

City of Palm Coast, Florida Agenda Item

Agenda Date: January 9, 2024

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|---|--|------------------|-----------------|
| Department | CONSTRUCTION MANAGEMENT & ENGINEERING | Amount | \$96,745.05 |
| Division | ENGINEERING | Account # | 10015509 034000 |
| Subject: RESOLUTION 2024-XX APPROVING A CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND FLORIDA PARK DRIVE STUDY | | | |
| Presenter: Carl Cote, Director of Stormwater & Engineering | | | |
| Attachments: | | | |
| <ol style="list-style-type: none"> 1. Presentation 2. Resolution 3. Contract 4. Notice of Intent to Award 5. Project Overview 6. Proposal | | | |
| Background: | | | |
| Council Priority: | | | |
| C. Safe and Reliable Services | | | |
| <p>City of Palm Coast Engineering proposes to enter into a contract with Kimley-Horn to generate an engineering study. The study will address two topics which are important to the City Council:</p> <ol style="list-style-type: none"> 1. Speed Limit Posting of Residential Streets 2. Traffic Concerns on Florida Park Drive | | | |
| <u>Study: Speed Limit Posting of Residential Streets</u> | | | |
| <p>Specific Florida statutes define the speed limit a government in Florida is allowed to post on a residential roadway. A study must be performed that indicates another speed limit may be appropriate as an alternate posting.</p> | | | |
| <u>Study: Traffic Concerns on Florida Park Drive</u> | | | |
| Residents have asked for studies related to Florida Park Drive | | | |
| <ol style="list-style-type: none"> a. The City has a median design completed and on the shelf for Florida Park Drive. <ol style="list-style-type: none"> i. What would be the cost to build that project? ii. How much speed reduction can the completed project be expected to generate? iii. How much annual crash reduction could be projected? | | | |

- b. The Manual of Uniform Traffic Control devices requires an ALL-WAY Stop Warrant to be studied and met prior to installation of an intersection all-way stop control
 - i. What are the two highest volume intersecting streets for Florida Park Drive?
 - ii. Do either of those intersections qualify for an all-way stop warrant?

The request is for City Council to approve the contract amount for City Engineering to complete this study. The results are scheduled for a presentation to Council in an April or May 2024 meeting.

In accordance with the City’s Purchasing Policy, staff advertised (RFSQ-SWE-23-68) and solicited bids for a residential speed limit posting study. The City received three (3) bids that were responsive and responsible. The project bid overview and notice of intent to award are attached. Staff recommends approving a contract with Kimley-Horn.

| | |
|--|--------------------|
| Source of Funds Worksheet FY 24 | |
| CM & Engineering -10015509-034000 | \$150,000.00 |
| Total Expended/Encumbered to Date | \$0.00 |
| Pending Work Orders/Contracts | \$0.00 |
| Current (WO/Contract) | <u>\$96,745.05</u> |
| Balance | \$53,254.95 |

Funds for this project are budgeted out of the Construction and Engineering fund for FY24.

Recommended Action:
ADOPT RESOLUTION 2024-XX APPROVING A CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND FLORIDA PARK DRIVE STUDY



Residential Speed Limit Posting Study

FY24 Strategic Action Plan

SAFE & RELIABLE SERVICES

Continue to focus on residential safety, and conduct a comprehensive approach to neighborhood safety.

**N
E
W**



a. Evaluate legality and possibility of lowering residential street speed limits.

b. Explore what tracking devices have successfully reduced residential speeds in [redacted] and communities.

c. Work with [redacted] to identify and enforce problem

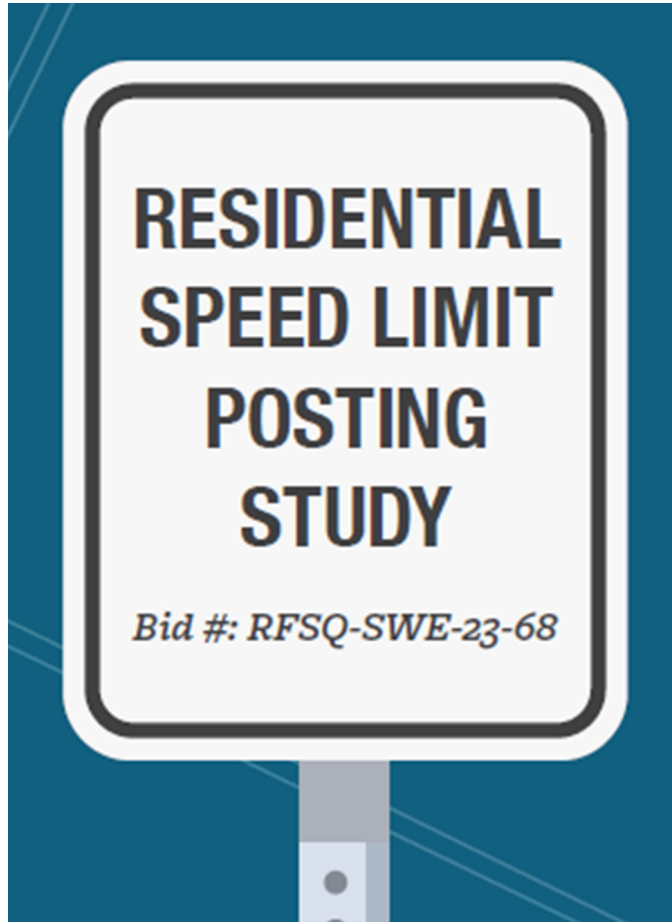
- ▶ City Council Adopted Council Priority on May 2, 2023
- ▶ Budgeted in FY24 Stormwater & Engineering



