022 notifying DEO that the City has determined amendments to their Comprehensive Plan are necessary. In response to the EAR letter, the Florida Department of Economic Opportunity (DEO) has advised the City that the proposed Comprehensive Plan amendments should be transmitted to DEO by February 1, 2023, otherwise the City will be prohibited from conducting any Comprehensive Plan amendments until it is completed.

As part of the EAR based amendments, the City is required to submit a new Property Rights Element (PRE). Section 163.3177 of Florida ss., and in accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3), requires for each local government to include in its Comprehensive Plan a PRE to ensure that private property rights are considered in local decision making.

The City has not submitted the EAR or EAR based amendments at this time. DEO has therefore notified the City that amendments to the Comprehensive Plan are prohibited until the EAR based amendment is proposed and the PRE is adopted. The City requires immediate assistance with drafting and transmittal specifically for the PRE; no other amendments or Element updates are proposed as part of this Agreement.

Scope of Services

Task 1 – Project Kickoff and Meetings

Kimley-Horn understands that the primary point of contact from the City will be the Development Services staff (“City staff”). Kimley-Horn will meet with the Client one (1) time virtually as a Project Kick-off and team introduction and to identify data and information needed to perform the drafting of the PRE. At this meeting, project organization and staff coordination procedures will be established.

Kimley-Horn will schedule a project progress call once a month with the Client until delivery of the final tasks in this scope, not to exceed six (6) calls up to 30 minutes each. The purpose of the calls will be to review the work assignment, provide project status, and additional needs through the end of this assignment. These calls will occur virtually, and it is assumed that one (1) Kimley-Horn team member will participate in each progress call.

Task 2 – Property Rights Element

Kimley-Horn will draft Goals, Objectives, and Policies for the new Property Rights Element (PRE) to address Section 163.3177 of Florida State Statute requirements. Kimley-Horn will provide one (1) draft of the new element for Client review and comment. The Client should collect comments from each reviewer and provide one consolidated set of comments or mark-up within two (2) weeks of receipt of the deliverable. Kimley-Horn will revise the element as one (1) time based on consolidated comments and provide one (1) final draft of the PRE to the Client. The Client shall be responsible for posting the PRE to the City’s website.

Task 3 - Transmittal and Adoption

Task 3.1 Transmittal Meetings

After the PRE has been reviewed by the Client, Kimley-Horn will attend and present the draft PRE at the following meetings:

Local Planning Agency: Kimley-Horn will present the draft PRE to the Local Planning Agency at an advertised public hearing. Input received will be added to the memorandum, to be presented to the City Commission.

City Commission Transmittal: Kimley-Horn will present the draft PRE to the City Commission at the transmittal hearing.

Task 3.2 Transmittal to DEO

Kimley-Horn will assist the City to transmit the PRE to DEO via email or their electronic portal system. As requested by DEO, the transmittal cover letter will refer to the transmittal as an EAR-Based Amendment and will request State Coordinated Review. Based on our assessment, the Plan will be reviewed by State agencies through the expedited review process, which provides for a 30-day review period. Following the review period, agencies will provide comments to the City directly.

Kimley-Horn will update the draft PRE one (1) time to incorporate comments received from State

agencies as may be appropriate and at the City's discretion. One (1) call will be scheduled with DEO after comments are received to clarify and confirm the information within their correspondence, if found necessary.

Please note this task does not include transmittal to, or coordination with, the Broward County Planning Council as the PRE should not require their review or recertification.

Task 3.3 City Commission Adoption

Kimley-Horn will present the PRE at one (1) City Commission hearing for the adoption of the new PRE.

Task 3.4 Final Deliverable

Kimley-Horn will provide City staff a digital copy in an ADA compliant pdf format. The digital copy shall not be protected or prevent future editing.

Task 4 – Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope you request, will be considered additional services and will be performed at our then-current hourly rates as we agree prior to their performance.

Schedule

We will provide our services as expeditiously as practicable once the Client provides a notice to proceed consistent with the agreed upon schedule. A **tentative** schedule has been listed below.

