

## **AGREEMENT FOR PROFESSIONAL DESIGN SERVICES FOR WILD SPACES PUBLIC PLACES PROJECTS**

THIS AGREEMENT is entered into this 5<sup>th</sup> day of October, 2023, by the CITY OF GAINESVILLE, FLORIDA, a Florida municipal corporation (“CITY”), and KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation registered to do business in Florida (“CONSULTANT”).

WHEREAS, the CITY conducted a competitive solicitation, selected CONSULTANT, successfully completed negotiations, and the CITY desires to enter into an agreement with CONSULTANT for professional design services on an as-needed basis for various parks and recreation projects.

NOW, THEREFORE, CITY and CONSULTANT agree as follows:

**1.0 TERM.** This Agreement shall become effective upon execution and shall continue for a period of three (3) years, unless earlier terminated in accordance with paragraph 15.0, below. However, upon mutual agreement of the parties the Agreement may be extended for up to two (2) one-year periods.

### **2.0 SCOPE OF SERVICES.**

**2.1 Contract Documents.** CONSULTANT shall provide professional design services for various parks and recreation projects pursuant to the terms and conditions in the following documents, attached or otherwise incorporated by reference (collectively the “Contract Documents”):

- a. This Agreement
- b. Addendum #2 dated April 6, 2023
- c. Addendum #1 dated April 4, 2023
- d. Request for Qualifications (RFQ) No. WSPP-230022-WB dated March 27, 2023
- e. CONSULTANT’s Proposal dated April 18, 2023

In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above.

**2.2 Individual Projects.** This Agreement provides for the administration, compensation and responsibility of the parties relating to the performance of professional design services authorized by the CITY. The specific scope of services to be provided by CONSULTANT for individual projects will be mutually agreed to by the parties in separate Task Assignments or Purchase Orders. All related Task Assignments and Purchase Orders will become part of this Agreement. The Task Assignments may be amended as provided herein as changes in scope. Compensation for services will be as described in Section 6.0 of this Agreement. Future phases of a project may, at the sole discretion of the CITY, include post-design services and construction inspection services.

Such services will be negotiated by the parties and contracted for under separate written agreement.

- 2.3 Change of Scope. Services performed at the CITY's request beyond those identified in the Task Assignment shall constitute a change of scope which will be documented by a Change Order to be approved in writing by both parties before services are performed.
- 2.4 Nothing in this Agreement shall be construed to prohibit the CITY from awarding, authorizing, or directing work to be performed, whether identified in this Agreement or otherwise, to firms other than CONSULTANT.
- 2.1 2.5 The CITY may use the CONSULTANT as a subject matter expert. CONSULTANT's expert services would be negotiated under a separate agreement at CONSULTANT's then-current hourly rates for expert services.

### **3.0 STANDARD OF CARE AND PERSONNEL.**

- 3.1 Standard of Care. CONSULTANT shall perform all services with the skill and care that would be exercised by comparable qualified design consultants performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in the design, CONSULTANT shall furnish, at its own cost and expense, the redesign necessary to correct such deficiencies, and shall be responsible for any and all consequential damages arising from the deficiencies. If CONSULTANT refuses to correct the deficiencies to the CITY's satisfaction, the CITY may, at its discretion, remove CONSULTANT from the project or terminate this Agreement.
- 3.2 Non-infringement. CONSULTANT warrants that any Confidential Information, Work Product, or other material it furnishes to the CITY shall not infringe on any third party rights in any U.S. patent, copyright, trademark, or trade secret.
- 3.3 Staff. CONSULTANT shall staff the project with the team members identified in its Proposal as well as such other qualified individuals at CONSULTANT's own expense as required to carry out and perform the Scope of Services of this Agreement; in the event any such personnel discontinue employment with CONSULTANT, CONSULTANT shall promptly replace such personnel on CONSULTANT's project team with individuals approved by CITY, in writing, which approval will not be unreasonably withheld. CONSULTANT's project team members shall not be employees of or have any personal fiscal relationship with any employees or officials of the CITY. Failure of CONSULTANT for any reason to staff projects under this Agreement with qualified personnel to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this Agreement.
- 3.4 Sub-consultants. CONSULTANT shall perform all the services, and none of the work or services under this Agreement shall be subcontracted without prior written approval of the CITY. It is understood that sub-consultants presented as part of a team in

CONSULTANT's Proposal or for any individual project are considered approved by the CITY.

