

RESOLUTION NO. 2021-31892

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND KIMLEY-HORN AND ASSOCIATES, INC, PURSUANT TO REQUEST FOR QUALIFICATIONS 2015-115-JR FOR PROGRAM MANAGEMENT SERVICES FOR AN INTELLIGENT TRANSPORTATION SYSTEM AND PARKING MANAGEMENT SYSTEM PROJECT; SAID AMENDMENT, IN MATERIAL PART, EXTENDING THE TERM OF THE AGREEMENT THROUGH A DATE THAT IS SIX MONTHS FROM THE CITY'S ACCEPTANCE OF THE COMPLETED PROJECT, WITHOUT EXCEEDING THE ORIGINAL APPROVED NOT-TO-EXCEED CONTRACT SUM OF \$2,250,000.

WHEREAS, most major events and high impact periods generate significant congestion in the City's roadway network; and

WHEREAS, between 2013 and 2020, the City's Transportation and Mobility Department managed a Traffic Monitoring and Management Program, consisting of the deployment, monitoring (14 hours per day, 365 days a year), and maintenance of portable travel time data collectors and temporary closed circuit television traffic monitoring cameras; and

WHEREAS, the program reduced travel time on all monitored corridors by an average of 18% as compared to pre-program traffic conditions; however, the program was discontinued in March 2020 due to impacts to the Transportation and Mobility Department's budget as a result of the COVID-19 pandemic; and

WHEREAS, given the success of the Traffic Monitoring and Management Program, the City issued Request for Qualifications (RFQ) 2015-115-JR to obtain Program Management Services to assist in the planning and management of a state-of-the-art Intelligent Transportation System and Smart Parking System ("ITS/SPS" or "Project"); and

WHEREAS, at the July 8, 2015 meeting, the Mayor and City Commission adopted Resolution No. 2015-29084, accepting the recommendation of the selection committee and the City Manager, authorizing the Administration to enter into negotiations with Kimley-Horn and Associates, Inc. (KHA), as the top-ranked proposer; and

WHEREAS, on October 23, 2015, the City and KHA executed a Professional Services Agreement (Agreement) for Program Management Services in connection with the Project; for an initial term of three (3) years and two (2) one-year renewal terms; and

WHEREAS, KHA coordinated with the Procurement Department, to develop the Scope of Services for Request for Proposals (RFP) 2016-199-KB (Phase 1), which included the Project Plan, Concept of Operations, Systems Engineering Management Plan, and Minimum Technical Requirements, all of which were approved by the City and external agencies prior to inclusion in the ITS/SPS DBOM procurement package; and

WHEREAS, KHA also collaborated with the Procurement Department and the City Attorney's Office to develop a comprehensive Design, Build, Operation, and Maintenance

(DBOM) contract, included in Phase 2 of this RFP process, released to the short-listed firms on May 8, 2017; and

WHEREAS, on October 18, 2017, the Mayor and City Commission adopted Resolution No. 2017-30064, accepting the City Manager's recommendation and awarding the ITS/SPS DBOM contract to Transcore ITS, LLC (Transcore); and

WHEREAS, KHA assisted the City in the lengthy negotiation process, resulting in the execution of a DBOM contract with Transcore on April 16, 2019; and

WHEREAS, the negotiations headed by KHA and the City team resulted in reductions of 50% in capital costs and 47% in annual operations and maintenance costs without significant modifications to the scope of work; and

WHEREAS, the contract with Transcore has an initial term of eight (8) years, with one (1) five (5) year renewal term; therefore, a shorter term than the Agreement with KHA for the Program Management Services component of the Project did not align with the term of the longer DBOM contract with Transcore, and

WHEREAS, in November 2019, the City Manager directed the Transportation and Mobility Department and Police Department to temporarily pause the Project in order to explore the feasibility of integrating the communications systems for the Project and the citywide Police camera installation project; thus, the Police Department chose to not move forward with a change order to the Transcore contract for the ITS/SPS integration; and

WHEREAS, the comprehensive evaluation performed by Transcore resulted in a delay of 300 days to the Project; and

WHEREAS, the DBOM contract with Transcore was extended via a change order; however, the Agreement with KHA was not extended; and

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

WHEREAS, however, KHA has not been able to complete the Scope of Services under the Agreement, including the construction engineering inspection, occupancy of the Traffic Management Center, and final system acceptance, due to the Project delays; and

WHEREAS, construction of the ITS/SPS will commence in late October 2021 and final system acceptance is currently slated to occur in January 2023, following occupancy of the Transportation Management Center; and