- 02/27/23 – Contract executed
- 03/06/23 – PRE draft delivered to client
- 03/10/23 – Comments delivered to consultant
- 03/17/23 – PRE updated and delivered to client
- 04/11/23 – Planning Board Recommendation Hearing
- 05/17/23 – City Commission Transmittal Hearing
- 05/19/23 – Transmit to DEO
- 06/19/23 – 30-day DEO review complete
- 07/05/23 – City Commission Adoption (assuming enough time for public notice)

Fee and Billing

Kimley-Horn will perform the services in Tasks 1 - 3 on a labor fee plus expense basis with the maximum labor fee shown below.

Task	Hours	Amount
Project Kickoff and Meetings	5	\$1,200
Property Rights Element	12	\$3,000
Transmittal and Adoption (includes 3 hearings)	40	\$10,000
Maximum Labor Fee	57	\$14,200
4. Additional Services	TBD	Hourly

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees and other direct expenses will be billed at 1.15 times cost. Travel expenses for meeting attendance, such as car rental, air travel, lodging and fuel, will be billed directly and will not exceed \$3,000 unless approved by the Client. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All application and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached City and Consultant Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the ***City of Hollywood***.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

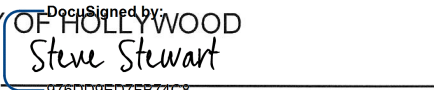


B. Kelley Klepper, AICP
Vice-President



Alessandria Palmer
Project Manager

THE CITY OF HOLLYWOOD

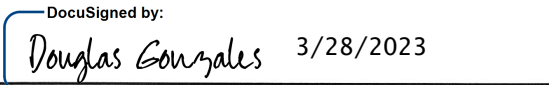
SIGNED: 

PRINTED NAME: Steve Stewart

TITLE: Director / Chief Procurement Officer

DATE: 3/27/2023

APPROVED AS TO FORM:



DOUGLAS R. GONZALES
CITY ATTORNEY

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Consultant and City Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
MODIFIED PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.
- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance

of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.

- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services satisfactorily rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.
- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

- 16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(19) PURSUANT TO FS 558.0035, EMPLOYEES OF
CONSULTANT MAY NOT BE HELD INDIVIDUALLY
LIABLE FOR DAMAGES RESULTING FROM
NEGLIGENCE UNDER THIS AGREEMENT.

CITY'S TERMS AND CONDITIONS

The following Terms and Conditions are applicable to this order entered into by and between the City of Hollywood (referred to as Client) and Kimley-Horn and Associates, Inc., (referred to as Consultant).

MODIFICATIONS

This purchase order form and any other document pertaining to this transaction which has been acknowledged in writing by the Director is a complete and exclusive statement of this order. Accordingly no modification or amendment shall be binding upon the Client unless signed by the Director. The City Attorney has approved these standard terms and conditions as to form and legality. Accordingly no modification of these terms and conditions shall be binding upon Client unless they are endorsed and approved by the City Attorney. In the event of a conflict between these terms and conditions and any other document pertaining to the transaction covered by this order, these terms and conditions shall prevail.

ASSIGNMENT

Any assignment of this order or the performance of work hereunder, in whole or in part, is prohibited.

EXCUSABLE DELAYS

The Client may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interests of the Client and is due to causes beyond the control of Consultant. Such grant must be in writing and made part of the order.

DEFAULT

In the event of default by the Consultant, Client may procure the articles or services covered by this order from other sources and hold the Consultant responsible for any excess costs occasioned thereby, in addition to all other available remedies at law or equity.

INVOICING

Consultant must render original invoice to the City of Hollywood, Department of Financial Services, P.O. Box 229045, Hollywood, Florida 33022-9045.

TAX

The City of Hollywood is exempt from Federal and State taxes for tangible personal property. Consultants doing business with the City, which are not otherwise exempt, shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the City, nor shall any Consultant be authorized to use the City Tax Exemption Number in securing such materials.

RESPONSIBILITY

Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly signed and authorized City of Hollywood order, issued by the Procurement Services Division.

