

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 6, 2007

☒ **Consent** ☐ **Regular**
☐ **Ordinance** ☐ **Public Hearing**

Department:

Submitted By: Engineering & Public Works Department
Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: The Second Amendment to an Agreement (R2004-1620) for professional services with Kimley-Horn and Associates approved on July 13, 2004.

Summary: This Agreement provides for professional services to develop a database showing the traffic from all approved projects. The database will be used for future concurrency traffic studies and a new five year buildout test. The goal for Small Business Enterprise (SBE) and/or Minority/Women Enterprise (M/WBE) is 15%. The actual participation level is 20% for SBE-M/WBE, achieved through their sub-consultant M.T.P. Group, Inc. This Amendment will extend the date for completion of the work from July 31, 2006, to March 31, 2007, and allow for reallocation of budget amounts among the various labor and direct expense tasks to better balance the project effort with task budgets.

District: Countywide (L.B.)

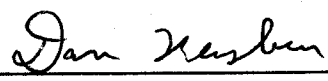
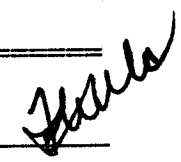
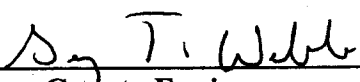
Background and Justification: The Traffic Performance Standards Committee has developed various recommendations changing the Traffic Performance Standards Ordinance. One recommendation was to develop a database of all traffic from all approved, un-built projects on the entire roadway system. This database would be used in place of historic growth rates. It would also be used for a new long range, five year traffic test (Test 2). The Board of County Commissioners ratified the selection of Kimley-Horn and Associates by the Consultant's Competitive Negotiations Act (CCNA) Selection Committee. The services, as detailed in Exhibit "A" of the attached Agreement, have been negotiated as just and reasonable compensation.

This Amendment would provide for a time extension that has been necessitated by:

1. Unforeseen issues with deployment of the database on the County's computer system.
2. Conversion of the source code to the standard software utilized by Information System Services.

Attachments:

1. Agreements (2)
2. Original Agreement R2004-1620 including Scope of Work
3. First Amendment to Agreement
4. Letter from Consultant requesting Contract Amendment

Recommended by:	 Division Director	12/15/06 Date	
Approved by:	 County Engineer	1/9/07 Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u><u>-0-</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>	<u><u>-0-</u></u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

Is Item Included In Current Budget? Yes _____ No _____

Budget Account No.:

Fund _____ Dept. _____ Unit _____ Object _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No Fiscal Impact


C. Departmental Fiscal Review: R. J. Ward 12/11/06

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

John Doe 1-10-07
OFMB
actw 1-10-07
111107
1-9-07

B. Legal Sufficiency:


 Contract Dev. and Control 11/2/07
 6 Jones 11/2/07

B. Legal Sufficiency:


Assistant County Attorney

**This amendment complies with
our review requirements.**

The effectance class of this Amerindian is retroactive.

C. Other Department Review:

Department Director

(This summary is not to be used as a basis for payment.)

**SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES BETWEEN
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES, INC.**

This Second Amendment to Agreement for Professional Engineering Services is made as of _____, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

RECITALS

WHEREAS, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

WHEREAS, on June 6, 2006 the County approved a First Amendment to that Contract (R2006-0957) to extend the completion date to July 31, 2006, and

WHEREAS, the County and Consultant desire to further amend the completion date of that Contract to allow work to continue until March 31, 2007.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from July 31, 2006 to March 31, 2007.

Article 2. This amendment shall be retroactive to July 31, 2006.