WHEREAS, given KHA's familiarity with the ITS/SPS Project history, system design, operation, maintenance specifications, and the City's overall vision for the project, it would not be advantageous to the City to re-advertise the Program Management Services contract as it would likely result in further delays to the ITS/SPS implementation; and

WHEREAS, based upon the foregoing the Administration recommends executing Amendment No. 1 to the Agreement, substantially in the form attached to the City Commission Memorandum accompanying this Resolution; said amendment extending the Term of the Agreement until a date that is six (6) months from the acceptance, by the City, of the ITS/SPS

installation, and including other miscellaneous provisions, in order to bring the Agreement into compliance with current standard provisions; and

WHEREAS, the extension of the Term would not increase the cost of the Agreement, which was originally approved with a not-to-exceed sum of \$2,250,000, but would allow KHA to complete the Program Management Services, through completion of the installation of the ITS/SPS Project and for an additional six (6) months thereafter in order to ensure a smooth transition into the operation and maintenance of the ITS/SPS, and compliance with performance metrics, all of which are part of the original scope of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the City Manager to execute Amendment No 1 to the Professional Services Agreement between the City and Kimley-Horn and Associates, Inc., pursuant to Request for Qualifications 2015-115-JR for Program Management Services for an Intelligent Transportation System and Parking Management System Project; said amendment, in material part, extending the term of the Agreement through a date that is six months from the City's acceptance of the completed Project, without exceeding the original approved not-to-exceed contract sum of \$2,250,000.

PASSED and ADOPTED this 13th day of October 2021.



Dan Gelber, Mayor

ATTEST:



Rafael E. Granado, City Clerk

OCT 15 2021



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10-8-21
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: October 13, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS 2015-115-JR FOR PROGRAM MANAGEMENT SERVICES FOR INTELLIGENT TRANSPORTATION SYSTEM AND PARKING MANAGEMENT SYSTEM, EXTENDING THE TERM OF THE AGREEMENT UNTIL SIX MONTHS AFTER THE DATE OF THE CITY'S NOTICE OF FINAL SYSTEM ACCEPTANCE.**

RECOMMENDATION

The Administration recommends that the Mayor and City Commission approve Amendment No. 1 to the professional services agreement (Agreement) between the City and Kimley-Horn and Associates, Inc. for program management services for the Intelligent Transportation System and Smart Parking System (ITS/SPS) project, extending the term of the Agreement until six months after the date of City's notice of final acceptance of the ITS/SPS project.

BACKGROUND

The City of Miami Beach continues to be one of the main centers of attraction for events in our region due to its weather, restaurants, nightlife, beaches, people, and the newly renovated Miami Beach Convention Center. Most major events and high impact periods generate significant congestion in the City's roadway network. The adverse traffic conditions are further exacerbated by roadway closures as a result of construction projects. Traffic congestion is one of the principal factors in increasing response times for emergency personnel.

Between 2013 and 2020, the City's Transportation and Mobility Department managed a Traffic Monitoring and Management program through a consultant services contract. The program consisted of the deployment, monitoring, and maintenance of portable travel time data collectors and temporary closed-circuit television traffic monitoring cameras. The consultant would monitor traffic for 14 hours per day, 365 days a year from a remote location and coordinate with the City's traffic management team comprised of Transportation and Mobility Department staff, Police and Fire Department dispatch, and Communications Department staff to ensure that incidents creating congestion were detected and confirmed, and that real-time information was disseminated to the motoring public and community via portable variable message signs and text alerts. Transportation and Mobility Department staff would use the incident information to perform signal timing changes and coordinate with other agencies as needed. It is worth highlighting that the portable variable message signs are owned and managed by the City and the traffic text alerts are managed City staff. In addition to the daily traffic monitoring and management, the program also covered six special events where traffic monitoring and management hours were extended as needed.

The program reduced travel time on all monitored corridors by an average of 18% as compared to pre-program traffic conditions. The program was discontinued in March 2020 due to impacts to the Transportation and Mobility Department's budget as a result of the COVID-19 pandemic.