PRIORITY GOAL UPDATE



Consultant Selection Process



- ▶ Request for Qualifications (RFQ) Issued 9/27/23
- ▶ Three (3) Proposals Received on 11/9/23
- ▶ Kimley-Horn and Associates, Inc., was selected as the top ranked firm by the evaluation team and a Notice of Intent to Award was issued 11/27/23
- ▶ Negotiated Scope and Fee Proposal (two parts)
 - ▶ Residential Speed Limit Posting
 - ▶ Florida Park Drive Evaluation



Residential Speed Study



Florida Statute 316.183 states:

- ▼ Residential roads SHALL be posted at 30 mph

EXCEPT:

- ▼ Where an investigation determines lower speed is appropriate
 - May be 25 MPH
 - May be 20 MPH



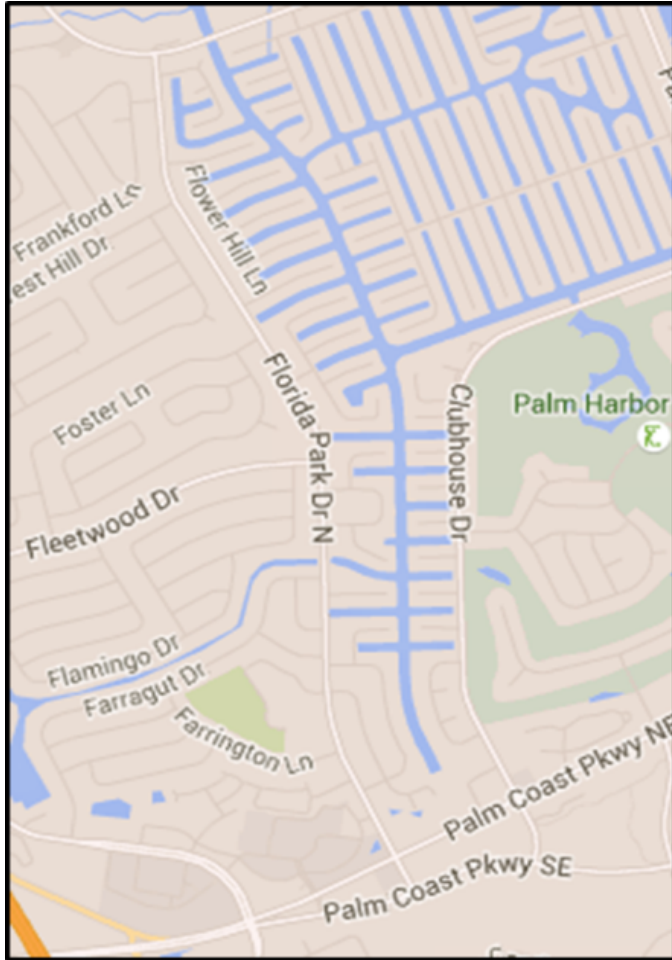
Residential Speed Limit Posting Study

Scope of Work:

- Approach: Florida Department of Transportation (FDOT) Speed Zoning for Highways, Roads, and Streets manual (August 2018) methodology for areawide “blanket” speed restrictions



Florida Park Drive



Summary of Council Actions

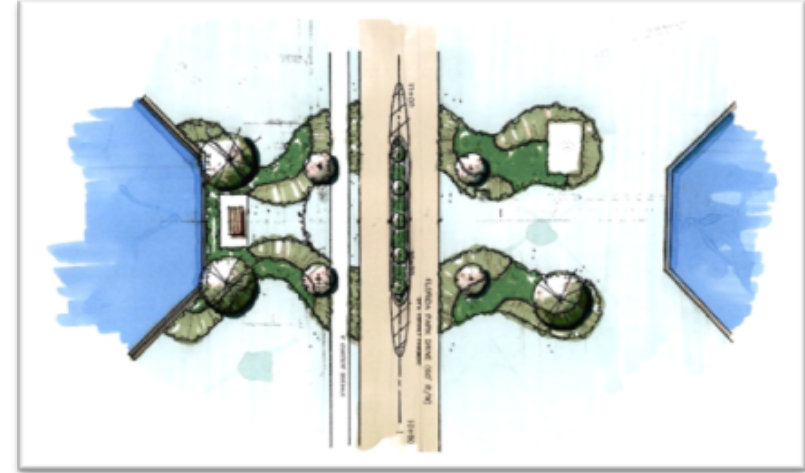
- ✓ Speed Limit & Radar Enforced Signage
- ✓ Truck Restriction
- ✓ Noise Study
- ✓ Air Quality Study
- ✓ Landscape Buffers
- x Landscape Medians (2 locations)
- ☐ Striping (narrow lanes with future resurfacing) –
Not Currently Funded in 5-Year Pavement Management Program



