

RESOLUTION NO. 2023- 3022

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A PROJECT AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. PURSUANT TO THE CONTINUING SERVICES AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR PROGRAM MANAGEMENT SERVICES RELATED TO THE TOWN'S UTILITIES UNDERGROUNDING PROJECT; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 3, 2020, the Town of Surfside (the "Town") electorate approved a ballot/referendum question in order to move forward with developing a plan to underground utilities in the Town; and

WHEREAS, on December 8, 2020, the Town Commission approved Resolution No. 2020-2743, which authorized the Town Manager to engage a consultant to provide project management support in connection with the initial phases of the Utilities Undergrounding Project (the "Project"); and

WHEREAS, pursuant to Resolution No. 2020-2752 adopted on January 14, 2021, the Town engaged HPF Associates, Inc. ("HPF") for project management support services for Phase I of the Project by (i) approving a professional services agreement (the "HPF Agreement"), and (ii) increasing the Town Manager's expenditure authority to engage HPF for a total not to exceed \$40,000; and

WHEREAS, on May 10, 2022, the Town Commission approved an amendment to the HPF Agreement for services in connection with Phase II of the Project, in an amount not to exceed \$184,625.88; and

WHEREAS, the Town Commission authorized a second amendment for Phase IIA on April 18th, 2023, in an amount not to exceed \$174,015.63; and

WHEREAS, subsequently, on May 4, 2023, the HPF Agreement was terminated by mutual agreement of the Town and HPF; and

WHEREAS, as a result, the Town is in need of program management services for the Project and desires to engage a firm with specialized expertise in design and construction management; and

WHEREAS, having thoroughly assessed the status of the Project, and upon evaluation of the Town's pre-qualified engineer firms, the Town Administration requested a proposal from Kimley-Horn and Associates, Inc. (the "Kimley-Horn"); and

WHEREAS, pursuant to Section 287.055, Florida Statutes (also known as the Consultants' Competitive Negotiation Act), the Town wishes to retain Kimley-Horn for professional engineering services, including program management services for the Project, in accordance with the Continuing Services Agreement effective April 2, 2021, for such services (the "CSA"); and

WHEREAS, in accordance with the provisions of the CSA, the Consultant has provided a proposal, attached hereto as Exhibit "A", and the Town and Consultant have agreed to enter into a specific Project Agreement (the "Agreement") attached hereto as Exhibit "B", authorizing the Consultant to provide program management services for the Project (the "Services"); and

WHEREAS, the Proposal and Agreement, attached hereto as Exhibits "A" and "B", respectively, provide for a scope of services detailing the Services to be provided by the Consultant, as well as a schedule for the performance and compensation for the Services for a total lump sum fee of \$290,700; and

WHEREAS, pursuant to the CSA, the Town Commission wishes to approve the Proposal attached hereto as Exhibit "A" and the Agreement attached hereto as Exhibit "B", in substantially the form attached, and authorize the expenditure of such funds; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Proposal and Agreement. The Proposal, attached hereto as Exhibit "A", and the Agreement for the Services with the Consultant, in substantially the form attached hereto as Exhibit "B", are hereby approved.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement attached hereto as Exhibit "B" with the Consultant for the Services, subject to final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency. The Town Manager is further authorized to expend funds in an amount not to exceed \$290,700.

Section 4. Implementation. The Town Manager and Town Officials are authorized to take any and all necessary action to implement the Agreement and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of September, 2023.

Motion By: Vice Mayor Rose
Second By: Commissioner Landsman

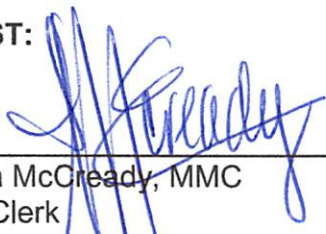
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischeld	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



August 16, 2023

Hector Gomez
Town of Surfside
9293 Harding Avenue
Surfside, FL 33154

Re: Surfside Undergrounding – Program Management

Dear Hector:

Kimley-Horn and Associates, Inc. ("Kimley-Horn") is pleased to submit this proposal (the "Agreement") to the Town of Surfside ("Town") for providing program management services related to the undergrounding of existing overhead utilities within the Town's municipal boundaries. Our project understanding, scope of services, and fee follow.

PROJECT UNDERSTANDING

The Town has requested a proposal for program management for undergrounding overhead utilities within the Town's municipal boundaries. It is understood that there are multiple utilities on the utility poles throughout the Town. These poles and lines are generally located in the public rights-of-way. New underground electric and communications infrastructure is desired to be installed within the road rights-of-way and in new easements, where required. Once the new facilities have been installed, activated, and the services cut over, the existing overhead wires and the poles will be removed. Kimley-Horn will perform program management services to assist the Town in managing the design phase of the improvements. Our services will generally consist of schedule and budget tracking, along with regular reporting to the Town staff and elected officials regarding progress. We have broken up our services to correspond to the program areas that have been previously established between the Town and the utility providers. We are assuming the design will occur over three consecutive years with each area having a 12-month duration.

