

**THIRD AMENDMENT TO AGREEMENT
(CCNA - PROFESSIONAL SERVICES)**

Clerk Tracking No. 16-00015

THIS THIRD AMENDMENT (the "Third Amendment") to the Contract for Professional Engineering Services is made and entered into this **17th day of February 2016** by and between the **CITY OF NAPLES**, a Florida Municipal Corporation (the "City"), and **KIMLEY HORN AND ASSOCIATES, INCORPORATED**, a North Carolina Corporation (the Consultant").

WITNESSETH

WHEREAS, the City and the Consultant entered into that certain Agreement to furnish Contract for Professional Engineering Services, dated **August 20, 2014** (the "Original Agreement") (Reference Original Bid No. **RFP 14-049** and Original Clerk Tracking No. **14-00105** for associated **Professional Services for Central Avenue Improvements Project: Third Amendment: Article Three Time and Article Four Compensation to add (CEI) Construction Engineering and Inspection Services**(the Project"); and

WHEREAS, the parties desire to amend the Original Agreement by this Third Amendment so that the Consultant will be provided additional time and will provide additional services pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. The above recitals are true and correct and are incorporated herein by this Reference.
2. "Article Three, Time" shall be amended to **March 31, 2017** for the provision of additional time the Consultant will have for stated services and close out of the Project: **(CEI) Construction Engineering and Inspection Services**.
3. "Article Four, Compensation" shall be amended for the provision of additional fees by the Consultant in the amount of **\$265,561.00** for City of Naples Central Avenue Improvements Project. **Attachment A-1 Scope of Services and Basis of Compensation** is attached and made a part of this Third Amendment.
4. The terms of this Third Amendment shall control and take precedence over any and all terms, provisions and conditions of Original Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of Original Agreement, except as expressly amended and modified by this Third Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.

5. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Consultant have caused this Third Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

ATTEST:

By: Patricia L. Rambosk
Patricia L. Rambosk, City Clerk

CITY:

CITY OF NAPLES, FLORIDA

By: A. William Moss
A. William Moss, City Manager

Approved as to form and legal sufficiency:

By: Robert D. Pritt
Robert D. Pritt, City Attorney

KIMLEY HORN AND ASSOCIATES, INC.

1777 Main Street, Suite 200

Sarasota, Florida 34236

Att: **Gary Nadeau**, P.E./Project Manager

FEI/EIN Number: On-File (NC)

A North Carolina Corporation

Mike Donahue
Witness (Signature)

Printed
Name: Mike Donahue

By: Gary J. Nadeau
(Signature)

Printed
Name: GARY J. NADEAU

Title: VICE PRESIDENT

Amendment to Professional Services Agreement



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CONSTRUCTION SUPPORT SERVICES:

Central Avenue Improvements from 8th St. to Riverside Circle

PURPOSE

The purpose of this SUPPLEMENTAL AGREEMENT is to describe the additional scope of services to provide Post Design Services and Construction Engineering Inspection for Central Avenue from 8th St. to Riverside Circle. It is anticipated that construction will begin April 2016 and will continue through December 2016 with the majority of construction activities occurring between April and October for the 8th St. and 10th St. roundabouts and streetscape improvements to Goodlette Frank Road. The segment of improvement on Riverside Circle is anticipated to continue through December 2016, if necessary.

ADDITIONAL SCOPE OF SERVICES

Task 1 - Project Administration and Management

- A) Meetings: The CONSULTANT will hold one (1) pre-construction/kick-off meeting with the City Project Manager and other personnel that City requests to attend to discuss proposed project, scheduling, construction issues, and other related items. The CONSULTANT will provide monthly project progress reports by email and meet with CITY personnel on a monthly basis to review the project schedule and progress. For the purposes of this scope it is anticipated that no more than seven (7) monthly progress meetings will be provided.
- B) Utility Coordination: The CONSULTANT will coordinate and attend utility coordination meetings with area utilities to discuss the proposed project parameters, scheduling, construction issues, and other related items.