- 3.5 Removal/Replacement of Staff. The CITY, for any reason, may request that the service of an individual or sub-consultant be removed from this Agreement or a project. Any changes in personnel require mutual written consent of the parties.
- 3.6 Independent Contractor. CONSULTANT shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents and Task Assignment, CONSULTANT shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONSULTANT in the full performance of the Agreement. CONSULTANT understands and agrees that as an independent contractor, CONSULTANT and its officers, agents and employees are not entitled to any wages or benefits due to CITY employees.
- 3.7 Legal compliance. CONSULTANT shall secure all licenses or permits required by law or regulations, and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to work under this Agreement.

#### **4.0 TASK ASSIGNMENTS (Work Orders).**

- 4.1 Task Assignments (for projects over \$25,000). All services to be performed having an amount greater than \$25,000 shall be authorized and performed in accordance with a written and jointly executed Task Assignment for each project for which services are requested. The Task Assignment shall reference this Agreement number and the terms of the Task Assignment shall supersede to the extent of any conflict with the Agreement. A sample format for the Task Assignment is attached and incorporated as Attachment "B". Each Task Assignment shall consist of the scope of work to be performed by CONSULTANT, project schedule, deliverables, any specific provisions and the signatures of authorized representatives of the CITY and CONSULTANT agreeing to the provisions of the Task Assignment. The CITY will assign projects based upon CONSULTANT's experience in a given area, ability to meet the time constraints of a given project and/or CONSULTANT's current workload.
- 4.2 Purchase Orders (for projects of \$25,000 or less). Services to be performed having an amount of less than or equal to \$25,000 may be authorized by the CITY with a Purchase Order, which shall reference this Agreement number and the terms of this Agreement shall supersede any conflicting terms contained within said Purchase Order. The CONSULTANT will prepare a letter proposal that itemizes the major scope tasks and fee.
- 4.2 Written Proposals. Upon request by the CITY, CONSULTANT shall submit to the CITY Project Manager a written proposal, which shall include as appropriate, completion dates, estimated fees and expenses, deliverables and the specific tasks necessary to accomplish the particular project objective. The CITY shall then incorporate the proposal into a Task

Assignment to be signed and executed by the parties. The proposal may be submitted to the CITY in Task Assignment format.

4.3 Changes to Scope. The CITY shall have the right to increase or reduce the scope of the services of CONSULTANT hereunder at any time and for any reason, upon written notice to CONSULTANT specifying the nature and extent of such reduction or increases. In the event of an addition to the scope of the services, CONSULTANT shall be fully compensated for additional work as agreed upon by the CITY and CONSULTANT. In the event of a reduction to the scope of services, CONSULTANT shall be fully compensated for the work already performed, including payment of all necessary contract fee amounts due and payable hereunder prior to the receipt of written notification of such reduction in scope and shall be compensated for the work remaining to be done, as determined by the CITY. The work of revising documents as a result of reduction in scope of the project shall be compensated for as a change as provided in this Agreement.

4.4 Timeliness. CONSULTANT shall complete all assigned projects in accordance with the mutually agreed upon time of performance specified in the Task Assignment or change thereto.

## **5.0 DELAY IN PERFORMANCE.**

5.1 Delay. Neither Party shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, including without limitation, hurricanes; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the CITY or CONSULTANT under this Agreement (except for the CONSULTANT's license and authorizations to do business).

5.2 Notice of Delay. Should such circumstances occur the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. In such event, the CONSULTANT's contract price and schedule shall be equitably adjusted, if impacted.

5.3 Force Majeure.

- a. No Party to this Agreement will be liable for any default or delay in the performance of its obligations under this Agreement due to an "act of god" or other event to the extent that: (a) the non-performing Party is without fault in causing such default or delay; and (b) such default or delay could not have been prevented by reasonable precautions. Such causes include, but are not limited to: acts of civil or military

authority (including but not limited to courts of administrative agencies); acts of god; war; terrorist attacks; riot; insurrection; inability of the CITY to secure approval; validation or sale of bonds; inability of the CITY or CONSULTANT or supplier or contractor to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

- b. In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of invoices if such event actually prevents payment) will be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a Force Majeure event will always be discussed and negotiated if additional delays are expected.
- c. In the event of any delay or nonperformance resulting from such cause, the party affected will promptly notify the other party in writing of the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance. Such written notice, including change orders, will indicate the extent, if any, to which is anticipated that any delivery or completion date will be affected.

