



**CITY OF DELRAY BEACH  
100 NW 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444**

**AGREEMENT FOR PROFESSIONAL SERVICES  
RFQ 2017-048 (918-42, 918-89, 906-56)**

**KIMLEY-HORN AND ASSOCIATES, INC.**

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES (CCNA)**

**AGREEMENT NO. RFQ 2017-048 (918-42, 918-89, 906-56)**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the "effective date"), by and between the **City of Delray Beach**, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1<sup>st</sup> Avenue, Delray Beach, Florida, 33444, and **Kimley-Horn and Associates, Inc.** a North Carolina corporation (hereinafter referred to as "Consultant") authorized to do business in Florida, whose principal address is 421 Fayetteville Street, Ste, 600, Raleigh, North Carolina 27601.

WHEREAS, the City desires to retain the services of the Consultant to provide certain Professional Services in accordance with the City's Request for Qualifications RFQ 2017-048, Continuing Engineering, Surveying, and Landscaping Architectural Consulting Services (918-42, 918-89, 906-56), and the Consultant's response thereto, which are attached hereto and incorporated herein as Exhibit "A".

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Consultant and the City agree as follows:

**ARTICLE 1. INCORPORATION OF REQUEST FOR QUALIFICATIONS**

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and scope of services set forth in the City's Request for Qualifications, RFQ 2017-048, and the Consultant's response to the Request for Qualifications, including all addenda and documentation required thereunder.

**ARTICLE 2. SCOPE OF SERVICES**

The Consultant shall provide Professional Services to the City, under the following categories of work as defined in the Request for Qualifications:

- a. Category(s)
  - i. Engineering Services
  - ii. Surveying/Mapping Services
  - iii. Landscape Architectural Services

The Consultant shall provide the services on an as-needed and project-by-project basis, based on work requests from City departments through the issuance of Service Authorizations.

### ARTICLE 3. COMPENSATION

The City shall pay the Consultant for performing the Services based on the Prices and Rates shown in Exhibit "B", which is attached hereto and incorporated herein, or pursuant to a negotiated lump sum.

### ARTICLE 4. TERM

The term of this Agreement shall be from the effective date until August 30, 2022, unless terminated beforehand as provided for in Article 5. Nothing contained in the Request for Qualifications or this Agreement shall be construed by the Consultant as a guarantee of work from the City. The City reserves the right to extend the Agreement for one, two-year term, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

At the City's request, the Consultant shall continue services beyond the final expiration date. This extension period shall not extend for more than one year beyond the final expiration date of the Agreement. The Consultant shall be compensated at the rate in effect when this extension period is invoked by the City.

### ARTICLE 5. TERMINATION

a. This Agreement may be terminated by the City, with or without cause, upon providing written notice to the Consultant. This Agreement may be terminated by the Consultant upon thirty (30) days' prior written notice to the City. Upon any such termination, the Consultant waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits. Unless the Consultant is in breach of this Agreement, the City shall pay the Consultant for services rendered through the date of termination in accordance with the terms of this Agreement.

b. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

### ARTICLE 6. LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively

in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### ARTICLE 7. ATTORNEY'S FEES

Any costs or expense (including reasonable attorney's fees) associated with the enforcement of the terms and for conditions of this Agreement shall be borne by the respective Parties, however, this clause pertains only to the Parties to this Agreement.

#### ARTICLE 8. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

As to the City: **City of Delray Beach**  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Attn: City Manager

With a copy to: **City of Delray Beach**  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attn: City Attorney

As to the Consultant:

**Kimley-Horn and Associates, Inc.**  
1920 Wekiva Way, Suite 200  
West Palm Beach, Florida 33411  
Attn: Marwan Mulfleh, P.E., Senior  
Vice President

b. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- i. Terms and conditions as contained in this Agreement.
- ii. Terms and conditions of RFQ 2017-048.
- iii. Consultant's response to RFQ 2017-048 and any subsequent information submitted by Consultant during the evaluation and negotiation process.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove first written.

**CITY OF DELRAY BEACH, FLORIDA**

By: \_\_\_\_\_  
Shelly Petrolia, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Katerri Johnson, City Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
R. Max Lohman, City Attorney

**CONSULTANT**

By: Marwan Mufleh

MARWAN MUFLEH

Printed Name

PRINCIPAL

Title

(SEAL)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 11th day of June,  
2018 by Marwan Mufleh, as Principal (name of officer or agent, title of  
officer or agent), of Kinney Horn and Assoc. Inc. (name of corporation acknowledging), a  
North Carolina (state or place of incorporation) corporation, on behalf of the corporation.  
(He)She is personally known to me or has produced \_\_\_\_\_ (type  
of identification) as identification.

Marwan Mufleh

Notary Public – State of FLORIDA