ACCEPTANCE

Consultant's acceptance of this order will be presumed unless Consultant acknowledges exception, in writing, to Client within ten (10) calendar days after date of order.

INSPECTION

All Services provided on this order are subject to review upon receipt by a representative of the Client. All rejected Services shall remain the property of the Consultant and will be returned at the Consultant's expense.

QUANTITIES

Quantities specified in the order cannot be changed without Client approval.

PAYMENT CHANGES

Payments will be made only to the company and address as set forth on order unless the Consultant has requested a change thereto on official company letterhead, signed by an authorized officer of the company.

ANTI-DISCRIMINATION

Consultants doing business with the Client are prohibited from discriminating against any employee, applicant or client because of race, creed, color, national origin, sex or age with regard to but not limited to the following: employment practices, rates of pay or other compensations, methods and training selection.

UNIFORM COMMERCIAL CODE

Florida law, including without limitation the Uniform Commercial Code (Chapter 670 – 680, Florida Statutes), shall apply to and supplement the terms and conditions of this order. Venue shall lie in a court of competent jurisdiction in Broward County, Florida.

LEGAL RESPONSIBILITY

By accepting this order, Consultant understands and agrees that the services to be rendered shall be performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules and regulations. Lack of knowledge by the Consultant shall in no way be a cause for relief from responsibility.

LIABILITY - COPYRIGHT/PATENT/TRADEMARK

Consultant shall save and hold harmless Client, its officers, employees and agents from liability for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to Client or used in the performance of this order.

INDEMNIFICATION

Consultant shall indemnify and hold harmless Client, its officers, employees and agents from and against any and all claims, damages, liability, judgments or causes of action, including costs, expenses and attorney fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Consultant, its officers, employees, agents, subcontractors or assignees in the performance of services under this Purchase Order.

REPRESENTATIVE

All parties to this order agree that the representatives named herein are, in fact, bonafide and possess full and complete authority to bind said parties.

PUBLICITY

No endorsement by the City of the product and/or service will be used by Consultant in any way, manner or form in product literature or advertising.

INSURANCE

The Consultant of services must have secured and maintained the required amount of \$1,000,000 general and \$500,000 Professional liability limits and must list the City as an additional insured of this coverage. The Consultant must have worker's compensation coverage as required by law. Any exception to the above stated limits or other requirements must be endorsed and approved by the City of Hollywood Risk Manager.



CITY OF HOLLYWOOD, FLORIDA
OFFICE OF PROCUREMENT SERVICES

DATE: March 1, 2023 **FILE:** PR-23-099

TO: Wazir Ishmael, Ph.D.
City Manager

VIA: ^{DS}
AR Adam Reichbach
Assistant City Manager for Finance and Administration

VIA: ^{DS}
GE Gus Zambrano
Assistant City Manager for Sustainable Development

THRU: ^{DS}
SS Steve Stewart
Director, Procurement and Contract Compliance

FROM: ^{DS}
AW Shiv Newaldass
Director, Development Services

SUBJECT: Recommendation to Approve the Issuance of a Purchase Order to Kimley Horn and Associates for an Evaluation and Appraisal Notification Letter and Property Rights Element in the amount of \$14,200.00. The Procurement Method used is Emergency.

ISSUE:

The Development Services Department, Division of Planning and Urban Design, has an urgent emergency need for an Evaluation and Appraisal Notification Letter ("EAR") and Property Rights Element. The emergency is due to receiving a letter on February 16, 2023, from the Department of Economic Opportunity ("DEO") informing the City of a statutory prohibition which prevents the City from updating and implementing its Comprehensive Plan, pursuant Chapter 163, Part II, Florida Statutes (see attached letter). The City previously determined that amendments to its Comprehensive Plan were necessary but failed to prepare/transmit the amendments to the DEO within a year. The DEO has indicated this prohibition will not be lifted until the City complies and submits the proposed amendment. As a solution, the DEO is agreeable to the City submitting the Property Rights Element and the EAR in order to lift the prohibition. Currently, the DEO's prohibition poses a threat to the following: (1) the functioning of City operations, (2) the preservation or protection of property, and/or (3) the health or safety of the public.