## **6.0 COMPENSATION.**

- 6.1 Fee and Expense Schedule. Compensation to CONSULTANT for services performed shall be based on the rates attached and incorporated as Attachment "A". The parties, based upon such rates, may agree to payment for services on a lump sum or "not to exceed" basis. The parties agree to review and adjust CONSULTANT's rates annually.
- 6.2 CONSULTANT Compensation Increases. CONSULTANT shall obtain the CITY's approval prior to performing any work which results in the work assignment exceeding the mutually agreed upon scope of services contained in the Task Assignments.
  - a. Minor modifications, which extend the deliverable dates and/or increase the project cost by less than 5%, may be approved by the CITY with documentation from CONSULTANT as specifically requested by the CITY.
  - b. Major modifications which increase the project cost by more than 5% shall be documented by CONSULTANT with the following information:
    - (1) A description of the new work and/or deliverables, that caused a major modification to the work.
    - (2) An explanation as to why the new work/deliverable was not included in the original scope of work or project assignment or a detailed explanation of other reasons the modification is necessary.

(3) A summary of all prior modifications to the project assignment, and reasons why additional modifications will not be necessary or reasons why additional modifications will be necessary.

(4) A description of any proposed work, which is outside the original work scope or project assignment. These shall be treated as a new project.

c. Upon submittal of the above information, the CITY and CONSULTANT shall mutually agree upon the price modification to complete the project or work assignment. Should agreement between the PARTIES not be reached, the CITY's decision shall be binding unless CONSULTANT requests reconsideration through the Dispute Resolution process described in Section 14.0.

6.3 Invoices. Invoices for payment, submitted by CONSULTANT to the CITY, shall include the following information (if applicable): Contract number, Task Assignment number, Purchase Order number, item number, job number, description of supplies or services, quantities, unit prices, work location, project representative, job start date, job completion date or other pertinent information which may include a detailed narrative of work completed during the invoicing period.

6.4 Receipting Report for Services. An itemized receipting report for services must be provided to the CITY's project representative prior to invoicing which includes the number of hours and labor rates by job title, overhead, authorized per diem or travel expenses for any work invoiced on a time and materials basis. Receipting reports shall be used by the project representative to verify the services rendered.

6.5 Payment Terms. Unless otherwise agreed upon in writing, the CITY's payment terms are net thirty (30) days from receipt of correct invoice. CONSULTANT should not submit more than one invoice per thirty-day period. Any delay in receiving invoices will be considered just cause for delaying or withholding payment. Invoices for partially completed work may be allowed with the CITY's prior approval. All partial invoices must be clearly identified as such on the invoice. Any charges or fees will be governed by current Florida Statutes.

**7.0 TAXES.** CONSULTANT accepts exclusive liability for the payment of its (i) income, gross receipts, ad valorem, or value added taxes, arising out of work rendered, now or hereafter imposed by any governmental authority, and (ii) payroll taxes or contributions for unemployment insurance, Medicare or Social Security for CONSULTANT's employees.

## **8.0 CONFIDENTIALITY AND PUBLIC RECORDS.**

8.1 "Confidential Information" includes, to the extent such information is defined in Sections 119.07 and 812.081, Florida Statutes, as trade secrets or data processing software, or otherwise confidential or exempt from Florida's Public Records Law, Chapter 119, Florida Statutes. "Confidential Information" that is marked as

“confidential” upon receipt, may include certain information about the CITY's operations, specifications, formulas, codes, software, hardware, intellectual properties, and other confidential and proprietary information belonging to the CITY, Work Product (as defined below) or technical documentation, prepared, developed, or obtained by the CITY or CONSULTANT, or any of its agents, representatives, or employees.

8.2 “Work Product” may include creative work which may lead to programs, intellectual properties, computer software, computer programs, codes, text, hypertext, designs, and/or any other work products associated with or arising directly out of the performance of the Work.