Task 2 – Post Design Services

Consultant will provide professional construction phase services as specifically stated below:

- *Pre-Construction Conference*. Schedule and host a preconstruction conference no later than ten (10) days after the "Notice to Proceed" as well as recording a record of the proceedings and distributing copies of the summary to the participants and other interested parties within seven (7) calendar days.
- *Shop Drawings and Samples*. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- *Clarifications and Interpretations*. Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by City.
- *Recommendations with Respect to Defective Work*. Consultant will recommend to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such



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observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

- *Change Orders.* Consultant may recommend Change Orders to City, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Task 3 – Construction Engineering Inspection

The Consultant shall observe the Contractor during various operations performed to witness that the materials and methods used by the Contractor substantially conform to the specifications of the contract and designated notes on the plans. The CEI shall advise the City of any omissions, substitutions, defects and deficiencies noted in the work of the Contractor and recommend corrective action. The work provided by the CEI shall, in no way, relieve the Contractor of responsibility for the satisfactory performance of the construction contracts. In conjunction with the fulfilling of these responsibilities, the CEI shall furnish the specific services described below:

- *Site Observation of Construction.* Consultant will provide full-time on-site construction observation services during the construction phase. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep City informed of the general progress of the Work.
 - The purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide City a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
 - Provide services to monitor the Contractor's on-site construction operations, the Contractor's Quality Control testing and inspection and to observe and inspect material entering into the work as required seeing that the quality of workmanship and materials is such that the projects will be completed in substantial conformity with the plans, specifications and other contract provisions, and reject any non-conforming work.
 - The Consultant shall conduct weekly progress meetings initially, then reduce to bi-weekly construction progress meetings with the Contractor, City and Utility Companies to discuss in detail the requirements and responsibilities for such items as Contractor's past week's work, projected work to be completed and outstanding issues that require resolution. The CEI shall prepare and distribute typed, bullet form notes/minutes of the meetings.
 - In the event that the Contractor gives notice, either written or verbal, that he deems certain work to be performed is beyond the scope of the construction contract and he



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intends to claim additional compensation, the CEI shall maintain accurate cost account records of such work. These records shall include manpower and equipment times and materials installed (temporary or permanent) in the portion of the work in dispute.

- Provide a digital photo log or video of project activities, with heavy emphasis on potential claim issues/items and on areas of real/potential public controversy.
 - Verify that the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project. Observe and coordinate with City inspection of types of water and sanitary sewer services; and the rehabilitation of distribution and/or transmission lines for water and sewer systems, and Reuse and Disposal lines, if applicable.
- *Daily Records.* The CEI shall keep detailed records of the Contractor's daily operations and significant events that affect the work and submit to City on a weekly basis. Provide monthly weather day timeline showing rainfall data. Verify quantities of materials installed twice a week. Document significant changes to the project; assist in the interpretation of the plans, specifications and contract provisions; make recommendations to the City to resolve disputes, which arise in relation to the construction contract.
- *Utility coordination support.* Assist the City and the Contractor in coordinating the work of utility companies so that utilities are removed, adjusted or protected in place in a timely manner to minimize delays to construction operations.
- *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- *Inspections and Tests.* Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate, and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.
- *Disagreements between City and Contractor.* Consultant will, if requested by City, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- *Applications for Payment.* Based on its observations and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to City, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities



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provided with pay requests. By recommending any payment, Consultant shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to City free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between City and Contractor that might affect the amount that should be paid.

- *Substantial Completion.* Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with City and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of City, Consultant considers the Work substantially complete, Consultant will notify City and Contractor.
- *Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.
- *Final Estimates.* Prepare the final estimate records in accordance with City guidelines.
- *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

Maintenance of Traffic

- The CEI will provide monitoring and review of Contractor's Work Zone Traffic Control Plan (TCP) and review of the modifications to the Work Zone TCP, including Alternate Work Zone TCP. CEI employees performing such service shall be Advanced Maintenance of Traffic certified. The monitoring provided by the CEI shall, in no way, relieve the Contractor of responsibility for the implementation and inspection of the approved Work Zone TCP.
- Conduct and document verification field reviews of the contractor's maintenance of traffic operations and Quality Control reviews.