AUTHORITY:

**§ 38.41 COMPETITIVE SOLICITATIONS REQUIRED; EXCEPTIONS
(C)(1) Emergency purchases:**

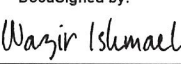
In urgent cases of compelling emergency that require the immediate purchase of goods, supplies, materials, equipment or services, the CPO is authorized to secure, when possible, emergency goods, supplies, materials, equipment or services by open market procedure. All such emergency purchases must receive prior administrative approval except for the most urgent situations presenting a clear and present substantial threat to life or property where immediate action is required.

Pursuant to Section 38.38 of the Procurement Code, the City Manager or designee will have authority to approve and execute contracts up to \$100,000.

Funding has been provided in the fiscal year 22/23 budget for the Division of Planning and Urban Design in Account Number is 001.140401.51500.531170.000000.000.000.

RECOMMENDATION:

Authorize the issuance of a Purchase Order to Kimley Horn and Associate for an Evaluation and Appraisal Notification Letter and Property Rights Element in the amount of \$14,200.00.

DocuSigned by: 	3/1/2023
APPROVED BY: <small>5F046E42A14D446...</small> Dr. Wazir Ishmael City Manager	Date: _____

Attachments: DEO Letter, dated 2/16/2023

Kimley Horn Proposal



February 20, 2023

Ms. Andria Wingett
Assistant Director Development Services
City of Hollywood
2600 Hollywood Blvd.
Hollywood, Florida 33022

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Local Planning Agency: Kimley-Horn will present the draft PRE to the Local Planning Agency at an advertised public hearing. Input received will be added to the memorandum, to be presented to the City Commission.

City Commission Transmittal: Kimley-Horn will present the draft PRE to the City Commission at the transmittal hearing.

Task 3.2 Transmittal to DEO

Kimley-Horn will assist the City to transmit the PRE to DEO via email or their electronic portal system. As requested by DEO, the transmittal cover letter will refer to the transmittal as an EAR-Based Amendment and will request State Coordinated Review. Based on our assessment, the Plan will be reviewed by State agencies through the expedited review process, which provides for a 30-day review period. Following the review period, agencies will provide comments to the City directly.

Kimley-Horn will update the draft PRE one (1) time to incorporate comments received from State

agencies as may be appropriate and at the City's discretion. One (1) call will be scheduled with DEO after comments are received to clarify and confirm the information within their correspondence, if found necessary.

Please note this task does not include transmittal to, or coordination with, the Broward County Planning Council as the PRE should not require their review or recertification.

Task 3.3 City Commission Adoption

Kimley-Horn will present the PRE at one (1) City Commission hearing for the adoption of the new PRE.

Task 3.4 Final Deliverable

Kimley-Horn will provide City staff a digital copy in an ADA compliant pdf format. The digital copy shall not be protected or prevent future editing.

Task 4 – Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope you request, will be considered additional services and will be performed at our then-current hourly rates as we agree prior to their performance.

Schedule

We will provide our services as expeditiously as practicable once the Client provides a notice to proceed consistent with the agreed upon schedule. A **tentative** schedule has been listed below.

- 02/27/23 – Contract executed
- 03/06/23 – PRE draft delivered to client
- 03/10/23 – Comments delivered to consultant
- 03/17/23 – PRE updated and delivered to client
- 04/11/23 – Planning Board Recommendation Hearing
- 05/17/23 – City Commission Transmittal Hearing
- 05/19/23 – Transmit to DEO
- 06/19/23 – 30-day DEO review complete
- 07/05/23 – City Commission Adoption (assuming enough time for public notice)

Fee and Billing

Kimley-Horn will perform the services in Tasks 1 - 3 on a labor fee plus expense basis with the maximum labor fee shown below.