8.3 If CONSULTANT is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, CONSULTANT shall:

- a) Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by the CITY to perform the service.
- b) Upon request from the CITY’s custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
- c) 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 contract if the contractor does not transfer the records to the CITY.
- d) Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the contractor or keep and maintain public records required by the CITY to perform the service. If the contractor transfers all public records to the CITY upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor 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.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, ELIZABETH D. WAITE, (352) 393-8187,**

**WAITEED@CITYOFGAINESVILLE.ORG, P.O. BOX 490, MAIL STATION  
24, GAINESVILLE FL 32627.**

**9.0 RIGHTS TO INTELLECTUAL WORK PRODUCT.**

- 9.1 Except as otherwise provided herein, sealed original drawings, specifications, final project specific calculations, and other engineering documents which CONSULTANT prepares and delivers to the CITY pursuant to this Agreement shall become the property of the CITY when CONSULTANT has been compensated for services rendered. With the exception of Work Product developed in whole or in part by the CITY, nothing contained in this paragraph shall be construed as limiting or depriving CONSULTANT from its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.
- 9.2 The CONSULTANT shall have the right to retain and use copies of drawings, documents, electronic files, or other data furnished or to be furnished by CONSULTANT and the information contained therein except for work developed or modified by the CITY. The CITY shall not use in a written prospectus or other investment memorandum any engineering report constituting or including CONSULTANT's professional opinion, except with CONSULTANT's prior written consent, nor shall CONSULTANT use the CITY's name in any such manner, except with the CITY's prior written consent and neither the CITY or CONSULTANT shall unreasonably withhold such consent. The CITY shall not acquire any rights to any of CONSULTANT's, CONSULTANT's subcontractors, or vendor's proprietary computer software that may be used in connection with the services except as expressly provided in the scope of services or as may be separately agreed. Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to City. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 9.3 All documents, including drawings, specifications, electronic files, engineering reports and computer software prepared by CONSULTANT (except for those pertaining to work developed by the CITY in whole or in part) pursuant to this Agreement are instruments of service in respect to the services. They are not intended or represented to be suitable for reuse by the CITY or others. Any reuse without prior written verification or adaption by CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to CONSULTANT.
- 9.4 CONSULTANT hereby grants to the CITY an irrevocable, nonexclusive, royalty free license for use solely in connection with operation, maintenance, repair, or alternation of the designed facilities or processes, with respect to any invention first reduced to practice

by CONSULTANT, its employees or agents, during the course of the services of this Agreement. The CITY shall retain all rights to plans and procedures based wholly or in part on or derived from proprietary information received from the CITY. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States, or in any other country, without the prior written approval of the CITY.

- 9.5. Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. CONSULTANT makes no warranty as to the compatibility of these files with any other system or software. Because of potential degradation of electronic medium over time, in the event of a conflict between sealed original documents and electronic files, the sealed original documents will govern. The standard formats for files delivered in electronic medium will be specified by the CITY project manager for the task assignment.

- 10.0 AUDIT OF RECORDS.** CONSULTANT shall maintain records sufficient to document completion of the scope of services established by this Agreement. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after termination of this Agreement. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

**11.0 INDEMNIFICATION.**

- 11.1 Pursuant to Section 725.08, Florida Statutes, this Agreement qualifies as a professional services contract and CONSULTANT qualifies as a design professional. CONSULTANT agrees to indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this Agreement.

- 11.2 CONSULTANT represents and warrants that CONSULTANT shall not infringe a trademark, copyright, patent, trade secret or any such intellectual property right in the performance of this Agreement. In the event of an infringement suit related to or resulting from this Agreement, CONSULTANT represents and warrants that the CITY will not be liable for any damages or royalties if applicable.

- 12.0 LIMITATION OF LIABILITY.** Notwithstanding the terms of any other provision, neither CONSULTANT nor the CITY shall in any event be liable for any anticipated profits, indirect, special, consequential, or punitive damages.

Sovereign Immunity. Nothing in this Agreement shall be interpreted as a waiver of the CITY's sovereign immunity as granted pursuant to Section 768.28 Florida Statutes.

**13.0 INSURANCE.** CONSULTANT shall maintain the following insurance, and shall provide the CITY a current Insurance Certificate.

13.1 Certificate of Insurance: Said insurance shall be written by a company licensed to do business in the State of Florida and satisfactory to the CITY. A Certificate of Insurance shall be furnished in a form acceptable to the CITY for the insurance required. Such certificate or an endorsement provided must state that the CITY will be given thirty (30) days written notice (or 10 days written notice for non-payment) prior to cancellation or material change in coverage. The CITY must be listed as an additional insured on the policy.