Testing:

- Review laboratory test reports provided by an independent licensed testing laboratory hired by the Contractor for the Contractor Quality Control (CQC) testing of component materials and completed work items for substantial conformance with the design concept of the project and information given in the contract documents. Notify the City of test reports which do not substantially conform to the contract documents, prepare a written notice describing any apparent non-conforming permanent work, make recommendations to the City and request the Contractor to carry out the acceptable corrective measures, as authorized by the City.



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SCHEDULE

The ENGINEER will provide the above Scope of Services as expeditiously as possible to meet a mutually agreed upon schedule. It is anticipated that the Scope of Services will be completed in eight (8) months after Notice to Proceed is received unless there are delays outside of the CONSULTANT's control, such as weather delays and other delays associated with project refinements by the City etc.

FEE

The CONSULTANT will perform the services described in Tasks:

Task	Description	Lump Sum Fee
1	Project Administration and Management	\$ 33,982
2	Post Design Services	\$ 35,914
3	Construction Engineering Inspection	\$195,655
Grand Total		\$265,561

All permitting, application, and similar project fees will be paid directly by the CITY. Fees and expenses will be invoiced monthly basis, as applicable, upon the percentage of services performed or actual services performed and expenses incurred as of the invoice date. Payment will be due within 10 days of your receipt of the invoice. If additional efforts become necessary during the performance of the assignment, the CONSULTANT will immediately advise the CITY of any budget revisions.

ACCEPTED:

**CITY OF NAPLES
COLLIER CITY, FLORIDA**

BY: _____

TITLE: _____

DATE: _____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: 
Gary J. Nadeau, PE

TITLE: Vice President

DATE: January 28, 2016

Central Avenue Streetscape Improvements, Construction Phase Services

8th St. to Goodlette Frank Road
City of Naples

Task Description	Sr. PM/IA \$	Engineer/Architect \$	Engineer \$	Designer/Sr. Designer \$	Sr. Inspector (provided by sub-consultant) \$	Administrative/Clerical \$	Total Labor Costs	Subconsultant Service	Total Cost
Task 1 - Project Administration and Management									
Pre Construction Conference/Kick-off Meeting	7	\$ 1,365.00	0	\$ -	0	\$ -	\$ 2,411.00	\$ 250.00	\$ 2,661.00
Progress Meetings & Reports (9 months)	63	\$ 12,285.00	0	\$ -	63	\$ 7,182.00	\$ 20,211.00	\$ 2,250.00	\$ 22,461.00
Utility Coordination	4	\$ 780.00	16	\$ 2,512.00	12	\$ 1,368.00	\$ 7,850.00	\$ 1,000.00	\$ 8,850.00
							\$ 30,482.00		\$ 33,982.00
Task 2 - Post Design Services									
Shop Drawing Reviews	10	\$ 1,950.00	40	\$ 6,280.00	0	\$ -	\$ 10,966.00	\$ -	\$ 10,966.00
Clarifications and Interpretations	20	\$ 3,900.00	40	\$ 6,280.00	0	\$ -	\$ 14,740.00	\$ 1,000.00	\$ 15,740.00
Utility certification and as-built plan review	16	\$ 3,120.00	24	\$ 3,768.00	0	\$ -	\$ 9,208.00	\$ -	\$ 9,208.00
							\$ 34,914.00		\$ 36,914.00
Task 3 - Construction Engineering Observation									
Site Observation and Project Support during construction	185	\$ 36,075.00	185	\$ 29,045.00	0	\$ -	\$ 71,165.00	\$ 7,500.00	\$ 78,665.00
								\$ 117,000.00	\$ 195,665.00
Total	305	\$ 59,475.00	305	\$ 47,885.00	24	\$ 2,952.00	\$ 136,561.00	\$ 12,000.00	\$ 248,561.00