

RESOLUTION NO. R-2024-008

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AUTHORIZATION TO PROCEED #1 AND THE TRANSPORTATION SURTAX ADDENDUM FOR MUNICIPAL CONSULTANT CONTRACTS WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR DESIGN OF THE US441/SR7 IMPROVEMENT PROJECT (HOLL-036) FROM JOHNSON STREET TO PEMBROKE ROAD, A SURTAX PROJECT, IN AN AMOUNT UP TO \$96,000.00; AMENDING THE FISCAL YEAR 2024 OPERATING BUDGET AND CAPITAL IMPROVEMENT PLAN.

WHEREAS, in November 2018, Broward County voters approved a 30-year sales surtax (also known as "Penny for Transportation") to fund statutorily permissible transportation expenditures; and

WHEREAS, the US441/SR7 Improvement Project (HOLL-036) ("Project"), from Johnson Street to Pembroke Road, has been determined to be statutorily eligible for funding and was subsequently approved for funding by the Broward County Board of County Commissioners; and

WHEREAS, on September 1, 2021, the City Commission adopted Resolution No. R-2021-208, ranking engineering firms, which included Kimley-Horn and Associates, Inc. ("Kimley-Horn"), under RFQ-4666-21-DCM, and approving the execution of Continuing Services Professional Services Agreements ("Consultant Agreements"); and

WHEREAS, RFQ-4666-21-DCM included provisions to allow usage for Broward County Surtax Funded Projects; and

WHEREAS, the Department of Design and Construction Management ("DCM") negotiated the Project scope and fee in an amount up to \$96,000.00 with Kimley-Horn, and staff has determined that both the Project scope and fee are fair and reasonable and in accordance with industry standards; and

WHEREAS, the City is utilizing Kimley-Horn for various projects, and the amount being paid to the firm has exceeded \$100,000.00 for Fiscal Year 2024 and, therefore, City Commission approval is required for the payment of additional fees to the firm pursuant to Section 38.38 of the Procurement Code; and

WHEREAS, funding for this Project will be provided under the Interlocal Agreement between Broward County and the City for Surtax-Funded Municipal Transportation Project: US441/SR7 Improvement Project (HOLL-036); and

WHEREAS, the DCM Director recommends that the City Commission approve and authorize the appropriate City officials to execute Authorization to Proceed #1 and an Addendum to the Consultant Agreement with Kimley-Horn for the Project relating to design, permitting and construction services in an amount up to \$96,000.00; and

WHEREAS, the Fiscal Year 2024 ("FY 2024") Operating Budget was adopted and approved by the City Commission pursuant to Resolution No. R-2023-300 at the second Public Budget Hearing on September 20, 2023; and

WHEREAS, the FY 2024 Capital Improvement Plan was adopted and approved by the City Commission pursuant to Resolution No. R-2023-301 at the second Public Budget Hearing on September 20, 2023; and

WHEREAS, it is necessary to amend the approved FY 2024 Operating Budget and Capital Improvement Plan as set forth in the attached Exhibit "1".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves and authorizes the execution, by the appropriate City officials, of the attached Authorization to Proceed #1 and an Addendum to the Consultant Agreement with Kimley-Horn, together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form by the City Attorney.

Section 3: That these amendments to the FY 2024 Operating Budget and FY 2024 Capital Improvement Plan, for the Fiscal Year beginning October 1, 2023 and set forth in detail in the attached Exhibit "1," are adopted and authorized as amendments and/or adjustments to the Operating Budget and Capital Improvement Plan of the City of Hollywood, Florida, for the Fiscal Year 2024.

Section 4: That the Department of Financial Services is authorized to establish such line-item accounts as may be necessary to properly monitor and track appropriations.

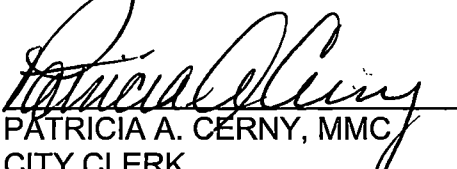
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AUTHORIZATION TO PROCEED #1 AND THE TRANSPORTATION SURTAX ADDENDUM FOR MUNICIPAL CONSULTANT CONTRACTS WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR DESIGN OF THE US441/SR7 IMPROVEMENT PROJECT (HOLL-036) FROM JOHNSON STREET TO PEMBROKE ROAD, A SURTAX PROJECT, IN AN AMOUNT UP TO \$96,000.00; AMENDING THE FISCAL YEAR 2024 OPERATING BUDGET AND CAPITAL IMPROVEMENT PLAN.