Area 1 – South of the program can generally be defined as east of Hawthorne Avenue and south of 91st Street. Area 2 – Central can generally be defined as from the Area 1 – South boundary to south of 93rd Street. Area 3 – North can generally be defined as north of 93rd Street.

Based on this understanding, our detailed scope of services is provided below.

SCOPE OF SERVICES

Kimley-Horn will provide the services specifically set forth below.

Area 1 – South – Program Management

Kimley-Horn will provide the following project management services related to initiating, planning, and executing the design phase for the Area 1 – South area of the project:

- Project schedule development and updates (monthly, up to 12)
- Budget tracking (monthly, up to 12)
- Progress reports (monthly, up to 12)
- Town Commission updates (monthly, up to 12)

Area 1 – South – Meetings

Kimley-Horn will attend scheduled project meetings as described below:

- Project kickoff meeting
- Progress meetings (virtual, monthly, up to 12)
- Town Commission meetings (up to 12)
- Stakeholder meetings (up to 3)

Area 2 – Central – Program Management

Kimley-Horn will provide the following project management services related to initiating, planning, and executing the design phase for the Area 2 – Central area of the project:

- Project schedule development and updates (monthly, up to 12)
- Budget tracking (monthly, up to 12)
- Progress reports (monthly, up to 12)
- Town Commission updates (monthly, up to 12)

Area 2 – Central – Meetings

Kimley-Horn will attend scheduled project meetings as described below:

- Project kickoff meeting
- Progress meetings (virtual, monthly, up to 12)
- Town Commission meetings (up to 12)
- Stakeholder meetings (up to 3)

Area 3 – North – Program Management

Kimley-Horn will provide the following project management services related to initiating, planning, and executing the design phase for the Area 3 – North area of the project:

- Project schedule updates (monthly, up to 12)
- Budget tracking (monthly, up to 12)
- Progress reports (monthly, up to 12)
- Town Commission updates (monthly, up to 12)

Area 3 – North – Meetings

Kimley-Horn will attend scheduled project meetings as described below:

- Project kickoff meeting
- Progress meetings (virtual, monthly, up to 12)
- Town Commission meetings (up to 12)
- Stakeholder meetings (up to 3)

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and performed based on proposals approved prior to performance of the additional services.

INFORMATION AND SERVICES PROVIDED BY THE TOWN

We shall be entitled to rely on the completeness and accuracy of all information provided by the Town or the Town's consultants or representatives. The Town shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Access to Town facilities for public meetings, as needed

SCHEDULE

Kimley-Horn will perform the scope above as expeditiously as practical to meet a mutually-agreed-upon schedule.

FEE AND BILLING

Kimley-Horn will perform the Scope of Services for the total lump sum fees listed below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Town. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Area 1 – South – Program Management	\$ 32,400
Area 1 – South – Meetings	\$ 64,500
Area 2 – Central – Program Management	\$ 32,400
Area 2 – Central – Meetings	\$ 64,500
Area 3 – North – Program Management	\$ 32,400
Area 3 – North – Meetings	\$ 64,500
Total Lump Sum Fee	\$290,700

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions of the Continuing Services Agreement dated April 2, 2021, which are incorporated by reference. As used in the agreement, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Town" shall refer to the Town of Surfside, Florida.

If you concur in all the foregoing and wish to direct us to proceed with the services, please notify us by providing a purchase order for the scope and fee described above.

We appreciate the opportunity to provide these services to the Town. Please contact me at (561) 840-0843 or brett.johnson@kimley-horn.com if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



By: Kevin Schanen, P.E.
Senior Vice President / Principal



Brett Johnson, P.E.
Project Manager

PROJECT AGREEMENT

Between

TOWN OF SURFSIDE, FL

And

Kimley-Horn and Associates, Inc.

Project Name: Utilities Undergrounding Project

PROJECT AGREEMENT

Between

TOWN OF SURFSIDE, FL

And

KIMLEY-HORN AND ASSOCIATES, INC.

Project Name: Utilities Undergrounding Project

Subject to the provisions contained in the “Continuing Services Agreement for Professional Engineering Services” (hereinafter referred to as the “Continuing Services Agreement”) between the **TOWN OF SURFSIDE, FL** (hereinafter referred to as “Town”) and **KIMLEY-HORN AND ASSOCIATES, INC.**, (hereinafter referred to as “Consultant”) dated April 2, 2021, which Continuing Services Agreement was competitively procured through Request For Qualifications (RFQ) No. 2020-06 in accordance with Section 287.955, Florida Statutes, this Project Agreement is made effective as of the _____ day of _____, 2023, and authorizes the Consultant to provide the services as set forth below:

SECTION 1. SCOPE OF SERVICES

1.1 Consultant shall provide **PROGRAM MANAGEMENT SERVICES** for the Utilities Undergrounding Project and complete the tasks that are identified and described in the Project Scope of Services and Schedule, attached hereto as Exhibit “A,” for the Town (the “Services”).