Professional Liability Insurance: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Commercial General Liability: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Automobile Liability: in the amount of \$500,000 combined single limit for bodily injury and property damage.

Worker's Compensation:

(a)	State	Statutory
(b)	Applicable Federal	Statutory
(c)	Employer's Liability	\$500,000 per Accident
		\$500,000 Disease, Policy Limit
		\$500,000 Disease, Each Employee

<u>Excess Liability</u>	\$1,000,000
-------------------------	-------------

13.2 The CITY reserves the right to require a limit increase or additional insurance (i.e. explosion, collapse and underground property damage; environmental impairment etc.) if the specific Task Assignment warrants.

#### **14.0 DISPUTE RESOLUTION.**

14.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the parties will submit the dispute to a mediator. The parties shall mutually agree to the mediator and the costs of the mediator will be born equally by both parties. The venue for mediation shall be in Alachua County, Florida.

14.2 Continue Work. During the dispute process, CONSULTANT shall continue work pursuant to this Agreement as instructed by the CITY.

- 15.0 TERMINATION.** CITY shall have the right to terminate this Agreement, in whole or in part, without cause, upon seven (7) calendar days' written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against CITY shall be limited to that portion of the contract price earned through the date of termination, but CONSULTANT shall not be entitled to any other or further recovery against CITY.
- 16.0 GOVERNING LAW AND VENUE.** This Agreement and any Task Assignment, Purchase Order, or resulting work or transaction hereunder shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the principles of conflict of laws. Venue for all disputes shall be in Alachua County, Florida.
- 17.0 MISCELLANEOUS.**
- 17.1 Statement of Non-inducement. CONSULTANT warrants that no company or person, other than a bona fide employee working solely for CONSULTANT has been employed or retained to solicit or secure this Agreement. CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. Notwithstanding any other provision of this Agreement for breach or violation of this paragraph, the CITY shall have the right to terminate this Agreement without liability, and at its discretion, to deduct from any amount due to CONSULTANT hereunder, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- 17.2 Non-Discrimination: No person shall, on the grounds of race, sex, sexual orientation, gender identity, age, handicap, creed, color, national origin or any other characteristic protected by applicable federal, state or local law, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this Agreement.
- 17.3 Truth-in-Negotiation. By execution of this Agreement, CONSULTANT certifies that the wage rates and other factual unit costs supporting compensation negotiated under project shall be accurate, complete and current at the time of execution of each such agreement. Each invoice shall be subject to adjustment to exclude any significant sums, by which the CITY determines the original compensation was increased due to inaccurate, incomplete, or non-current wage rates and other adjustments shall be made within one (1) year following the end of the applicable agreement.
- 17.4 E-Verify. The CONSULTANT shall comply with all applicable requirements of Section 448.095, Florida Statutes, including but not limited to: 1) the CONSULTANT shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the CONSULTANT during the term of this Agreement; and 2) the CONSULTANT shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to

likewise register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the subcontractor during the term of this Agreement. Section 448.095, Florida Statutes, states the statute must be construed in a manner that is fully consistent with any applicable federal laws or regulations, and therefore this section does not apply to this Agreement to the extent that this section would be inconsistent with any federal laws or regulations that are applicable to this Agreement.

- 17.5 Severability. In the event that any provision of this Agreement is found to be unenforceable, the other provisions shall remain in full force and effect.
- 17.6 Assignability. Neither the CITY nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Section shall prevent CONSULTANT from employing independent consultants, associates, and subcontractors to assist in the performance of the services undertaken pursuant to this Agreement.
- 17.7 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CITY and CONSULTANT.
- 17.7 Entire Agreement. This Agreement and incorporated documents and any resulting Task Assignments/Work Orders/Purchase Orders constitute the entire agreement between the parties hereto. Modifications of this Agreement shall be in writing, signed by both parties, and incorporated as written amendments to this Agreement prior to becoming effective.
- 17.8 Notices. Any notice, demand, communication, or request required or permitted hereunder shall be in writing, and (1) delivered in person; (2) sent by certified, return receipt requested, United States Mail to the address below; or (3) sent by email to the email address, below, and the sender receives a read receipt or an acknowledgement that recipient has received the email (if the sender receives an automated message that the email has not been delivered, the email does not constitute notice).