Article 3. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

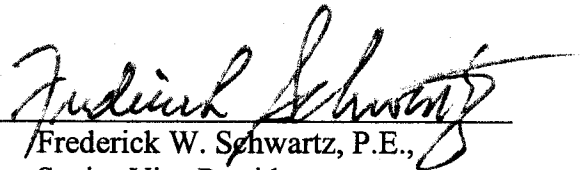
[Remainder of page left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

COUNTY:
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES,
INC.,
a Florida Corporation

BY: _____
Chair

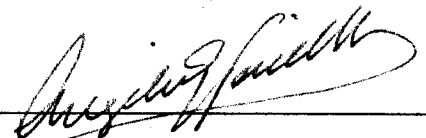
BY: 
Frederick W. Schwartz, P.E.,
Senior Vice President

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

CORPORATE SEAL

WITNESS:

BY: _____
Deputy Clerk

BY: 

ANGELINA FAIRCHILD
(Printed Name)

SEAL

BY: 

ADAM FERR
(Printed Name)

APPROVED AS TO TERMS
AND CONDITIONS:

BY: 
ENGINEERING DEPARTMENT

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: _____
COUNTY ATTORNEY

ATTACHMENT 1

**STANDARD FORM
AGREEMENT FOR PROFESSIONAL SERVICES
ENGINEERING SERVICES
BETWEEN
PALM BEACH COUNTY AND CONSULTANT**

This is an Agreement made as of JUL 13 2004, 2004, between **PALM BEACH COUNTY, FLORIDA (COUNTY)** and **Kimley-Horn and Associates, Inc. (CONSULTANT)**, a Engineering firm having an office and a place of business at 4431 Embarcadero Drive, *West Palm Beach, Florida 33407, and having Federal Tax ID #56-0885615*. The COUNTY intends to have the Consultant provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County (hereinafter called the PROJECT).

The COUNTY and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by CONSULTANT and the payment for those services by COUNTY as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

1.1.1. The CONSULTANT shall develop a data base that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County as more specifically set forth in the Scope of Work detailed in Exhibit A

The data base shall provide the following on a year by year basis:

1. Traffic from approved but un-built projects.
2. Adjustments of "double counting"(adjustments between attraction and productions) .
3. Adjustments for background growth.
4. Current traffic counts.

1.1.2. The outputs from the data base shall include:

1. Two-way peak hour, peak season traffic for the AM and PM peak hours.
2. Directional peak hour, peak season traffic for the AM and PM peak hours.
3. Intersection turning movement counts.

1.1.3. The CONSULTANT has, during the selection and negotiation process which has preceded this agreement, represented to the COUNTY that the CONSULTANT is possessed of that level of skill, knowledge, experience and expertise that is commensurate with engineering firms of national repute in the areas of practice required for this project. The CONSULTANT acknowledges that the COUNTY has relied on the CONSULTANT'S representations of skill, knowledge, experience and expertise. By executing this contract, the CONSULTANT agrees that the CONSULTANT will exercise that degree of care, knowledge, skill and ability as other engineering firms possessing the degree of skill, knowledge, experience and expertise which the CONSULTANT has claimed. The CONSULTANT shall perform such duties as may be assigned without neglect. The CONSULTANT accepts the relationship of trust and confidence established by this Agreement, and covenants with the COUNTY to cooperate with the COUNTY and to utilize the CONSULTANT'S skill, efforts and judgment commensurate with engineering firms of national repute in the

areas of practice required for this project. The CONSULTANT agrees to perform each assignment in an efficient and economical manner consistent with the COUNTY'S interests and consistent with the COUNTY'S stated objectives and recognized professional engineering standards.

The CONSULTANT further contracts with the COUNTY to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the Accessibility provisions of the Americans with Disabilities Act (ADA) shall be complied with and incorporated into the project.

SECTION 2 - COUNTY'S RESPONSIBILITY

COUNTY shall provide the following in a timely manner so as not to delay the services of CONSULTANT.

- 2.1. Requested traffic reports for approved developments, when available.
- 2.2. All available roadway link volumes.
- 2.3. All available intersection turning volumes.

SECTION 3 - PERIODS OF SERVICE

3.1. This is an Agreement for specific professional engineering services as outlined in the Scope of Work detailed in Exhibit A. This Agreement will commence on the day and year first written above and shall remain in effect until the completion of the work outlined in the Scope of Work detailed in Exhibit A. Work on this contract shall be completed by December 31, 2005.