Task	Hours	Amount
Project Kickoff and Meetings	5	\$1,200
Property Rights Element	12	\$3,000
Transmittal and Adoption (includes 3 hearings)	40	\$10,000
Maximum Labor Fee	57	\$14,200
4. Additional Services	TBD	Hourly

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees and other direct expenses will be billed at 1.15 times cost. Travel expenses for meeting attendance, such as car rental, air travel, lodging and fuel, will be billed directly and will not exceed \$3,000 unless approved by the Client. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All application and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached City and Consultant Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the ***City of Hollywood***.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

B. Kelley Klepper, AICP
Vice-President

Alessandria Palmer
Project Manager

THE CITY OF HOLLYWOOD

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Consultant and City Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. Not permitted pursuant to Florida Attorney General Opinion 2000-22, attached hereto. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services satisfactorily rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Not applicable
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.
- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

Not applicable

- 16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(19) **PURSUANT TO FS 558.0035, EMPLOYEES OF
CONSULTANT MAY NOT BE HELD INDIVIDUALLY
LIABLE FOR DAMAGES RESULTING FROM
NEGLIGENCE UNDER THIS AGREEMENT.**

TERMS AND CONDITIONS

The following Terms and Conditions are applicable to this order entered into by and between the City of Hollywood (referred to as Client) and Kimley-Horn and Associates, Inc., (referred to as Consultant).

MODIFICATIONS

This purchase order form and any other document pertaining to this transaction which has been acknowledged in writing by the Director is a complete and exclusive statement of this order. Accordingly no modification or amendment shall be binding upon the Client unless signed by the Director. The City Attorney has approved these standard terms and conditions as to form and legality. Accordingly no modification of these terms and conditions shall be binding upon Client unless they are endorsed and approved by the City Attorney. In the event of a conflict between these terms and conditions and any other document pertaining to the transaction covered by this order, these terms and conditions shall prevail.

ASSIGNMENT

Any assignment of this order or the performance of work hereunder, in whole or in part, is prohibited.

EXCUSABLE DELAYS

The Client may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interests of the Client and is due to causes beyond the control of Consultant. Such grant must be in writing and made part of the order.

DEFAULT

In the event of default by the Consultant, Client may procure the articles or services covered by this order from other sources and hold Consultant responsible for any excess costs occasioned thereby, in addition to all other available remedies at law or equity.

TERMINATION

Client, acting through its City Manager or his/her designee, reserves the right to terminate this order in whole or in part for default (a) if Consultant fails to perform in accordance with any of the requirements of this order or (b) if Consultant becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Consultant under any State or Federal Law relating to bankruptcy, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Client except for completed items delivered and accepted by the Client.

TERMS

By accepting this order, the Consultant agrees that payment terms shall be Net 30 unless otherwise stated.

INVOICING

Consultant must render original invoice to the City of Hollywood, Department of Financial Services, P.O. Box 229045, Hollywood, Florida 33022-9045.

TAX

The City of Hollywood is exempt from Federal and State taxes for tangible personal property. Consultants doing business with the City, which are not otherwise exempt, shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the City, nor shall any Consultant be authorized to use the City Tax Exemption Number in securing such materials.

RESPONSIBILITY

Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly signed and authorized City of Hollywood order, issued by the Procurement Services Division.

ACCEPTANCE

Consultant's acceptance of this order will be presumed unless Consultant acknowledges exception, in writing, to Client within ten (10) calendar days after date of order.

INSPECTION

All Services provided on this order are subject to review upon receipt by a representative of the Client. All rejected Services shall remain the property of the Consultant and will be returned at the Consultant's expense.

QUANTITIES

Quantities specified in the order cannot be changed without Client approval.

PAYMENT CHANGES

Payments will be made only to the company and address as set forth on order unless the Consultant has requested a change thereto on official company letterhead, signed by an authorized officer of the company.

ANTI-DISCRIMINATION

Consultants doing business with the Client are prohibited from discriminating against any employee, applicant or client because of race, creed, color, national origin, sex or age with regard to but not limited to the following: employment practices, rates of pay or other compensations, methods and training selection.

UNIFORM COMMERCIAL CODE

Florida law, including without limitation the Uniform Commercial Code (Chapter 670 – 680, Florida Statutes), shall apply to and supplement the terms and conditions of this order. Venue shall lie in a court of competent jurisdiction in Broward County, Florida.