Section 5: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

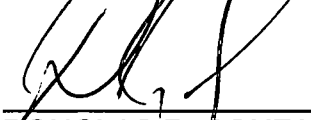
PASSED AND ADOPTED this 17 day of January, 2024.

  
\_\_\_\_\_  
JOSH LEVY, MAYOR

ATTEST:

  
\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOUGLAS R. GONZALES  
CITY ATTORNEY (LP)

**Exhibit 1: Budget and Capital Amendments**  
**Surtax Transportation Capital Projects Fund (302)**

This item recognizes Broward County Transportation Surtax Grant Funding program to fund the US441/SR7 Improvement Project from Johnson Street to Pembroke Road.

**Revenue:**

<b>Description</b>	<b>Account Number</b>	<b>Amount</b>
US441/SR7 Improvement Surtax Proceeds	302.179901.33700.337511.001822.000.000	96,000
<b>Subtotal</b>		<u>96,000</u>

**Expenditures:**

<b>Description</b>	<b>Account Number</b>	<b>Amount</b>
Engineering Services - Capital	302.179901.54100.563013.001822.000.000	96,000
<b>Subtotal</b>		<u>96,000</u>



DEPARTMENT OF DESIGN & CONSTRUCTION MANAGEMENT

2207 Raleigh Street  
Hollywood, FL 33020  
Phone (954) 921-3410 Fax (954) 921-3405

CONSULTANT'S AUTHORIZATION TO PROCEED

To:	Kimley-Horn and Associates, Inc. 8201 Peters Road, Suite 200, Plantation, FL 33324	Date:	12/18/2023
Facility Name:	US441-SR7- Johnson St to Pembroke Road	Project No.:	HOLL-036
Project Name:	HOLL-036- US441-SR7 Improvements	ATP Sequence Number:	1
		Resolution No.	R-2023-XXX
You are hereby authorized to proceed with the following services:			
<input checked="" type="checkbox"/>	Basic Services: under Continuing Services Agreement RFQ 466-21-DCM, approved by R-2021-208 and Transportation Surtax Addendum for Municipal Consultants Contracts HOLL-036 approved by R-2023-XXX		
<input type="checkbox"/>	Additional Services		

Payment for these services shall be: ☒ Lump Sum ☒ See attached proposal dated: December 11, 2023

AUTHORIZED DESIGN VALUE

CONSULTANT'S ESTIMATED COST

Construction Budget:		\$
Scope Increase:		
Total Construction Budget:		

	BASIC SERVICES	ADDITIONAL SERVICES	TOTAL
Total Estimated Fees:	\$ 96,000.00	\$ 0	\$ 96,000.00
Fee Authorized Through This ATP	\$ 96,000.00	\$ 0	\$ 96,000.00
Less Fee Previously Authorized	\$ 0	\$ 0	\$ 0
Fee Authorized This ATP: (Not to Exceed)	\$ 96,000.00	\$ 0	\$ 96,000.00

APPROVED AS TO FORM

Submitted:

Name:

Nicole Heran, Deputy Director  
Department of Design & Construction Management

Douglas R. Gonzales  
City Attorney

Recommended:

Jose Cortes, Director  
Department of Design & Construction Management

Approved:

David E. Keller  
Director of Financial Services

Approved:

Josh Levy, Mayor

Distribution:

1 Original to Consultant (See Note Below)  
1 Original to Design Project File  
cc: Senior Acct.

Accepted:

Stefano F. Viola

Consultant

Note to Consultant: Please Sign All Originals and Return to the Department of Design & Construction Management

Account No. \_\_\_\_\_



**TRANSPORTATION SURTAX ADDENDUM FOR MUNICIPAL CONSULTANT CONTRACTS  
(SURTAX PROJECT# HOLL-036/ COH-RFQ # 4666-21-DCM-CSA)**

This Transportation Surtax Addendum ("Addendum") is between the City of Hollywood a municipality of the State of Florida ("Municipality"), and Kimley-Horn and Associates, Inc., a Florida corporation ("Consultant") (each a "Party" and collectively referred to as the "Parties").