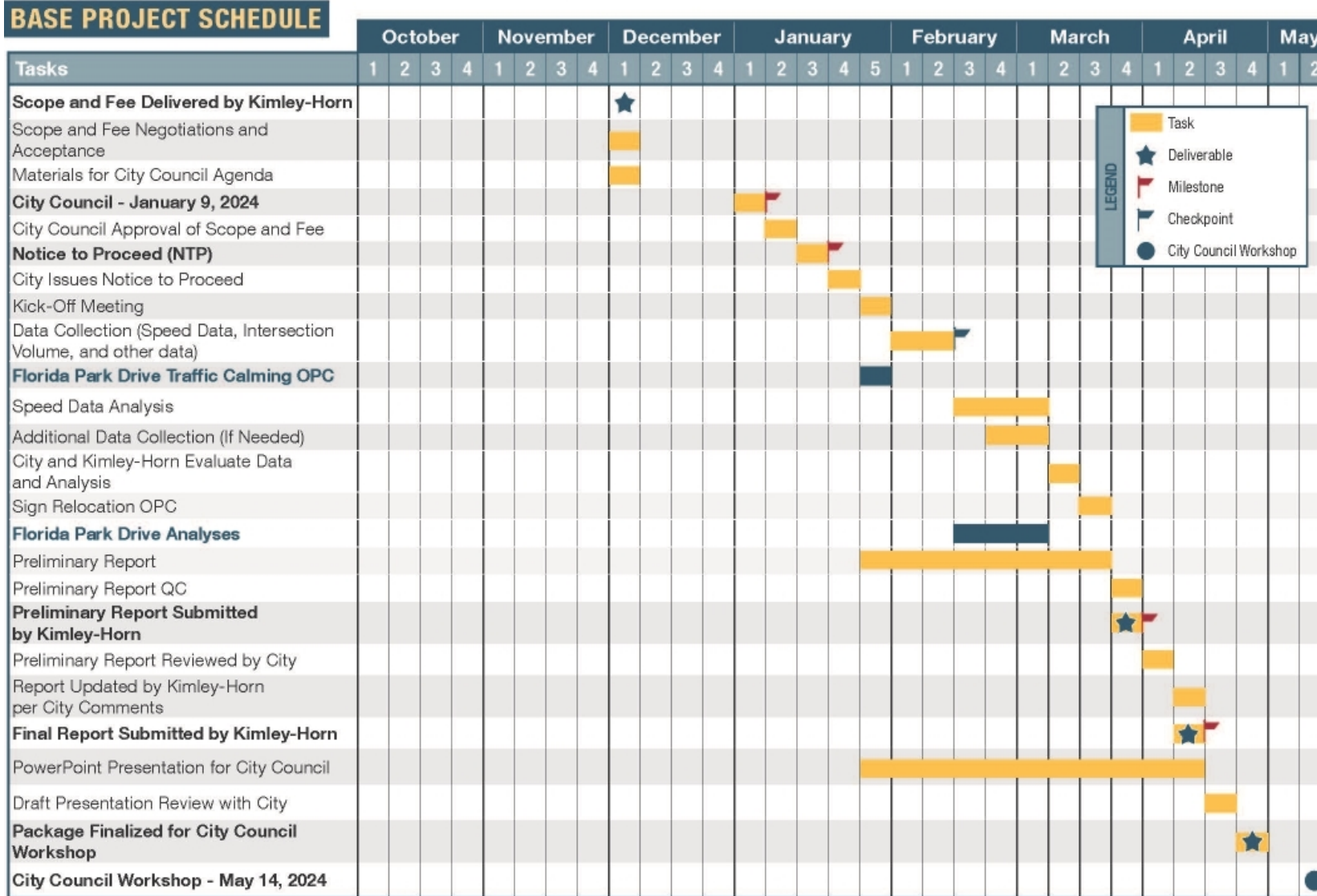
Florida Park Drive

Scope of Work:

- ▼ Traffic Median Analysis
 - Speed Reduction Evaluation
 - Traffic Diversion Evaluation
 - Crash Predication Analysis
- ▼ All-Way Stop Sign Warrant
 - Speed Reduction Evaluation



Project Schedule



Council Action

Approvals:

- ▶ Approve Fee Proposal and Enter into Contract with Kimley-Horn and Associates, Inc., to perform a residential speed limit posting study for a fee of \$63,248.05
- ▶ Approve Fee Proposal and Enter into Contract with Kimley-Horn and Associates, Inc., to perform a Florida Park Drive study for a fee of \$33,745.10



RESOLUTION 2024-____
RESIDENTIAL SPEED LIMIT POSTING STUDY
FLORIDA PARK DRIVE STUDY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING CONTRACT WITH KIMLEY-HORN FOR A RESIDENTIAL SPEED LIMIT POSTING STUDY AND A FLORIDA PARK DRIVE STUDY; PROVIDING LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR FUTURE AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Kimley-Horn desires to provide engineering consultant services for a residential speed posting study and a Florida Park Drive study for the City of Palm Coast; and

WHEREAS, the City Council of the City of Palm Coast desires to approve a contract with Kimley-Horn for the above mentioned services for the City of Palm Coast.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. APPROVAL OF CONTRACT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the contract with Kimley-Horn for a residential speed limit posting study and a Florida Park Drive study, as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 3. FUTURE AMENDMENTS. The City Manager, or designee is hereby authorized to approve any future amendment to the Master Services Agreement for changes totaling less than \$50,000.00 as long as this amount does not exceed the line-item limit for the budgeted purchase. Further, the City Manager has the authority to execute

amendments to the Master Price Agreement on behalf of the City for any other changes that may be necessary.