Given the success of the Traffic Monitoring and Management Program, the City established a goal to pursue a state-of-the-art Intelligent Transportation System and Smart Parking System (ITS/SPS) program, including:

- Traffic monitoring cameras with built-in analytics to collect counts and monitor safety
- Travel time data collection devices to track congestion and predict it before it occurs
- Full color range digital message signs throughout the City to inform motorists of lane closures, congestion, and parking information in real-time
- Traffic volume and speed data collection sensors
- Communication system and dashboard for monitoring and management of all devices and data
- Implementation of a real-time traffic management center to house traffic monitoring and management operators
- Information signs to track garage and parking lot occupancy

Following an industry review meeting, on March 20, 2015, the City issued Request for Qualifications (RFQ) 2015-115-JR to obtain Program Management Services for the ITS/SPS Project. The City Manager selected an evaluation committee including members of the City Transportation and Mobility Department, Parking Department, Public Works Department, Florida Department of Transportation, and a member of the Transportation and Parking Committee. The selection committee convened on June 15, 2015 to consider the proposals and interview the proposers. Following deliberation, the committee selected Kimley-Horn and Associates (KHA) as the most qualified firm to assume this role. This recommendation was endorsed by the City Manager and approved by the City Commission at the July 8, 2015 Commission meeting via Resolution No. 2015-29084.

On October 23, 2015, the City entered into a professional services agreement (Agreement) with KHA for program management services for ITS/SPS. Pursuant to the Agreement, KHA is responsible for:

- Developing Project Plan documents including technical specifications and stakeholder requirements
- Developing Concept of Operations Plan
- Developing a Systems Engineering Management Plan
- Developing Minimum Technical Standards
- Developing project procurement documents for the Design, Build, Operation, and Maintenance (DBOM) solicitation
- Drafting the DBOM contract in collaboration with City staff
- Overseeing negotiations plan with DBOM firm
- Overseeing day-to-day project management duties including design reviews, agency meetings, schedule and budget adherence, etc.
- Serving as the project engineer during the construction to ensure that all construction is being performed in accordance to plan and technical specifications
- Overseeing the system's acceptance and burn-in period process
- Assisting in the occupancy phase following burn-in period with initial review of performance metrics and invoices

The term of the Agreement between the City and KHA is for three (3) years, with two (2) one (1) year renewal options, thus expiring on October 22, 2020. On September 16, 2020, the City Commission authorized a month-to-month extension of the Agreement for a period of one year. As such, **the Agreement with KHA currently expires on October 22, 2021**. The total fee to be paid to KHA pursuant to the Agreement is not to exceed \$2,250,000.

Following execution of the Agreement, the KHA team began working with City departments and external agencies to gather all necessary input to draft the project documents. This input was gathered over the course of 16 steering committee meetings including members of the Police Department, Fire Department, Public Works Department, Information Technology Department, Florida Department of Transportation, and Miami-Dade County Traffic Signals and Signs. The Project Plan, Concept of Operations, Systems Engineering Management Plan, and Minimum Technical Requirements were all approved by the City and external agencies prior to inclusion in the ITS/SPS DBOM procurement documents. In addition to the project documents, KHA also coordinated with the Procurement Department to develop the procurement documents. All documents developed by KHA were included in Request For Proposal (RFP) 2016-199-KB (Phase 1) for an ITS/SPS DBOM contract advertised on September 16, 2016. The Phase 1 selection process included qualifications, experience, and availability of the proposers. Following the short-listing process, KHA collaborated with the Procurement Department and the City Attorney's Office to develop a comprehensive DBOM contract included in Phase 2 of RFP 2016-199-KB released to the short-listed firms on May 8, 2017. On October 18, 2017, the Mayor and City Commission approved the City Manager's recommendation awarding the ITS/SPS DBOM contract to Transcore ITS LLC (Transcore), via Resolution No. 2017-30064.

Following award, KHA assisted the City in a lengthy and intense negotiation process resulting in the execution of a DBOM contract with Transcore on April 16, 2019. **It is worth highlighting that the negotiations headed by KHA and the City team resulted in reductions of 50% in capital costs and 47% in annual operations and maintenance costs without significant modifications to the scope of work.** Further, as part of these negotiations, the City/KHA team included stringent performance penalties related to the operations and maintenance phase to ensure Transcore's services remain high quality and responsive to the City's needs for real-time traffic management and messaging throughout the contract. The term of the contract between the City and Transcore is eight years with one five (5) year renewal at the City Manager's discretion. Thus, **the term of the Program Management Services contract with KHA is shorter and does not align with the longer term of the DBOM contract with Transcore.**

ANALYSIS

Since the execution of the DBOM contract with Transcore, KHA has served as the owner's (City's) representative working on the City's behalf to ensure the ITS/SPS project remains on track in terms of budget, milestones, and deliverables. As the owner's representative, KHA is also responsible for leading all progress meetings, reviewing design plans, coordinating with permitting agencies, reviewing and approving all documents produced by Transcore and required under the contract, coordinating the submission and responses of requests for information (RFI) from Transcore, and reviewing all pay applications submitted by Transcore.