**GENERAL CONDITIONS**

**A.** The solicitation, purchase order, or contract between Municipality and Consultant (all of which shall be referred to in this Addendum as the "Consulting Agreement") is funded in whole or in part by the transportation surtax levied pursuant to Section 31½-71, et seq., of the Broward County Code of Ordinances (the "County Surtax Ordinance"). The Consulting Agreement is therefore subject to the terms and conditions of County Surtax Ordinance, Section 212.055(1) of the Florida Statutes, and the terms and conditions of the interlocal funding agreement between Broward County, a political subdivision of the State of Florida ("County") and Municipality to provide for funding of the Project (the "Funding Agreement").

**B.** The purpose of this Addendum is to incorporate the terms and conditions required by the County Surtax Ordinance, Section 212.055(1), Florida Statutes, and the Funding Agreement, into the Parties' Consulting Agreement.

**C.** [If applicable] Municipality has met the requirements of Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, and has selected Consultant to perform the services hereunder.

**D.** All contract provisions required by the County Surtax Ordinance, Section 212.055(1) of the Florida Statute, and the Funding Agreement, as amended, are incorporated in this Addendum by reference, whether or not expressly set forth in the provisions below.

**E.** Consultant agrees to include the terms in this Addendum in each subcontract financed in whole or in part with transportation surtax funds levied pursuant to the County Surtax Ordinance.

**F.** In the event of any conflict between the terms contained in this Addendum and those contained in the Consulting Agreement, as amended, the terms of this Addendum shall prevail. Unless otherwise expressly provided by Florida law, any terms required by the County Surtax Ordinance and Section 212.055(1) of the Florida Statutes, as amended, shall control in the event of a conflict with any provisions contained in this Addendum.

**G.** The Parties agree to perform their respective obligations under the Consulting Agreement in accordance with the terms provided in this Addendum.

**ARTICLE 1. DEFINITIONS**

Whenever the following terms appear in this Addendum, the intent and meaning shall be interpreted as follows:

- 1.1 **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.
- 1.2 **Board** means the governing body of Municipality, its successors and assigns.
- 1.3 **Code** means the Broward County Code of Ordinances.
- 1.4 **Contract Administrator** means the Director of Design and Construction Management, or such other person designated by City Manager in writing. The Contract Administrator is the representative of Municipality concerning the Project.
- 1.5 **Contractor** means the person, firm, corporation, or other entity who enters into an agreement with Municipality to perform the construction work for the Project.
- 1.6 **County** means Broward County, a political subdivision of the State of Florida and representatives authorized by the Board of County Commissioners or the Broward County Charter to act on behalf of County.
- 1.7 **County Business Enterprise or CBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.
- 1.8 **Notice to Proceed** means a written authorization to proceed with the Project, phase, or task, issued by the Contract Administrator.
- 1.9 **Oversight Board** means the independent Transportation Surtax Oversight Board created pursuant to Section 31½-75 of the Broward County Code of Ordinances.
- 1.10 **Project** means HOLL-036- US441/SR7 Improvement Project.
- 1.11 **Purchasing Director** means Municipality's Chief Procurement Officer or designee authorized to execute Work Authorization provided for in the Consulting Agreement.
- 1.12 **Services or Scope of Services** means the work set forth in the Scope of Services attached to the Consulting Agreement, and includes civil, structural, mechanical, and electrical engineering, architectural services, and other professional design services as applicable for the Project, as well as optional services procured under the Consulting Agreement.
- 1.13 **Small Business Enterprise or SBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.
- 1.14 **Subconsultant** means an entity or individual, **including subcontractors**, providing services to Municipality through Consultant, regardless of tier.

## **ARTICLE 2. EXHIBITS**

<b>Exhibit A</b>	<b>Maximum Billing Rates</b>
<b>Exhibit A-1</b>	<b>Reimbursables for Direct Non-Salary Expenses</b>
<b>Exhibit B</b>	<b>Schedule of Subconsultants</b>

## **ARTICLE 3. TIME FOR PERFORMANCE; DAMAGES**

3.1 This Agreement begins on March 4, 2024 and ends three (3) years after that date. Consultant shall perform the Services within the time period specified in the Scope of Services (as defined in the Consulting Agreement). Time periods shall commence from the date of the applicable Notice to Proceed.