SECTION 4. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 5. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 6. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 16th day of January 2024.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

JENNIFER NIX, CITY ATTORNEY

Attachments: Exhibit A – Contract Proposal

MASTER SERVICES AGREEMENT
(Professional Services)

THIS MASTER SERVICES AGREEMENT ("Agreement") made and entered into this ____ day of _____, 202__ ("Effective Date"), between KIMLEY-HORN AND ASSOCIATES, INC., whose place of business is 1530 Cornerstone Boulevard, Building 1, Suite 200, Daytona Beach, Florida 32117 ("SUPPLIER") and the CITY OF PALM COAST, a municipal corporation of the State of Florida, holding tax exempt status, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, ("CITY"). CITY and SUPPLIER are collectively referred to herein as "Parties".

WITNESSETH:

WHEREAS, CITY desires to procure **RESIDENTIAL SPEED LIMIT POSTING STUDY SERVICES** from a competent and qualified supplier and has conducted a formal Request for Statement of Qualifications # RFSQ-SWE-23-68 (RFSQ) requesting bids/quotes for the services; and

WHEREAS, SUPPLIER is in the business of providing said services, is competent and qualified to provide said services to CITY, responded to the RFSQ and desires to render said services to CITY in accordance with the terms and conditions stated herein;

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and SUPPLIER agree as follows:

1. SUPPLY OF SERVICES:

A. Work Order/Services. This Agreement standing alone does not authorize performance of Services or require CITY to place any orders. During the term of this Agreement, subject to the terms of a work order ("Work Order"), attached to this Agreement as Exhibit A agreed to by CITY and SUPPLIER, SUPPLIER shall provide the services, including any deliverables ("Services"), set forth in such Work Order. At a minimum, each Work Order will set forth a brief project description, the specific tasks, activities and deliverables to be performed, a timeline for performance and completion, a budget, and a payment schedule, with milestone payments where applicable. Each Work Order must be executed by the Parties prior to the commencement of Services thereunder. SUPPLIER shall use its best efforts to provide Services to CITY as described herein; to keep CITY advised of the progress of the work; to provide CITY with such reports, presentations, charts, graphs, and the like as are appropriate to the nature of the services to be performed hereunder; and to maintain complete files and records of all Services provided. Execution of a Work Order shall be an affirmative and irrefutable representation by SUPPLIER to CITY that SUPPLIER is fully familiar with any and all requisite work conditions related to the provisions of the services.

B. Quality of Services. SUPPLIER shall make no claim for additional time or money based upon its failure to comply with this AGREEMENT. SUPPLIER has informed CITY, and hereby represents to CITY, that it has extensive experience in performing and providing the services described in this AGREEMENT, and that it is well acquainted with the components that are properly and customarily included within such Services and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. SUPPLIER shall diligently and in a professional and timely manner perform and provide the Services included in each Work Order. All Services to be provided shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of CITY, and the laws of any Federal, State, or local regulatory agencies. SUPPLIER shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement. SUPPLIER shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by SUPPLIER under this Agreement, as well as the conduct of its staff, personnel, employees, and agents. SUPPLIER shall work closely with the CITY on all aspects of the provision of the services. SUPPLIER shall be responsible for the professional quality, technical accuracy, competence, methodology, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by SUPPLIER under this Agreement. SUPPLIER shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature

C. Schedule/Delivery. Time is of the essence in the performance of this Agreement and any Work Order hereunder. SUPPLIER shall begin performing services upon execution by both Parties of the Work Order and written notification to proceed by CITY. SUPPLIER and CITY agree to make every effort to adhere to the schedules as described in each

Work Order. However, if SUPPLIER is delayed at any time in the provision of services by any act or omission of CITY or by any other supplier employed by CITY, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. If SUPPLIER'S performance is affected by any event beyond its reasonable control, including fire, explosion, flood, or other acts of God; war, terrorist acts or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers, SUPPLIER shall not be liable in connection with this Agreement to the extent affected by such force majeure event; provided that SUPPLIER gives CITY immediate written notice of the force majeure event and exercises all reasonable efforts to eliminate the effects of the force majeure event on its performance as soon as and to the extent practicable. It is further expressly understood and agreed that SUPPLIER shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