LEGAL RESPONSIBILITY

By accepting this order, Consultant understands and agrees that the services to be rendered shall be performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules and regulations. Lack of knowledge by the Consultant shall in no way be a cause for relief from responsibility.

LIABILITY - COPYRIGHT/PATENT/TRADEMARK

Consultant shall save and hold harmless Client, its officers, employees and agents from liability for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to Client or used in the performance of this order.

INDEMNIFICATION

Consultant shall indemnify, hold harmless and defend Client, its officers, employees and agents from and against any and all claims, damages, liability, judgments or causes of action, including costs, expenses and attorney fees, incurred as a result of any error, omission or negligent act by the Consultant, its officers, employees, agents, subcontractors or assignees arising out of this order.

REPRESENTATIVE

All parties to this order agree that the representatives named herein are, in fact, bonafide and possess full and complete authority to bind said parties.

PUBLICITY

No endorsement by the City of the product and/or service will be used by Consultant in any way, manner or form in product literature or advertising.

INSURANCE

The Consultant of services must have secured and maintained the required amount of \$1,000,000 general and \$500,000 Professional liability limits and must list the City as an additional insured of this coverage. The Consultant must have worker's compensation coverage as required by law. Any exception to the above stated limits or other requirements must be endorsed and approved by the City of Hollywood Risk Manager.

Ron DeSantis
GOVERNOR



Meredith Ivey
ACTING SECRETARY

February 16, 2023

Ms. Andria Wingett
Assistant Director
City of Hollywood
Post Office Box 229045
Hollywood, Florida 33022-9045

RE: Notification of prohibition on adoption of plan amendments for failure to submit proposed Evaluation and Appraisal Amendments

Dear Assistant Director Wingett:

The purpose of this letter is to inform you of a statutory prohibition outlined in Chapter 163, Part II, Florida Statutes, which will have an impact on your jurisdiction's ability to adopt comprehensive plan amendments in the future.

Section 163.3191(4), Florida Statutes, states that if a local government determines that amendments to its comprehensive plan are necessary to reflect changes in state requirements, and fails to prepare and transmit such plan amendment or amendments to the statutory reviewing agencies for review pursuant to s. 163.3184(4), Florida Statutes, within one (1) year after notifying the Department of its determination, it may not amend its comprehensive plan until such time as it complies by submitting the proposed amendments.

According to our records the City of Hollywood has not submitted the proposed Evaluation and Appraisal amendments which were due on **January 31, 2023**; and therefore, the City may not adopt amendments to its comprehensive plan until the proposed Evaluation and Appraisal amendments are submitted to the reviewing agencies.

If you have any questions concerning the processing of the proposed Evaluation and Appraisal amendments please contact Barbara Powell, Deputy Bureau Chief, at (850) 717-8504 or James Stansbury, Bureau Chief at (850) 717-8512.

Sincerely,

Barbara Powell, Deputy Bureau Chief
Bureau of Community Planning and Growth

BP/dh

Department of Development Services
Division of Planning and Urban Design



tel: 954.921.3471
fax: 954.921.3347

January 31, 2022

JAN 31 2022

LTR22-019

Florida Department of Economic Opportunity
Ray Eubanks
107 E Madison Street
Tallahassee, FL 32399

Re: Hollywood Evaluation and Appraisal Notification Letter

To whom it may concern:

In accordance with the requirements of section 163.3191, Florida Statutes and the timeframes in Rule Chapter 73C-49, Florida Administrative Code, the City of Hollywood has evaluated its Comprehensive Plan and has determined that amendments are necessary to reflect changes in state requirements since the last Comprehensive Plan update. The City understands that the necessary amendments must be transmitted to the State Land Planning Agency within one year of this determination, which occurs on January 31, 2023.

Should you have any questions, please do not hesitate to reach out by email at ldelmonte@hollywoodfl.org or at 954-921-3000 option 3. We look forward to working with you and the State Land Planning Agency throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie A. Del Monte".

Leslie A. Del Monte
Planning Manager

2600 Hollywood Boulevard
P.O. Box 229045
Hollywood, Florida
33022-9045
hollywoodfl.org