3.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services and any phase of Services under this Agreement. Prior to granting approval for Consultant to proceed to any phase, the Contract Administrator may, at the Contract Administrator's sole option, require Consultant to submit the itemized deliverables and documents identified in the Scope of Services for the Contract Administrator's review.

3.3 If the Contract Administrator determines that Consultant is unable to timely complete all or any portion of the Services because of delays resulting from untimely review by Municipality or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Consultant, or because of delays caused by factors outside the control of Consultant, Municipality shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of Consultant to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Consultant's control, and to inform the Contract Administrator of all facts and details related to the delay. Consultant must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

3.4 If (a) Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with Municipality, or (b) if Contractor is granted an extension of time beyond said substantial completion date and Consultant's Services are extended beyond the substantial completion date through no fault of Consultant, then Consultant shall be compensated in accordance with Article 5 for all Services rendered by Consultant beyond the substantial completion date.

3.5 Notwithstanding Section 3.4, if Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with Municipality, and the failure to substantially complete is caused in whole or in part by Consultant, then Consultant shall pay to Municipality its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts,



whether direct or indirect, in the agreement between the Contractor and Municipality are incorporated herein. This section shall not affect the indemnification rights or obligations of either Party otherwise set forth in this Agreement.

3.6 If Services are scheduled to end due to the expiration of this Agreement, at the request of the Contract Administrator, Consultant agrees to continue to provide Services for an extension period, not to exceed (3) three months, upon the same terms and conditions as contained in this Agreement. Consultant shall be compensated for such Services at the rate in effect when the extension is invoked by Municipality. To exercise an extension authorized by this section, the Purchasing Director shall notify Consultant in writing prior to the end of the term of this Agreement stating the duration of the extension, which must be within the authority of the Purchasing Director or otherwise authorized by the Board.

#### **ARTICLE 4. COMPENSATION AND METHOD OF PAYMENT**

4.1 Reimbursable Expenses. Reimbursement of any travel costs, travel-related expenses, or other direct non-salary expenses directly attributable to this Project permitted under this Agreement ("Reimbursable Expenses") shall be limited to those permitted under Section 112.061, Florida Statutes, except to the extent otherwise stated herein. Municipality shall not be liable for any such expenses that have not been approved in writing in advance by the Contract Administrator. Reimbursable Expenses of Subconsultants expenses must also comply with the requirements of this section.

4.2 Salary Costs. The term Salary Costs as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to the Project. The fringe benefit and overhead rates shall be Consultant's most recent and actual rates determined in accordance with Federal Acquisition Regulation ("FAR") guidelines and audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date of this Agreement. These rates shall remain in effect for the term of this Agreement except as provided for in the Agreement.

4.2.1 Consultant shall require all of its Subconsultants to comply with the requirements of Section 4.2.

4.2.2 Salary Costs for Consultant and Subconsultants as shown in Exhibit A are the maximum billing rates, which are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on Exhibit A for Consultant or any Subconsultant, Consultant shall reimburse Municipality based upon the actual costs determined by the audit. Municipality may withhold the amount Consultant is required to reimburse Municipality from any payment due Consultant.

4.2.3 Unless otherwise noted, the Salary Costs stated above are based upon Consultant's "home office" rates. Should it become appropriate during the course of this Agreement that a "field office" rate be applied, then it is incumbent upon Consultant to submit a supplemental Exhibit A reflective of such rates for approval by Contract Administrator and, upon such Municipality's approval, invoice Municipality accordingly.

4.2.4 The total hours payable by Municipality for any "exempt" or "nonexempt" personnel shall not exceed forty (40) hours per employee in any week. If the work requires Consultant's or Subconsultant's personnel to work in excess of forty (40) hours per week, any additional hours must be authorized in advance, in writing, by the Contract Administrator. If approved, Salary Costs for additional hours of service provided by nonexempt (hourly) employees or exempt (salaried) employees shall be invoiced at no more than one and one-half of the employee's hourly rate and in a manner consistent with Consultant's or Subconsultant's applicable certified FAR audit and all other provisions of Section 4.2. If a "Safe Harbor" rate is elected for use by Consultant or Subconsultant, then the additional hours are payable at no more than the employee's regular rate.