As to the CITY:  
Elizabeth D. Waite, Director, Wild Spaces Public Places  
City of Gainesville, P.O. Box 490, Mail Station 24  
Gainesville, FL 32627  
WAITEED@cityofgainesville.org  
352-393-8187

As to CONSULTANT:  
Kimley-Horn and Associates, Inc.  
C. Elisabeth Manley  
800 SW 2nd Avenue  
Suite 100  
Gainesville, FL 32601  
elisabeth.manley@kimley-horn.com  
352-374-3274

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written above.

CITY OF GAINESVILLE

  
Cynthia Curry (Oct 3, 2023 10:34 EDT)

Cynthia W. Curry

City Manager

Date: Oct 5, 2023

KIMLEY-HORN AND ASSOCIATES, INC.


  
Chris Towne (Oct 3, 2023 14:39 EDT)

Print Name: Chris Towne

Title: Associate

Date: Oct 3, 2023

Approved as to Form and Legality:

  
David C. Schwartz (Oct 3, 2023 17:45 EDT)

Assistant City Attorney



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

**HOURLY RATE SCHEDULE**

<u>Classification</u>	<u>Rate</u>
Analyst	\$155 - \$215
Professional	\$215 - \$280
Senior Professional I	\$260 - \$360
Senior Professional II	\$350 - \$380
Senior Technical Support	\$170 - \$265
Support Staff	\$125 - \$150
Technical Support	\$150 - \$180

Effective through December 31, 2023; Subject to adjustment thereafter.

Internal Reimbursable Expenses will be charged at 5% of Labor Billings

External Reimbursable Expenses will be charged at 15% mark-up, or per the Contract

Sub-Consultants will be billed per the Contract

## ATTACHMENT B

### TASK ASSIGNMENT NO. 1

**TITLE:** *(an appropriate title to distinguish this Task Assignment)*

**THIS TASK ASSIGNMENT** is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation (“CITY”), and \_\_\_\_\_, (“CONSULTANT”), a Florida corporation for services to be performed as described herein and in accordance with the Agreement for Professional Design Services for Wild Spaces Public Places Projects, Contract 230022-WSP-WB, dated \_\_\_\_\_.

**1. CONTRACT DOCUMENTS AND SCOPE OF PROJECT:** CONSULTANT shall provide professional design services pursuant to the terms and conditions in the following documents:

- a. This Task Assignment
- b. Professional Design Services for Wild Spaces Public Places Projects dated \_\_\_\_\_
- c. CONSULTANT’s Proposal dated April 19, 2023, attached hereto and incorporated as Exhibit A

In the event of conflict or inconsistency between the foregoing documents, the order of precedence for interpretation shall be the order in which the documents are listed above.

**2. BACKGROUND:** *(provide sufficient information to understand the current status)*

**3. PROJECT SCHEDULE:**

**4. COMPENSATION:** CITY shall pay the CONSULTANT a fixed amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the full and faithful completion of this Task Assignment in accordance with the price breakdown in Exhibit A and in accordance with the payment terms in the Professional Services Agreement. There shall be no reimbursable expenses or other charges for the scope of work in Exhibit A.

**5. DELIVERABLES:** Per the attached Proposal – Exhibit A.

**6. SPECIAL PROVISIONS:** The CITY’s Project Manager will be Betsy Waite, P.E., waiteed@cityofgainesville.org or 352-393-8187 and the CONSULTANT’s Project Manager will be (name & contact info.)

**IN WITNESS WHEREOF**, the parties hereto have executed this Task Assignment on the day first above written.

CITY OF GAINESVILLE

CONSULTANT

\_\_\_\_\_  
Cynthia W. Curry  
City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT B**

Approved as to Form and Legality:

---

Assistant City Attorney



## ADDENDUM NO. 1

Date: April 4, 2023

Bid Date: Wednesday, 4/19/23  
at 3:00 P.M. (Local Time)

Bid Name: Professional Design Services for WSPP Projects

Bid No.: WSPP-230022-WB

NOTE: This Addendum has been issued only to the holders of record of the specifications.