- D. Change Orders.** No changes to a Work Order shall be made without the prior written approval of the Parties. The agreed upon changes shall be detailed in a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. Execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change including but not limited to scope, costs and adjustments to the schedule.
- E. Supplier Designated Representative/Key Personnel.** SUPPLIER shall furnish a SUPPLIER Designated Representative to administer, review, and coordinate the provision of services under this Agreement and each Work Order. Upon request by CITY, SUPPLIER shall submit to CITY detailed resumes of key professional personnel that will be involved in performing services described in the Work Order. CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. If, at any time, SUPPLIER desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.
- F. Replacement of SUPPLIER Personnel.** CITY reserves the right to reject at any time for any lawful reason whatsoever any of SUPPLIER'S personnel assigned by SUPPLIER in connection with any Work Order. SUPPLIER shall as soon as possible thereafter provide a replacement satisfactory to CITY. In no event shall performance of the Services be delayed or shall CITY be charged for any time required for any replacement SUPPLIER'S personnel to be trained to provide or become familiarized with the Services, whether the replacement is requested by CITY or not.
- G. CITY Premises.** At all times while on CITY'S premises, SUPPLIER shall comply with all rules and regulations of CITY. SUPPLIER shall be responsible for its employees and agents while on CITY'S premises.
- H. Ownership of Deliverables.** All deliverables, including any analysis, reference data, presentations, inventions, computer models, survey data, plans and reports, or any other form of written instrument or document and ideas made or conceived by SUPPLIER that result from or in connection with or during the performances of Services for CITY and any proprietary rights thereto, shall be the property of CITY. SUPPLIER agrees to assign, and does hereby assign, to CITY all right, title and interest of whatsoever kind and nature in and to all Deliverables and related proprietary rights. SUPPLIER shall execute, acknowledge, and deliver to CITY all such further papers as may be necessary to enable CITY to own, register, publish or protect said Deliverables and related proprietary rights in any and all countries and to vest title to said Deliverables and related proprietary rights in CITY. SUPPLIER grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the SUPPLIER for the CITY under this Agreement.
- I. Acceptance Criteria.** For any milestone in which SUPPLIER submits a Deliverable, CITY shall have the right to review and test such deliverable for the functional requirements or acceptance criteria specified for such deliverable and shall notify SUPPLIER if there are any deficiencies. SUPPLIER shall use its best efforts to promptly cure any such deficiencies, and after completing any such cure, SUPPLIER shall resubmit the deliverable for review and testing as set forth above. Any applicable warranty period shall only commence after acceptance by CITY.

2. COMPENSATION:

- A. Costs and Expenses.** Compensation to SUPPLIER for the services performed on each Work Order shall be as set forth in the Work Order/Change Order. CITY shall only reimburse SUPPLIER for out-of-pocket expenses such as gas, tolls, mileage, meals, etc., that are directly attributable to the performance of work under a Work Order and have been approved in writing in advance by an authorized representative of CITY.

- B. Invoicing.** Each Work Order shall be invoiced separately. As work progresses for services satisfactorily performed, SUPPLIER shall render to the CITY, at the close of each calendar month, an itemized detailed invoice properly dated, describing all services rendered, proper documentation of the cost of the services, the name and address of SUPPLIER, Work Order Number, Contract Number, the billing period, if applicable, and all other information required by this Agreement. SUPPLIER shall not send any invoices with respect to Services, and no claim from SUPPLIER for payment (including any amount for fees or expenses) will be allowed for any work done by SUPPLIER with respect to such Services, prior to the Parties' executing the Work Order and CITY issuing a purchase order to SUPPLIER with respect to Services. Work performed by SUPPLIER without written approval by the City's Designated Representative shall not be compensated. Any work performed by SUPPLIER without written approval by CITY is performed at SUPPLIER'S own election. Except for charges or expenses of SUPPLIER expressly set forth in the applicable Work Order, CITY shall not be responsible for any other charges or expenses of SUPPLIER or any mark-ups on any expenses of SUPPLIER. SUPPLIER shall submit invoices to CITY with supporting documentation for approved expenses, signed by the Authorized Representative. Original invoices should be submitted via email to ap@palmcoastgov.com.
- C. Payment Terms.** The Florida Prompt Payment Act shall apply when applicable. Invoices which are in an acceptable form to CITY and without disputable items will be processed for payment under the Prompt Payment Act., Fla. Stat. 218.23; payments shall be made by CITY to SUPPLIER not more than once monthly. SUPPLIER shall continue to perform during any dispute of an invoice.
- D. Financial Reconciliation.** At the completion or termination of the Services and before the final payment will be made, SUPPLIER shall, upon request by CITY, provide CITY with a financial reconciliation of funds paid by CITY and tasks completed or partially completed.

3. TERM AND TERMINATION:

- A. Term.** This Agreement shall take effect on the Effective Date and shall terminate at the end of one (1) year. Expiration of the term of this Agreement shall have no effect upon Work Orders and Purchase Orders issued pursuant to this Agreement and prior to the expiration date. Work Orders shall remain in effect until delivery and acceptance of the work authorized by the Work Order as well as during periods of warranty and guarantee.
- B. Termination By CITY.**
 - i. Termination Without Cause. CITY may terminate this Agreement at any time upon fifteen (15) days prior written notice; provided however, that any Work Order entered into shall survive such termination under the terms of this Agreement until the conclusion of such Work Order unless such Work Order is specifically terminated. CITY may terminate any incomplete Work Order at any time and for any or no reason upon written notice to SUPPLIER. In the event of such termination, SUPPLIER shall immediately cease all work in connection with the applicable Work Order after receipt of written notice from CITY unless such notice expressly provides otherwise.
 - ii. Termination for Cause. CITY may terminate this Agreement for cause at any time upon written notice allowing SUPPLIER five (5) days to remedy the breach. Cause shall include but is not limited to:
 1. If, in CITY'S opinion, adequate progress under a Work Order is not being made by SUPPLIER; or
 2. If, in CITY'S opinion, the quality of the services provided by SUPPLIER is/are not in conformance with commonly accepted professional standards, standards of CITY, the requirements of Federal or State regulatory agencies, and SUPPLIER has not corrected such deficiencies in a timely manner as reasonably determined by CITY; or
 3. SUPPLIER or any employee or agent of SUPPLIER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by SUPPLIER; or
 4. SUPPLIER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
 5. SUPPLIER violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

iii. Except where CITY terminates for cause, SUPPLIER shall be entitled to payment for any work performed and accepted by CITY and any CITY approved expenses irrevocably committed prior to the effective date of termination. CITY shall be entitled to an appropriate refund for any amounts advanced to SUPPLIER for Services not yet performed as of the effective date of termination. SUPPLIER shall not be entitled to any damages for such early termination of Services. In no event shall CITY be responsible for any amounts in the aggregate greater than (i) the total that would have been due under such Work Order or (ii) the value of the work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination, whichever is less.