SECTION 4 - PAYMENTS TO CONSULTANT

4.1. Methods of Payment for Services and Expenses of CONSULTANT.

4.1.1 Basic Service: The COUNTY will pay the CONSULTANT a total labor fee of \$264,000 for the scope detailed in Exhibit 'A' based on the Fee Schedule detailed in Exhibit B.

4.1.2 4.1.2. Reimbursable expenses: The COUNTY will pay the CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY. The payment reimbursable expenses shall not exceed estimated costs, as detailed in the fee Schedule in Exhibit B. No reimbursable expenses will be incurred without additional authorization from the COUNTY.

4.1.3. Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number R-89-633 adopted April 4, 1989.

4.2. Payments

4.2.1. Payments to the CONSULTANT shall be due and payable monthly in proportion to the percentage Task completed as approved and accepted by the COUNTY.

4.3. Other Provisions Concerning Payments

4.3.1. Records of CONSULTANT'S Salary Costs pertinent to CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the COUNTY on request prior to final payment for CONSULTANT'S services.

SECTION 5 - GENERAL CONSIDERATION

5.1. Termination

This Agreement may be canceled by the CONSULTANT upon thirty (30) days prior written notice to the COUNTY'S representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY with or without cause, immediately upon written notice to the CONSULTANT. Upon any such termination, the CONSULTANT hereby waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits, on account thereof. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination plus reasonable close out costs. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

A. Stop work on the date and to the extent specified.

- B. Terminate and settle all orders and subcontractors relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

5.2. **Disclosure and Ownership of Documents**

5.2.1. Upon completion and acceptance of the final work, the CONSULTANT shall furnish to the COUNTY, the original drawings, field notes and all documents and materials prepared by and for the COUNTY under this Agreement. The CONSULTANT may keep a reproducible set of the original drawings and shall keep all other data collected during the provision of the services. The COUNTY may, at its expense, obtain copies of any data which the CONSULTANT has accumulated in the process of providing the services on this Project.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the COUNTY'S sole risk and without liability or legal exposure to the CONSULTANT.

5.2.2. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased, under this Agreement at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

5.2.3. Notwithstanding any other provision to the contrary in this agreement, the COUNTY and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

5.2.4. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.3. **Insurance**

5.3.1. The CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the COUNTY.

5.3.2. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the COUNTY'S representative. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY'S representative. Compliance with the foregoing requirement shall not relieve the CONSULTANT of its liability and obligations under this Agreement.

5.3.3. The CONSULTANT shall maintain, during the term of this Agreement, standard Professional Liability Insurance in the minimum amount of \$1,000,000 per claim.

5.3.4. Insurance and Indemnification - The CONSULTANT shall maintain Professional Liability insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of negligence, error or omission the professional services required in the

performance of the CONSULTANT'S agreement with the COUNTY. Required coverage shall be for Limits of Liability not less than \$1,000,000.

5.3.5. **SPECIAL INSTRUCTIONS:** Occurrence form Professional Liability Insurance is highly preferred, however, in the event the CONSULTANT is only able to secure Claims-Made Professional Liability Insurance special conditions apply. Any Certificate of Insurance issued to the COUNTY must clearly indicate whether the coverage is on a Claims-Made basis. Should coverage be afforded on a Claims-Made basis the CONSULTANT shall be obligated by virtue of this Agreement to maintain insurance coverage in effect with no less limits of liability nor any more restrictive terms and/or conditions for a period of 5 years from the date of this Agreement. CONSULTANT shall not commence work under this Agreement until he has obtained all insurance required under this paragraph and such insurance has been approved by COUNTY. CONSULTANT shall maintain during the term of the Agreement, his standard Professional Liability Insurance in the amount of \$1,000,000 (with standard deductions of not more than \$750,000).