The original Specifications remain in full force and effect except as revised by the following changes which shall take precedence over anything to the contrary:

1. Any questions shall be submitted in writing to the City of Gainesville Purchasing Division by 3:00 p.m. (local time), April 12, 2023. Questions may be submitted as follows:  
Email: [byrnewm@cityofgainesville.org](mailto:byrnewm@cityofgainesville.org)  
or  
Faxed (352) 334-3163  
Attention: Wendy Byrne
2. Please find attached:
  - a) Copy of the cone of silence information (Financial Procedures Manual Section 41-524 Prohibition of Lobbying in Procurement Matters).
3. The following from the Bid Document information has changed:

**\*\*\*IMPORTANT NOTICE REGARDING PRE-PROPOSAL MEETING\*\*\***  
**The scheduled meeting will occur via ZOOM, NOT Teams;**  
the information to join is provided below. Attendance is not required.

[WSPP-230022-WB Non-Mandatory Pre Bid Zoom Meeting](#)

The following are answers/clarifications to questions received since issuance of the RFQ:

4. Question: There is a Teams link in the RFP. Is this still the best link to use to join the meeting?  
Answer: **NO; please see the link and information provided above.**
5. Question: Can you clarify if the Scope and Related Services (section 2.2 of the Bid Document) is stating that we can submit on just one of these services, or we need to have experience in one or more of the

areas? For example, can we just submit a team of landscape architects? Or do we need to include a full service team in our submittal?

Answer: You can submit a proposal just to cover the services most suited to your company.

6. Question: Can we include a cover before the bid cover?

Answer: Yes

7. Question: Can we include a Table of Contents?

Answer: Yes

8. Question: Can we include a cover letter?

Answer: Yes

9. Question: Is the City looking to award a team of consultants to include all services, or can we submit a proposal just to cover the services that we provide in-house?

Answer: You can submit a proposal just to cover the services most suited to your company.

10. Question: For the Non-mandatory pre-proposal meeting attendees should pre-register to attend, but I am not seeing that link. Also, on page 3 it refers to the pre-proposal meeting as a “Zoom” meeting, but the link is “Teams”. Will you please confirm which platform will be used for the non-mandatory meeting and if we are to pre-register for it.

Answer: **The scheduled meeting will occur via ZOOM, NOT Teams;**  
the information to join is provided below. Attendance is not required.

### [WSPP-230022-WB Non-Mandatory Pre Bid Zoom Meeting](#)

11. Question: For the Proposer Expertise Questions form (selected projects from Attachment A), can firms re-format this form as long as all requested information is included? Additionally, is this page limited to 1 page?

Answer: Please do not reformat the page; if additional space is needed, please add pages.

12. Question: If we need additional space for our responses in the Proposer Expertise Questions form can we re-create the form to use additional pages?

Answer: Yes, you may do so.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

ACKNOWLEDGMENT: Each Proposer shall acknowledge receipt of this Addendum No. 1 by his or her signature below, **and a copy of this Addendum to be returned with proposal.**

CERTIFICATION BY PROPOSER

The undersigned acknowledges receipt of this Addendum No. 1 and the Proposal submitted is in accordance with information, instructions, and stipulations set forth herein.

PROPOSER: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

# CITY OF \_\_\_\_\_ FINANCIAL SERVICES GAINESVILLE PROCEDURES MANUAL

## **41-524      Prohibition of Lobbying in Procurement Matters**

Except as expressly set forth in Resolution 170116, Section 9, during the Cone of Silence as defined herein no person may lobby, on behalf of a competing party in a particular procurement process, City Officials or employees, except the Procurement Division or the procurement designated staff contact person. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

Cone of Silence period means the period between the issue date which allows for immediate submittals to the City of Gainesville Procurement Division in response to an invitation to bid, or a request for proposal, or qualifications, or information, or an invitation to negotiate, as applicable, and the time that City Officials or the Procurement Division, or City Department awards the contract.

Lobbying means when a person seeks to influence or attempt to influence City Officials or employees with respect to a decision of the City, except as authorized by procurement procedures.



## ADDENDUM NO. 2

Date: April 6, 2023

Bid Date: April 19, 2023  
at 3:00 P.M. (Local Time)

Bid Name: Professional Design Services for WSPP Projects  
Bid No.: WSPP-230022-WB

NOTE: This Addendum has been issued only to the holders of record of the specifications and to the attendees of the non-mandatory pre-bid conference held on April 5, 2023.

The original Specifications remain in full force and effect except as revised by the following changes, which shall take precedence over anything to the contrary:

1. Please find attached:
  - a) Questions submitted by potential bidders who attended the non-mandatory pre-bid conference on April 5, 2023, via Zoom as well as questions submitted via email prior to and immediately following the pre-bid conference.
  - b) Copy of the Cone of Silence information (Financial Procedures Manual Section 41-524 Prohibition of Lobbying in Procurement Matters).