1.2 The Town may request changes that would increase, decrease, or otherwise modify the scope of services outlined under the Project Scope of Services and Schedule, attached hereto as Exhibit “A.” Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

2.1 As part of the scope of services and project schedule, the Consultant shall provide the Town the Deliverables identified in the Project Scope of Services and Schedule, attached hereto as Exhibit “A.”

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 Term. This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The Town Manager, in his sole discretion, may extend the term of this Agreement through written notification to the Consultant. Such extension shall not exceed 90 days. No further extensions of this Agreement shall be effective unless authorized by the Town Manager.

3.2 Commencement. Services provided by the Consultant under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notice to Proceed (“Commencement Date”) provided to the Consultant by the Town. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notice to Proceed. Consultant must receive written notice from the Town Manager prior to the beginning the performance of services.

3.3 Contract Time. Upon receipt of the Notice to Proceed, the Consultant shall provide services to the Town on the Commencement Date, and shall continuously perform services to the Town, without interruption, in accordance with the time frames set forth in the "Scope of Services and Project Schedule", a copy of which is attached and incorporated into this Agreement as Exhibit "A". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 Compensation. Consultant shall be compensated for the provision of the Services in accordance with Exhibit "A" attached hereto. Consultant shall receive a lump sum fee of \$290,700.

4.2 Reimbursable Expenses. The following expenses are reimbursable and will be billed at 1.1 x actual cost to cover administrative processing: Travel and accommodations, long distance telephone calls, , facsimile, courier services, mileage (at a rate approved by the Town), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the Town.

SECTION 5. BILLING AND PAYMENTS

5.1 Invoices

5.1.1. Compensation and Reimbursable Expenses. Consultant shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule attached hereto as Exhibit "A", attached hereto and made part of this Agreement. Invoices for each phase shall not exceed amounts allocated to said phase plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously.

5.1.2. Florida Prompt Payment Act. The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

5.2 Disputed Invoices. In the event that all or a portion of an invoice submitted to the Town for payment to the Consultant is disputed, or additional backup documentation is required, the Town shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The Consultant shall provide the Town within five (5) working days of the date of the Town's notice. The Town may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. The Town, at its sole discretion, may pay to the Consultant the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 Suspension of Payment. In the event that the Town becomes credibly informed that any representations of the Consultant, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the Consultant is not in compliance with any term or condition of this Project Agreement, the Town may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the Owner's reasonable satisfaction.

5.4 Retainage. The Town reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the Consultant until the project is completed. Said retainage may be withheld at the sole discretion of the Town and as security for the successful completion of the Consultant's duties and responsibilities under the Project Agreement.

5.5 Final Payment. Submission to the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the Town that, upon receipt from the Town of the amount invoiced, all obligations of the Consultant to others, including its consultants, incurred in connection with the Project, shall be paid in full. The Consultant shall deliver to the Town all documents requested by the Town evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of all claims against the Town by the Consultant.

SECTION 6. TERMINATION/SUSPENSION

6.1 For Cause. This Agreement may be terminated by either party upon five (5) calendar days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that Consultant abandons this Agreement or causes it to be terminated by the Town, the Consultant shall indemnify the Town against any loss pertaining to this termination. In the event that the Consultant is terminated by the Town for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 and the provision of Section 6.2 shall apply.

6.2 For Convenience. This Agreement may be terminated by the Town for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of such termination a termination, the Consultant shall incur no further obligations in connections with the Project and shall, to the extent possible terminate any outstanding subconsultant obligation. The Consultant shall be compensated for all services performed to the satisfaction of the Town and reimbursable expenses incurred prior the date of termination. In such event, the Consultant shall promptly submit to the Town its invoice for final payment and reimbursement which invoice shall comply with the provisions of Section 5.1. Under no circumstances shall the Town make payment of profit to the Consultant for services which have not been performed.

6.3 Assignment upon Termination. Upon termination of this Project Agreement, a copy of all work product of the Consultant shall become the property of the Town and the Consultant shall within ten (10) working days of receipt of written direction from the Town, transfer to either the Town or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Project Agreement. Upon the Town's request, the Consultant shall additionally assign its rights, title and interest under any subcontractor's agreements to the Town.

6.4 Suspension for Convenience. The Town shall have the right at any time to direct the Consultant to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the Town the Consultant shall immediately comply with same. In the event the Town directs a suspension of performance as provided herein, through no fault of the Consultant, the Town shall pay the Consultant as full compensation for such suspension the Consultant's reasonable cost, actually incurred and paid, of demobilization and remobilization.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Project Agreement to be executed the day and year as first stated above

TOWN:

ATTEST:

**TOWN OF SURFSIDE, FLORIDA, a
Florida Municipal Corporation**

TOWN CLERK

By: _____
Hector Gomez, Town Manager

Date: _____

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

TOWN ATTORNEY

CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Name: _____

Title: _____

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT “A”

**PROJECT SCOPE OF SERVICES AND SCHEDULE AND
PAYMENT SCHEDULE**

[TO BE INSERTED]