4.2.5 Consultant and any of its Subconsultants may alternatively use a "Safe Harbor" combined fringe benefit and overhead rate of 110% in lieu of providing fringe benefit and overhead cost factors certified by an independent Certified Public Accountant in accordance with the FAR guidelines. The Safe Harbor rate, once elected, shall remain in place for the entire term of this Agreement, and be applicable for use as "home" and "field" fringe benefit and overhead rates, if applicable, and shall not be subject to audit under this Agreement. All other provisions of Section 4.2 remain in place.

4.2.6 Indemnification Related to Paycheck Protection Program Forgiveness. If the State of Florida, federal government, or any other authority seeks recovery from Municipality, whether through offset or any other means, of Paycheck Protection Program ("PPP") funds received by Consultant or any Subconsultant under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and/or any forgiveness of such funds pursuant to Section 1106 of the CARES Act, Consultant must indemnify and hold harmless Municipality and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, arising from or relating thereto.

#### 4.3 Method of Billing.

4.3.1 For Maximum Amount Not-To-Exceed Compensation: Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses attributable to the Project. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. Billings shall

itemize and summarize Reimbursable Expenses by category and identify the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by Consultant is not acceptable except for meals and travel expenses. Internal expenses must be documented by appropriate Consultant's cost accounting forms with a summary of charges by category. When requested, Consultant shall provide backup for past and current invoices that records hours and Salary Costs by employee category, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

4.3.2 For Lump Sum Compensation: Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, Consultant shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

4.4 Fiscal Year. The continuation of this Agreement beyond the end of any Municipality fiscal year is subject to both the appropriation and the availability of transportation surtax funds in accordance with Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

## **ARTICLE 5. AUDIT RIGHTS AND RETENTION OF RECORDS**

5.1. Consultant and Subconsultants shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Consultant expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with Municipality. Contract Records shall, upon reasonable notice, be open to inspection and subject to audit and reproduction during normal business hours. Audits and inspections pursuant to this section may be performed by any representative of Municipality and/or County (including and any outside representative engaged by either Municipality and/or County). Municipality and County may conduct audits or inspections at any time during the term of this Agreement and for a period of

three (3) years after the expiration or termination of this Agreement (or longer if required by Applicable Law, Municipality, and/or County). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant's employees, Subconsultants, vendors, or other labor.

5.2. Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, e-mails, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, cost and expense reports, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations, or performance under this Agreement, whether by Consultant or Subconsultants.

5.3. Municipality and Broward County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County, Florida. Consultant hereby grants Municipality and County the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by Municipality or Broward County, with seventy-two (72) hours' advance notice. Consultant agrees to provide adequate and appropriate workspace. Consultant shall provide Municipality and County with reasonable access to Consultant's facilities, and Municipality and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement. Consultant shall make all Contract Records available electronically in common file formats or via remote access if, and to the extent, requested by Municipality.

5.4. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Municipality's disallowance and recovery of any payment upon such entry.

5.5. If an audit or inspection reveals overpricing or overcharges to Municipality of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed, Consultant shall make adjustments for the overcharges and pay liquidated damages. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of the audit findings to Consultant.

5.6. Consultant shall, by written contract, require all Subconsultants to agree to the requirements and obligations as stated in this Article 5.

## **ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY AND CBE/SBE COMPLIANCE**

6.1 Consultant and Subconsultants shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Consultant

shall include the foregoing or similar language in its contracts with any Subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

6.2 By January 1 of each year, Consultant must submit, and cause each of its Subconsultants to submit, an Ownership Disclosure Form (or such other form or information designated by Municipality), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

6.3 Consultant shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Consultant to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit Municipality to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other Applicable Law, all such remedies being cumulative.