5.3.6. The CONSULTANT shall maintain, during the life of this Agreement, comprehensive general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence to protect the CONSULTANT from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONSULTANT or by anyone directly employed by or Agreement with the CONSULTANT.

5.3.7. The CONSULTANT shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damage liability to protect the CONSULTANT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT.

5.3.8. The CONSULTANT shall maintain, during the life of this Agreement, adequate Worker's Compensation Insurance and Employer's Liability Insurance in at least such amount as are required by law for all of its employees per Florida Statute 440.02.

5.3.9. All insurance, other than Professional Liability and Worker's Compensation, to be maintained by the CONSULTANT shall specifically include PALM BEACH COUNTY as an "Additional Insured". The Additional Insured endorsement shall read Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents".

5.4 Indemnification

Pursuant to Florida Statute, FS. 725.08 (1), the CONSULTANT shall indemnify, and hold harmless the COUNTY, and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever to the extent arising out of, because of, or due to negligent act or omission or commission of the CONSULTANT, its officers, agents, or employees. Neither the CONSULTANT, nor any of its officers, agents, or employees will be liable under this section for damages arising out of injury or damage to persons or property to the extent caused or resulting from the sole negligence of the COUNTY or any of its officers, agents, or employees.

5.5 Controlling Law

5.5.1. This Agreement is to be governed by the laws of the State of Florida. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such

party or parties may be entitled as a result of that action.

5.6 Successors and Assigns

5.6.1. COUNTY and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of COUNTY and CONSULTANT (and to the extent permitted by Paragraph 5.6.2. the assigns of COUNTY and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.6.2. Neither COUNTY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

5.6.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than COUNTY and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of COUNTY and CONSULTANT and not for the benefit of any other party.

5.7 Subcontracting

5.7.1. The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

5.7.2. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

5.7.3 In accordance with Palm Beach County Small Business Enterprise (SBE) Ordinance #2002-064, as amended from time to time, and M/WBE Ordinance #93-28, as amended by Ordinance #95-5, the annual goal for SBE and/or M/WBE participation for Professional Services is 15%, the following participation resulted for this Agreement:

<u>0</u> %	SBE Participation
<u>0</u> %	African/American Participation
<u>0</u> %	Hispanic Participation
<u>20</u> %	Women Participation
<u>0</u> %	Other (to be used in any category)

5.7.4 The CONSULTANT agrees to abide by all provisions of the SBE and/or M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

5.7.5 The CONSULTANT incorporates Exhibit "D" (Participation of SBE and/or M/WBE Consultants) and Exhibit "E" (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, dollar

value of the SBE and/or M/WBE participation on Exhibit "D" and the Letter of Intent, Exhibit "E", signed by each of the listed SBE and/or M/WBE sub-consultants agreeing to perform the services at the listed dollar value.

5.7.6 The CONSULTANT understands that each minority and/or woman owned firm utilized on this contract must be certified by Palm Beach County in order to be counted toward the contract goal.

5.7.7 The CONSULTANT understands that it is the responsibility of the County Department letting the Agreement and the SBE and/or M/WBE Office to monitor compliance with the SBE and/or M/WBE Ordinance requirements. In that regard, the CONSULTANT agrees to furnish progress payment reports, with each billing, to both parties on the progress of the SBE and/or M/WBE participation for this Agreement.

5.7.8 The CONSULTANT further agrees to provide the SBE and/or M/WBE Office with a copy of the CONSULTANT'S agreement with the SBE and/or M/WBE sub-contractor or any other related documentation upon request.

5.7.9 The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of the Agreement as it relates to the use of SBE and/or M/WBE firms. Any SBE's and/or M/WBE's which, for any reason, no longer remain associated with the contract of the CONSULTANT shall be replaced with other certified SBE's and/or M/WBE's, unless approval to the contrary is granted by the COUNTY.