In November 2019, the City Manager directed the Transportation and Mobility Department to temporarily pause the ITS/SPS project in order to explore the feasibility of integrating the communications systems for the ITS/SPS project and the citywide Police camera installation project. Following various coordination meetings, it was determined that the cost to integrate the two communication systems as part of the ITS/SPS project significantly exceeded the funding allocated to the citywide Police camera installation project. Thus, the Police Department chose to not move forward with a change order to Transcore for

the system integration. **The comprehensive evaluation performed by Transcore resulted in a delay of 300 days to the ITS/SPS project. The DBOM contract with Transcore was extended via a change order; however, the Program Management Services contract with KHA was not extended.** A notice of resumption was issued to Transcore on November 20, 2020. Transcore is currently securing construction permits from the City and external agencies. Construction of the ITS/SPS project will commence in late October 2021 and final system acceptance is scheduled to occur in January 2023 following occupancy of the Transportation Management Center.

The key remaining task orders under the scope of services of the Program Management Services Agreement with KHA include construction engineering inspection, occupancy of the Transportation Management Center, and final ITS/SPS system acceptance.

CONCLUSION

The City and KHA entered into an Agreement for Program Management Services for the ITS/SPS project on October 23, 2015. The Agreement will expire on October 22, 2021.

Given the extensive ITS/SPS DBOM procurement process, lengthy DBOM contract negotiations, and subsequent additional delay due to the communication systems integration evaluation, the Agreement with KHA for program management services is expiring prior to the completion of the scope of services and prior to ITS/SPS system acceptance. Given KHA's familiarity with the ITS/SPS project history; system design, operation, and maintenance requirements and specifications; and the City's overall vision for the project, the Administration believes that it would not be advantageous for the City to re-advertise the program management services contract as it would likely result in further delays to ITS/SPS project implementation.

As a result of staff's review, it was determined that most similar program management services contracts are generally termed based on project/system acceptance and not years. As such, the Administration recommends that the Mayor and City Commission approve Amendment No. 1 to the Professional Services Agreement between the City and KHA for ITS/SPS, extending the term of the Agreement until six months after the date of City's notice of final acceptance of the ITS/SPS project.

SUPPORTING SURVEY DATA

According to the 2019 Community Satisfaction Survey, 64% of the residents believe that traffic congestion generated by tourism affects their quality of life.

STRATEGIC CONNECTION

Reduce traffic congestion

FINANCIAL INFORMATION

No fiscal impact.

LEGISLATIVE TRACKING

Transportation and Mobility

ATTACHMENTS

Attachment: Amendment No. 1 to the Professional Services Agreement between the City of Miami Beach, Florida and Kimley-Horn and Associates, Inc

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

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

RECITALS

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

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

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

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

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

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

1. ABOVE RECITALS.

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

2. MODIFICATIONS.

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

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

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

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

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

A. Consultant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

B. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

C. Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:

1. Keep and maintain public records required by the City to perform the service;
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Consultant does not transfer the records to the City;
4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service.

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

D. REQUEST FOR RECORDS; NONCOMPLIANCE.

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

E. CIVIL ACTION.

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

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

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

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

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

12.5 INSPECTOR GENERAL AUDIT RIGHTS

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

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

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

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

10.6 E-VERIFY

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

B. **TERMINATION RIGHTS.**

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

3. **RATIFICATION.**

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

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

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

ATTEST:

By:

Secretary

President

Print Name

Print Name

Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: October 13, 2021

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO REQUEST FOR QUALIFICATIONS 2015-115-JR FOR PROGRAM MANAGEMENT SERVICES FOR INTELLIGENT TRANSPORTATION SYSTEM AND PARKING MANAGEMENT SYSTEM, EXTENDING THE TERM OF THE AGREEMENT UNTIL SIX MONTHS AFTER THE DATE OF THE CITY'S NOTICE OF FINAL SYSTEM ACCEPTANCE.

(ITEM TO BE SUBMITTED IN SUPPLEMENTAL)

SUPPORTING SURVEY DATA

According to the 2019 Community Satisfaction Survey, 64% of the residents believe that traffic congestion generated by tourism affects their quality of life.

FINANCIAL INFORMATION

No fiscal impact.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

No

Does this item utilize G.O. Bond Funds?

No

Strategic Connection

Mobility - Address traffic congestion.

Legislative Tracking

Transportation and Mobility