6.4 Consultant must meet or exceed the required CBE goal by utilizing the CBE firms listed in Exhibit B (or a CBE firm substituted for a listed firm, if permitted) for zero percent (No BCE Required) 0 % of total Services under this Agreement (the "Commitment") for the scope of the work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by Municipality, Consultant shall enter into formal contracts with the CBE firms listed in Exhibit B and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

6.5 Each CBE firm utilized by Consultant to meet the CBE goal must be certified by OESBD. Consultant shall inform Municipality immediately when a CBE firm is not able to perform or if Consultant believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Consultant to substitute the CBE firm with another CBE firm, as applicable. Whenever a CBE firm is terminated for any reason, Consultant shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event Consultant shall notify OESBD, and OESBD may adjust the CBE goal by written notice to Consultant. Consultant shall not terminate a CBE firm for convenience without OESBD's prior written consent, which consent shall not be unreasonably withheld.

6.6 The Parties stipulate that if Consultant fails to meet the Commitment, the damages to Municipality arising from such failure are not readily ascertainable at the time of contracting. If

Consultant fails to meet the Commitment and County determines, in the sole discretion of the OESBD Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81 of the Code) to meet the Commitment, Consultant shall pay Municipality liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7 of the Code. As elected by Municipality, such liquidated damages amount shall be either credited against any amounts due from Municipality, or must be paid to Municipality within thirty (30) days after written demand. These liquidated damages shall be Municipality's sole contractual remedy for Consultant's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Consultant acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by Municipality, or inability to substitute a CBE Subconsultant where the OESBD Program Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the Commitment.

6.7 Consultant acknowledges that County may make minor administrative modifications to Section 1-81 of the Code, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Consultant and shall include a deadline for Consultant to notify Municipality in writing if Consultant concludes that the modification exceeds the authority under this section. Failure of Consultant to timely notify Municipality of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Consultant.

6.8 OESBD may modify the required participation of CBE firms in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Consultant shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

6.9 Consultant shall provide monthly utilization reports, using the form available at <https://www.broward.org/EconDev/SmallBusiness/Pages/Compliance.aspx>, to the Contract Administrator, to OESBD at [SBCOMP@broward.org](mailto:SBCOMP@broward.org), and to the Small Business Specialist designated by the Contract Administrator. In addition, Consultant shall allow Municipality and OESBD to engage in onsite reviews to monitor Consultant's progress in achieving and maintaining the Commitment. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring.

6.10 The presence of a “pay when paid” provision in a Consultant’s contract with a CBE firm shall not preclude Municipality or its representatives from inquiring into claims of nonpayment or exercising any right stated in the Consulting Agreement as amended herein.

## **ARTICLE 7. PUBLIC RECORDS**

7.1 Public Records. . Notwithstanding any other provision in this Agreement, any action taken by Municipality in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Consultant is acting on behalf of Municipality as stated in Section 119.0701, Florida Statutes, Consultant shall:

7.1.1 Keep and maintain public records required by Municipality to perform the services under this Agreement;

7.1.2 Upon request from Municipality, provide Municipality with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

7.1.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to Municipality; and

7.1.4 Upon completion or termination of this Agreement, transfer to Municipality, at no cost, all public records in possession of Consultant or keep and maintain public records required by Municipality to perform the services. If Consultant transfers the records to Municipality, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to Municipality upon request in a format that is compatible with the information technology systems of Municipality.

If Consultant receives a request for public records regarding this Agreement or the Services, Consultant must immediately notify the Contract Administrator in writing and provide all requested records to Municipality to enable Municipality to timely respond to the public records request. Municipality will respond to all such public records requests.

Consultant must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Consultant contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Consultant asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Consultant must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to Municipality from a person with personal

knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by Municipality, Consultant must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to Municipality for records designated by Consultant as Restricted Material, Municipality shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Consultant, or the claimed exemption is waived. Any failure by Consultant to strictly comply with the requirements of this section shall constitute Consultant's waiver of Municipality's obligation to treat the records as Restricted Material. Consultant must indemnify and hold harmless Municipality and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Patricia A. Cerny, MMC, City Clerk, 954-921-3211, [pcerny@hollywoodfl.org](mailto:pcerny@hollywoodfl.org), 2600 Hollywood Blvd, Room 221, Hollywood , Florida, 33020.**

#### **ARTICLE 8. MISCELLANEOUS.**

8.1 Indemnification of Municipality. Consultant shall indemnify and hold harmless Municipality and its current, past, and future officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant or other persons employed or utilized by Consultant in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and Municipality's Attorney, any sums due Consultant under this Agreement may be retained by Municipality until all of Municipality's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Municipality.

