

FIRST AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND KIMLEY-HORN AND ASSOCIATES, INC. FOR AIRPORT PLANNING CONSULTANT SERVICES

This First Amendment ("First Amendment") to the Agreement (hereinafter defined) between Broward County, a political subdivision of the State of Florida ("County"), and Kimley-Horn and Associates, Inc., a North Carolina corporation authorized to transact business in the State of Florida ("Consultant") (collectively, the "Parties"), is entered into effective as of the date this First Amendment is fully executed by the Parties.

RECITALS

A. Request for Proposals, R1277902P1, for Airport Planning Consultant Services was approved for solicitation on October 28, 2014.

B. The Parties entered into an agreement on June 23, 2015 ("Agreement") to provide Airport Planning Consultant Services in the total maximum not to exceed amount of Four Million Eight Hundred Thousand Dollars (\$4,800,000).

C. The Agreement expires on June 22, 2020.

D. The Parties desire to amend the Agreement to add two (2) additional one (1) year renewal terms, give authority to the Director of Aviation to exercise the options to renew, add a required CBE provision, and increase the total maximum not to exceed amount.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Amendments made to the Agreement by this First Amendment are indicated by the use of strikethroughs to indicate deletions and underlining to indicate additions.
3. Article 4.1 of the Agreement is amended as follows:

4.1 The initial term of this Agreement shall be for the period beginning on the date of execution of this Agreement by the Board and ending three years from that date ("Initial Term"). At its option, the County may renew this Agreement for ~~two (2)~~ four (4) additional one (1) year periods. The option to renew may be exercised by the County's Director of Purchasing or Director of Aviation by written notice of renewal to Consultant.

4. Article 5 of the Agreement is amended as follows:

Absent amendment, the total cumulative amount authorized for all Work Authorizations issued under this Agreement to CONSULTANT may not exceed ~~Four Million Five Hundred Sixty Thousand Dollars (\$4,560,000)~~ Seven Million Sixty Thousand Dollars

~~(\$7,060,000)~~ for labor and ~~Two Hundred Forty Thousand Dollars (\$240,000)~~ Three Hundred Forty Thousand Dollars (\$340,000) for reimbursables, for a total maximum not to exceed Agreement amount of ~~Four Million Eight Hundred Thousand Dollars (\$4,800,000)~~ Seven Million Four Hundred Thousand Dollars (\$7,400,000). The method of compensation to be paid under each individual Work Authorization shall be pursuant to one or a combination of the following:

...

5. Section 5.1.4 of the Agreement is amended as follows:

5.1.4 Reimbursable Expenses. County has established a maximum amount not-to-exceed of ~~Two Hundred Forty Thousand Dollars (\$240,000.00)~~ Three Hundred Forty Thousand Dollars (\$340,000.00) for potential reimbursable expenses which may be utilized pursuant to Section 5.3. Unused amounts of those monies established for reimbursable expenses shall be retained by County.

6. The Agreement is amended to create Section 9.9, as follows (underlining omitted):

9.9 The Parties stipulate that if Consultant fails to meet the CBE participation goal, the damages to County arising from such failure are not readily ascertainable at the time of this First Amendment. If Consultant fails to meet the CBE participation goal and County determines, in the sole discretion of the OESBD Program Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the CBE participation goal, Consultant shall pay County liquidated damages, the calculation of any liquidated damages shall be limited to the amount added by this First Amendment, in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the CBE participation goal, up to a maximum amount of ten percent (10%) of the amount added by this First Amendment excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Consultant's breach of the CBE participation goal, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the CBE participation goal attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subconsultant where the OESBD Program Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the CBE participation goal.

7. In the event of any conflict or ambiguity between this First Amendment and the Agreement, the Parties agree that this First Amendment shall control.

8. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

9. The Agreement, including as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement, including as amended in this First Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

10. Preparation of this First Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

11. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

12. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2020, and KIMLEY-HORN AND ASSOCIATES, INC., signing by and through its Vice President, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its
Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

_____ day of _____, 2020

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By [Signature] 03/16/2020
Yesenia Alfonso (Date)
Assistant County Attorney

By [Signature] 03/16/2020
Alexander J. Williams, Jr. (Date)
Senior Assistant County Attorney

AJW/YA
Kimley-Horn 1st Amd.
03/09/2020

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CONSULTANT

WITNESSES:

KIMLEY-HORN AND ASSOCIATES, INC.

[Signature]
Signature

By: Jill Capelli
Authorized Signor

Shanda Sutton Layne
Print Name of Witness above

Jill Capelli, Vice President
Print Name and Title

[Signature]
Signature

13 day of March, 2020

Michael Wanko
Print Name of Witness above

ATTEST:
[Signature]
Corporate Secretary or other person authorized to attest

(CORPORATE SEAL OR NOTARY)