5.7.10 The CONSULTANT understands that he/she is prohibited from making any agreements with the SBE and/or M/WBE in which the SBE and/or M/WBE promises not to provide sub-consultants quotations to other bidders or potential bidders

5.7.11 The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the SBE and M/WBE Ordinances, and will allow the COUNTY to inspect such records.

5.7.12 The CONSULTANT shall certify in writing that all sub-contractors, sub-consultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the CONSULTANT prior to receipt of any further progress payments. During the term of the Agreement and upon completion of the Agreement, the COUNTY may request documentation to certify payment to sub-contractors, sub-consultants or suppliers. This provision in no way creates any contractual relationship between any sub-contractor, sub-consultant, or supplier and the COUNTY or any liability on the COUNTY for the CONSULTANT'S failure to make timely payment to the sub-contractor, sub-consultant or supplier.

5.8 Personnel

5.8.1. CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement.

5.8.2. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All of the services required herein shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, licensed or permitted under state and local law to perform such services.

5.8.3. The CONSULTANT warrants that all services shall be performed by skilled and competent personnel in accordance with all applicable national, federal, state, and local professional and technical standards.

5.9 Availability of Funds

5.9.1. The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

5.10 Conflict of Interest

5.10.1. CONSULTANT represents that employees directly engaged in the performance of the Basic Services hereunder will not be engaged in the performance of other services which constitute a conflict of interest.

5.10.2. The CONSULTANT shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT.

5.10.3. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Agreement.

5.11 Independent Contractor Relationship

5.11.1. The CONSULTANT and sub-consultants are, and shall be, in the performance of all work services and activities under this Agreement, Independent Contractors, and not employees, agents, or servants of the COUNTY. The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The CONSULTANT shall be responsible to the COUNTY for all the work or services performed by the CONSULTANT or any person or firm engaged as a sub-consultant to perform work in fulfillment of this Agreement.

5.12 Access and Audits

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

5.13 Entirety of Contractual Agreement

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

5.14 During the term of this Contract, the COUNTY may require professional services that are the same or similar to those described in this agreement. The COUNTY may, at its sole discretion, obtain said services in accordance with the State of Florida Consultants Competitive Negotiation Act. If the COUNTY so elects, it is mutually understood that the relationship between the CONSULTANT and the COUNTY under this Contract shall be considered as neither barring the CONSULTANT from, nor granting special consideration to the

CONSULTANT in participating in the selection process for a consultant to provide such additional services.

SECTION 6 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

6.1.1. CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

Federal & State Tax

The following Exhibits are attached to and made a part of this Agreement.

Exhibit A: Scope of Work consisting of (8) pages

Exhibit B: Fee Schedule consisting of (2) pages.

Exhibit C: Affidavit of Statements: Truth in Negotiation, Prohibition Against Contingent Fees, Non-Discrimination, and Public Entity Crimes Statement consisting of (1) pages.

Exhibit D: Letter of Intent to Perform As an SBE, M/WBE, and/or Sub-consultant, with County Minority Certification consisting of (4) pages.

Exhibit E: Registration and/or certifications consisting of (4) pages.

6.3. This Agreement (consisting of pages 1 to 10 inclusive), together with the Exhibits and Schedules identified above constitute the entire Agreement between **COUNTY** and **CONSULTANT** and supersede all prior written or oral understandings. This Agreement and said Exhibits and Schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

THIS SECTION LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first above written.