### ADDENDUM #2 – Questions and Answers

Question1: Do you want us to submit for specific projects, or assemble the best team with several difference services for all potential projects?

**Answer1:** We want to know what projects your company would be a great fit for, with the caveat that the list is not all inclusive of everything we are going to be working on. It can be a variety of teams or just whatever your company is best suited to work on.

Question2: Do any of the projects have budgets already?

**Answer2:** The City Commission has not approved budgets for any future projects; the scope of work for each project needs to be more “dialed in” before we can get a budget number.

Question3: Is the City looking to build a pool of contractors?

**Answer3:** That is the goal. This is not a single award situation. We could contract with multiple firms. We are looking for design and design support services to supply a wide array of our needs.

Question4: Are you looking for only our qualifications, not qualifications for us as a team member with other consultants?

**Answer4:** You are welcome, in your submittal, to discuss teams in the context of what your firm can handle/put together. Does your firm want to be the project lead and submit a variety of other services, or do you only work on a more narrow scope?

**Question5:** If a firm plans to submit as a prime consultant, does that make them ineligible to submit as a sub-consultant on another team?

**Answer5:** No; on previous RFQs and projects we have seen team overlap.

**Question6:** Regarding local preference, are there specific points awarded for being local?

**Answer6:** This isn't construction so there is no local preference per se; if you have a talent that we cannot source locally, then we will certainly work with vendors outside Alachua County.

**Question7:** So, the City is looking at, for example, The Thomas Center wholesale improvements. The City is the funding source, but would there be other representatives within the City that might lead that project as far as supervising historic architectural improvements, or are you going to be in charge of everything?

**Answer7:** Betsy Waite and Peter McNiece will be facilitating but relying on input from stakeholders both internal and external.

**Question8:** Are you going to require a 330 form or do you want us to just follow the 330 profile numbers for the Scope and Related Services in Section 2.2?

**Answer8:** The form is not required, but please follow 330 profile numbers in describing what your company provides.

**Question9:** Is the City looking for teams led by Architecture or Civil, or can MEP firms submit as Prime for only MEP services?

**Answer9:** The City's Wild Spaces & Public Places program is interested in having a wide variety of professional firms on continuing service contracts. While our larger projects often require civil engineering, landscape architecture, architecture and MEP we do sometimes have projects that only require one specialty. I'd encourage smaller firms to submit individual proposals so we can contract with you directly. Sometimes the Wild Spaces & Public Places program needs a photometric lighting design, a topographic survey, soil borings or other specialty work. We contract with MEP, survey, geotechnical and other specialty firms directly.

**Question10:** The RFQ says "Scope says the firm(s) selected should be able to provide expertise in one or more of the areas listed below..." If MEP/FP firms submit as Prime, are we required to have one of the other bulleted disciplines as a subconsultant?

**Answer10:** No, you are not required to submit more than one area of expertise.

ACKNOWLEDGMENT: Each Proposer shall acknowledge receipt of this Addendum No. 2 by his or her signature on the following page, **and a copy of this Addendum No. 2 is to be returned with proposal.**

CERTIFICATION BY PROPOSER

The undersigned acknowledges receipt of this Addendum No. 2 and the Proposal submitted is in accordance with information, instructions, and stipulations set forth herein.

PROPOSER: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

# CITY OF \_\_\_\_\_ FINANCIAL SERVICES GAINESVILLE PROCEDURES MANUAL

## **41-524      Prohibition of Lobbying in Procurement Matters**

Except as expressly set forth in Resolution 170116, Section 9, during the Cone of Silence as defined herein no person may lobby, on behalf of a competing party in a particular procurement process, City Officials or employees, except the Procurement Division or the procurement designated staff contact person. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

Cone of Silence period means the period between the issue date which allows for immediate submittals to the City of Gainesville Procurement Division in response to an invitation to bid, or a request for proposal, or qualifications, or information, or an invitation to negotiate, as applicable, and the time that City Officials or the Procurement Division, or City Department awards the contract.

Lobbying means when a person seeks to influence or attempt to influence City Officials or employees with respect to a decision of the City, except as authorized by procurement procedures.