iv. Within five (5) days from the effective date of termination, SUPPLIER shall provide or make available to CITY all materials provided by CITY to SUPPLIER and all CITY materials, including any work-in-progress and all full and partial copies thereof, and shall also submit an invoice to CITY in accordance with the pricing set forth in such Work Order for all work done by SUPPLIER in accordance with such Work Order and this Agreement with respect thereto prior to termination.

C. Termination By SUPPLIER. SUPPLIER shall have the right to terminate this Agreement or any Work Order hereunder by way of a written notice, if CITY commits a material breach of the Agreement or a Work Order hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of default.

D. Cooperation. Upon receipt of a notice for any termination of this Agreement and any Work Order hereunder, the Parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process.

E. Survivability. The terms of this Agreement shall survive in full force and effect as to any incomplete Work Orders and Purchase Orders issued prior to the expiration of this Agreement and such Work Orders and Purchase Orders shall continue to be subject to this Agreement until such Work Orders and Purchase Orders are completed or terminated in accordance with this Agreement.

4. REPRESENTATIONS AND WARRANTIES.

A. SUPPLIER represents and warrants the following:

i. The Services shall be performed strictly in accordance with and conform to this Agreement, the applicable Work Order and any applicable industry standards and practices.

ii. The Services shall be provided by qualified personnel, suitably skilled and trained in the performance of the Services, and performed in a diligent and professional manner.

iii. SUPPLIER has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents required to perform the Services.

iv. All deliverables, material, supplies or goods provided by SUPPLIER shall be free from defects and be of merchantable quality.

v. All deliverables provided shall be original and shall not infringe any copyright or violate any rights of any persons or entities whatsoever, except that SUPPLIER shall not be responsible for any claim arising solely from SUPPLIER'S adherence to CITY'S written instructions or directions which do not involve items of SUPPLIER'S origin, design or selection.

vi. SUPPLIER shall comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the Services provided to the City. SUPPLIER agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment, safety, environmental and health laws.

B. Without limiting any other rights that CITY may have, CITY reserves the right to refuse any Services if SUPPLIER does not, or the Services do not, conform to the foregoing. Acceptance of any part of the Services shall not bind CITY to accept any non-conforming Services simultaneously provided by SUPPLIER, nor deprive CITY of the right to reject any previous or future non-conforming Services.

- C. The representations and warranties contained herein are deemed to be material obligations and shall survive any payment by CITY and shall survive any termination or expiration of this Agreement and any termination or completion of any or all Work Orders.

5. INDEMNIFICATION/SOVEREIGN IMMUNITY AND INSURANCE.

- A. **Indemnification.** SUPPLIER shall indemnify and hold harmless CITY, and its officers and employees, from and against liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent the foregoing are caused by the negligence, recklessness, or intentionally wrongful conduct of the SUPPLIER and other persons employed or utilized by the SUPPLIER in performance of this Agreement, including damage to persons or property. The indemnification obligations herein shall not be limited to the amount of insurance coverage required herein or benefits payable by or for SUPPLIER or its agents under worker's compensation acts, disability benefits acts, or other employee benefits acts. This indemnification provision shall survive any termination or expiration of this agreement. PURSUANT TO FLORIDA STATUTES SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IF THE REQUIREMENT OF THIS SECTION ARE MET.
- B. **Sovereign Immunity.** CITY expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of City as set forth in Section 768.28, Florida Statutes.
- C. **Insurance.** SUPPLIER shall, at SUPPLIER'S own cost, procure insurance in accordance with Exhibit "B" Insurance Requirements, attached hereto and made a part hereof.

6. ALTERNATIVE DISPUTE/CONFLICT RESOLUTION.

- A. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties agree to exhaust the conflict resolution procedures reasonably imposed by CITY prior to filing suit or otherwise pursuing legal remedies.
 - B. SUPPLIER agrees that it will file no suit nor otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the dispute resolution procedures set forth in subsection (A) of this Section.
 - C. In the event that the CITY'S dispute resolution procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the Parties shall exercise their best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be reasonably imposed by CITY. The costs of voluntary mediation shall be shared equally among the Parties participating in the mediation.
- 7. ASSIGNMENT.** SUPPLIER shall not assign this Agreement, any rights hereunder or any monies due or to become due, nor delegate or subcontract any obligations or work, without the prior written consent of CITY, and any such purported assignment without such written consent shall be void. This Agreement shall be binding on SUPPLIER'S heirs, executors, legal representatives, successors and permitted assigns.