OWNER:

PALM BEACH COUNTY, FLORIDA,
a Political Subdivision of the
State of Florida

CONSULTANT:

Kimley-Horn and Associates, Inc.
a Florida Corporation

BOARD OF COUNTY COMMISSIONERS

BY: 

Karen T. Marcus, Chair

JUL 13 2004

BY: 

Frederick W. Schwartz, P.E.,
Senior Vice President

ATTEST:

Dorothy H. Wilken, Clerk
Circuit Court

R2004 1620

CORPORATE SEAL

WITNESS:

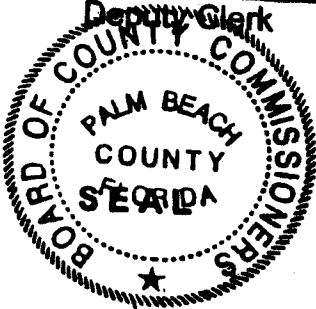
BY: 

Lisa M. Hill
(Printed Name)

BY: 

LORIN R.C. BRISSETT
(Printed Name)

BY: Linda C. Hickman
Deputy Clerk



APPROVED AS TO TERMS
AND CONDITIONS:

BY: D. T. Wall

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: 

COUNTY ATTORNEY

P:\85294\lrcb\2004\TPS_Database\0704_Final_Contract.doc

**FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES BETWEEN
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES, INC.**

This First Amendment to Agreement for Professional Engineering Services is made as of JUN 06 2006, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

RECITALS

WHEREAS, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

WHEREAS, the County and Consultant desire to amend the completion date of that Contract to allow work to continue until July 31, 2006.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from December 31, 2005 to July 31, 2006.

Article 2. This amendment shall be retroactive to December 31, 2005.

Article 3. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

[Remainder of page left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

R2006 0957

COUNTY: JUN 06 2006
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES,
INC.,
a North Carolina Corporation

BY: Tony Masilotti
Tony Masilotti, Chairman

BY: Frederick W. Schwartz
Frederick W. Schwartz, P.E.,
Senior Vice President

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

CORPORATE SEAL

WITNESS:

BY: Rich Canale
Deputy Clerk
SEAL

BY: Lisa A. Milam
Lisa A. Milam
(Printed Name)

BY: Frank D. Dineen
Frank D. Dineen
(Printed Name)

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Don Dineen

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: Don Dineen
COUNTY ATTORNEY



4431 Embarcadero Drive
West Palm Beach, Florida
33407

November 21, 2006

Mr. Dan Weisberg, P.E.
Director
Palm Beach County Traffic Division
160 Australian Avenue Suite
Suite, 303
West Palm Beach, FL 33416

Re: *Traffic Performance Standards Database Project*
A Contract Amendment

Dear Mr. Weisberg:

By means of this letter, Kimley-Horn and Associates, Inc. (KHA) is formally requesting a second extension for the completion date of the Palm Beach County Traffic Performance Standards (TPS) Database Project.

As you know, the Palm Beach County Board of County Commissioners granted an extension earlier this year for completion on July 31, 2006. KHA deployed a version of the TPS Database on July 31, 2006 which although substantially complete, required further refinements to the functionality and the structure by KHA following the testing and review of that deployment by your staff. In order to continue to comply with the comments and requests that have been made by your staff, Kimley-Horn and Associates, Inc. will need to have the project completion date officially extended beyond July 31, 2006.

By way of email, we have submitted a revised schedule to your staff that describes a series of tasks that are being performed towards responding to your staff's comments and the ultimate completion of the project. That schedule outlines a date for the end of November 2006 for completion of all tasks related to the core functionality of the TPS Database and the end of December 2006 for the completion of the conversion of the source code from C-Sharp (C#) to Vb.Net at the request of your staff. It is noted that adherence to the current schedule depends in part on the availability of your staff to review the interim deliverables outlined in the schedule.

TEL 561 845 0665
FAX 561 863 8175



We respectfully request that the project completion date be extended to allow completion of these tasks within the schedule specified. We understand that the consensus between you and your staff is to have the contract officially extended to March 2007 in order to allow for any unforeseen contingencies. While we understand that consensus, Kimley-Horn and Associates, Inc. is committed to completing all efforts related to this project prior to December 2006.

Please let us know if you have any questions or comments.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in cursive script, reading 'Frederick W. Schwartz', is written over the company name.

Frederick W. Schwartz, P.E.
Senior Vice President

FWS/lrcb

Cc: Lorin R.C. Brissett, P.E., Project Manager