8.2 Drug-Free Workplace. To the extent required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Consultant certifies that it has and will maintain a drug-free workplace program for the duration of the Agreement.

8.3 Truth-In-Negotiation Representation. Consultant's compensation under the Agreement is based upon its representations to Municipality, and Consultant certifies that the wage rates, factual unit costs, and other information supplied to substantiate Consultant's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Consultant executes this Agreement. Consultant's compensation will be



reduced by Municipality, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to Municipality as the basis for Consultant's compensation in this Agreement.

8.4 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the "Broward County Domestic Partnership Act," Section 16½-157 of the Code ("Act"), Consultant certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

8.5 Living Wage Requirement. To the extent Consultant is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Consultant agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and shall fully comply with the requirements of such ordinance, and that Consultant shall ensure all of its Subconsultants that qualify as "covered employers" fully comply with the requirements of such ordinance.

8.6 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Addendum by reference. The attached Exhibits are incorporated into and made a part of the Consulting Agreement as amended herein.

8.7 Prior Agreements. The Agreement together with this Addendum represents the final and complete understanding of the Parties regarding the subject matter of the Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of the Agreement are contained in the Agreement and this Addendum.

8.8 Verification of Employment Eligibility. Consultant represents that Consultant and each Subconsultant have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Consultant violates this section, Municipality may immediately terminate this Agreement for cause and Consultant will be liable for all costs incurred by Municipality due to the termination.

8.9 Entities of Foreign Concern. The provisions of this section apply only if Consultant or any Subconsultant will have access to an individual's personal identifying information under this Agreement. Consultant represents and certifies: (i) Consultant is not owned by the government of a foreign country of concern; (ii) the government of a foreign country of concern does not have a controlling interest in Consultant; and (iii) Consultant is not organized under the laws of and does not have its principal place of business in a foreign country of concern. On or before the Effective Date, Consultant and any Subconsultant that will have access to personal identifying information shall submit to Municipality executed affidavit(s) under penalty of perjury, in a form approved by Municipality attesting that the entity does not meet any of the criteria in

Section 287.138(2), Florida Statutes. Compliance with the requirements of this section is included in the requirements of a proper 4.3. Terms used in this section that are not otherwise defined in this Agreement shall invoice for purposes of Section have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

8.10 Polystyrene Food Service Articles. Consultant shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: MUNICIPALITY, through its Board, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and CONSULTANT, signing by and through its \_\_\_\_\_, duly authorized to execute same.

MUNICIPALITY

ATTEST:

\_\_\_\_\_  
Pat Cerny, City Clerk

By: \_\_\_\_\_  
Josh Levy, MAYOR

\_\_\_\_\_  
Print Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I HEREBY CERTIFY that I have approved  
this Agreement as to form:

\_\_\_\_\_  
Douglas Gonzales, City Attorney

CONSULTANT

Kimley-Horn and Associates, Inc.

By: 


Authorized Signer

Stefano F. Viola

Print Name and Title

20<sup>th</sup> day of Dec, 2023

WITNESS:



Signature

Shandela Sutton Layne

Print Name of Witness above

EXHIBIT A  
RATE SCHEDULE  
FOR  
CITY OF HOLLYWOOD, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

<u>Category</u>	<u>Hourly Rate</u>
Principal	\$280 - \$330
Project Manager	\$245 - \$295
Senior Professional	\$215 - \$295
Professional	\$170 - \$215
Designer	\$145 - \$195
Analyst	\$120 - \$170
Technical Support	\$100 - \$130
Administrative Support	\$80 - \$120

**Exhibit A-1**  
**Reimbursables for Direct Non-Salary Expenses**

<b>Reimbursable</b>	<b>Maximum Reimbursable</b>
<b>Total Maximum Reimbursables:</b>	

**Exhibit B**  
**Schedule of Subconsultants**

Project No: HOLL-036  
Project Title: US1/SR7 Improvement Project  
Facility Name:

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No.	Firm Name	Discipline
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		