- 8. AUDIT OF BOOKS AND RECORDS.** SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement during the term of this Agreement and for five (5) years subsequent to the expiration or termination of this Agreement and/or final payment whichever is later. CITY or CITY'S authorized representative, may at all reasonable times during the term of this Agreement and for five (5) years thereafter and upon reasonable notice, inspect and audit the books, documents, papers, accounting records and other evidence pertaining to this Agreement and SUPPLIER shall make such materials available at SUPPLIER'S office upon CITY'S request. In the event any audit or inspection conducted after final payment reveals any overpayment by CITY under the terms of this Agreement, SUPPLIER shall refund such overpayment to CITY within thirty (30) days of notice by CITY. SUPPLIER agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- 9. AUTHORIZED REPRESENTATIVE.** Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for SUPPLIER certifies/certify that he/she/they is/are authorized to bind SUPPLIER fully to the terms of this Agreement.

10. CHOICE OF LAW/JURISDICTION. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.

11. COMPLIANCE WITH LAWS. SUPPLIER agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes applicable to the Services including, but not limited to, the following:

A. Discrimination/ADA. SUPPLIER shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUPPLIER, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. If SUPPLIER or an affiliate is placed on a discriminatory vendor list, such action may result in termination by CITY. SUPPLIER shall certify, upon request by CITY, that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.

B. Drug Free Workplace. SUPPLIER shall certify, upon request by CITY, that SUPPLIER maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.

C. Immigration. CITY shall not intentionally award publicly-funded contracts to any SUPPLIER who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the Immigration and Nationality Act (INA)]. CITY shall consider the employment by SUPPLIER of unauthorized aliens, a violation of Section 274A (e) of the INA.

D. Scrutinized Companies. Contractor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Contractor has falsely certified facts under this paragraph or if Contractor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Contract, City will have all rights and remedies to terminate this Contract consistent with Section 287.135, F.S., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, F.S., as amended.

E. Contractor Preference. Pursuant to Section 287.05701, F.S., the City cannot give preference to a Contractor based on the Contractor's social, political, or ideological interests such as:

- a. The Contractor's political opinions, speech, or affiliations;
- b. The Contractor's religious beliefs, religious exercise, or religious affiliations;
- c. The Contractor's lawful ownership of a firearm;
- d. The Contractor's lawful engagement in lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition;
- e. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
- f. The Contractor's support of the state or federal government in combating illegal immigration, drug trafficking, or human trafficking;
- g. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described herein;
- h. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law: 1) environmental standards, including emissions standards, benchmarks, requirements or disclosures; 2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

F. Conflict of Interest.

- i. SUPPLIER hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of SUPPLIER, or any interest in property that SUPPLIER may have.
- ii. SUPPLIER shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.
- iii. SUPPLIER further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to CITY.
- iv. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

12. CONTRACT DOCUMENTS. The RFSQ and all submissions prepared by SUPPLIER in response to the RFSQ are incorporated herein by reference to the extent not inconsistent with the terms and conditions as set forth herein. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

13. ENFORCEABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The waiver of a breach of any term or condition of this Agreement or Purchase Order hereunder shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereunder. In addition, neither CITY'S review, approval or acceptance of, nor payment for, any Goods provided hereunder shall be construed to operate as a waiver of any rights under this Agreement or the Purchase Order.

14. ENTIRE AGREEMENT. This Agreement shall constitute the entire understanding of the Parties and shall not be changed, amended, altered or modified except in writing and signed by authorized representatives of the Parties with the same formality and equal dignity herewith. All prior agreements, whether written or oral between the Parties relating to the subject matter hereof are superseded by this Agreement and are of no further force or effect. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No term included in any invoice, estimate, confirmation, acceptance or any other similar document in connection with this Agreement or a Work Order hereunder shall be effective unless expressly stated otherwise in a writing signed by authorized representatives of the Parties with the same formality and equal dignity herewith. Any amendments to this Agreement must be in writing signed by both Parties. In the event of a conflict between this Agreement and a Work Order or any other writing, this Agreement controls over such inconsistent or additional terms.

15. E-VERIFY REGISTRATION AND USE. Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Palm Coast.

By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.05, F.S. (2023), "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to execute the same affidavit and to maintain a copy of such affidavits for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, F.S. (2023), as amended, and the Contractor will not be awarded a

public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

- 16. EXCLUSIVITY.** The Parties agree that CITY hereunder is not guaranteeing that any minimum amount of Services will be ordered from SUPPLIER under this Agreement. The relationship between SUPPLIER and CITY is not one of exclusivity. Without limiting the foregoing, SUPPLIER agrees that CITY has the right to benchmark, whether formally or informally, any services offered by SUPPLIER or any terms of this Agreement or any Work Order and to competitively bid any project it may have.
- 17. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement and all Work Orders is that of independent contractors. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as making the SUPPLIER, (including its officers, employees, and agents), the agent, representative, or employee of CITY for any purpose, or in any manner, whatsoever. Persons employed by SUPPLIER in the performance of Services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY'S officers and employees either by operation of law or by CITY.
- 18. INTERPRETATION.** This Agreement is the result of bona fide arms length negotiations between CITY and SUPPLIER and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.
- 19. NOTICES.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

FOR CITY:

The City Manager
City of Palm Coast
160 Lake Avenue
Palm Coast, Florida 32164

FOR SUPPLIER:

Stewart Robertson
Kimley-Horn and Associates, Inc.
1530 Cornrestone Blvd. Bld 1, Ste 200
Daytona Beach, Florida 32117

- 20. ORDER OF PRECEDENCE.** In the event of a conflict between the terms and conditions of this Agreement and any related exhibits, attachments, proposals, or Work Orders, the terms of this Agreement shall take precedence and control over those of the exhibit, attachment, proposal, or Work Order unless otherwise agreed to in writing by all Parties. In the event of a conflict between the terms and conditions of a Work Order and any related exhibits, attachments, or proposals, the terms of the Work Order shall take precedence and control over those of the exhibit, attachment, or proposal thereto unless otherwise agreed to in writing by all Parties.

21. PUBLIC RECORDS LAW.

- A.** The Parties specifically acknowledge that this Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If SUPPLIER 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, SUPPLIER shall:
 - i. Keep and maintain all public records required by CITY to perform the Services herein; and
 - ii. Upon request from CITY'S custodian of public records, provide CITY 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 Chapter 119, F.S. or as otherwise provided by law; and
 - iii. 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 Agreement Term and following completion of the Agreement if SUPPLIER does not transfer the records to CITY; and
 - iv. Upon completion of the Agreement, transfer, at no cost, to CITY all public records in possession of SUPPLIER or keep and maintain public records required by CITY to perform the Services herein. If SUPPLIER transfers all

public records to CITY upon completion of the Agreement, SUPPLIER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUPPLIER keeps and maintains public records upon completion of the Agreement, SUPPLIER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format compatible with the information technology systems of CITY.

B. All requests to inspect or copy public records relating to the Agreement shall be made directly to CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to CITY. A contractor who fails to provide the public records to CITY within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, SUPPLIER shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from SUPPLIER'S failure to comply with these requirements.

c. IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, cityclerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.

22. SEVERABILITY. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

23. SUBCONTRACTORS. In the event that SUPPLIER, during the course of this Agreement, requires the Services of any subcontractors or other professional associates in connection with performance of this Agreement or any Work Order, SUPPLIER must first secure CITY'S prior express written approval. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractors to assume performance of SUPPLIER'S duties commensurately with SUPPLIER'S duties to CITY under this Agreement, it being understood that nothing herein shall in any way relieve SUPPLIER from any of its duties under this Agreement or any Work Order hereunder. SUPPLIER shall remain fully responsible for the performance of subcontractors or other professional associates. SUPPLIER shall provide CITY with executed copies of all subcontracts.

24. WAIVER. The failure of CITY to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date below written for execution by the CITY.

CITY OF PALM COAST

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

By: _____
(Authorized Signatory)

Print: Denise Bevan

Print Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

Exhibits

A - Work Order Template Form

B - Insurance Requirements

Exhibit A - Work Order Template Form



Work Order # _____ PO# _____ Project Mgr. _____
name

SUPPLIER NAME: _____

Contract Project Title _____ Work Order Project Title _____

Contract Bid # _____ Work Order Bid # _____

Contract Resolution # _____ Work Order Resolution # _____

TOTAL COST: \$ _____

1. **INCORPORATION BY REFERENCE** The provisions of the Contract referenced above dated _____ ("Agreement") are hereby expressly incorporated by reference into and made a part of this Work Order.
2. **METHOD OF COMPENSATION** (chose one): _____ FIXED FEE/LUMP SUM _____ UNIT BASED/ NOT TO EXCEED*
3. **PRICING** (chose one): _____ ATTACHED _____ INCLUDED IN CONTRACT
4. **SCHEDULE** (chose one): _____ AS NEEDED BASIS _____ SHALL BE COMPLETED BY - ____ / ____ /20 ____
5. **DESCRIPTION OF SERVICES** (chose one): _____ ATTACHED _____ INCLUDED IN CONTRACT
6. **OTHER ATTACHMENTS TO THIS WORK ORDER:** _____ No _____ Yes If yes, identify: _____
7. **MISCELLANEOUS:** _____
8. **TIME IS OF THE ESSENCE:** The obligation of Supplier to perform services shall commence upon execution of this Work Order and shall be completed as set forth above. Time is of the essence. Failure to meet the completion date shall be a material default and may be grounds for termination of this Work order and the Agreement.
9. **CONFLICT.** In the event of a conflict between the terms and conditions of the Agreement and this Work Order, the terms of the Agreement shall govern unless otherwise agreed to in writing by all parties. In the event of a conflict between the terms and conditions of this Work Order and any attachments, the terms of this Work Order shall govern unless otherwise agreed to in writing by all parties.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this _____ day of _____, 20____, for the purposes stated herein.

SUPPLIER APPROVAL

CITY APPROVAL

By: _____

By: _____

Print: _____

Print Name: _____

Title: _____

Title: Assistant City Manager or Designee

Date: _____

Date: _____

BPO Use Only:

Req # _____

Requisition Creator _____
name

Select one: _____ New PO _____ Increase to Existing/ P.O. Adjustment

EXHIBIT B
Insurance Requirements

1. GENERAL.

- 1.1. Prior to performance under this Agreement, SUPPLIER shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by SUPPLIER and shall be maintained in force until the Agreement completion date. The insurance provided by SUPPLIER shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of SUPPLIER. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by SUPPLIER, SUPPLIER shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, SUPPLIER shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. SUPPLIER waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another supplier shall relieve SUPPLIER of SUPPLIER'S full responsibility for performance of any obligation including SUPPLIER indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of SUPPLIER to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve SUPPLIER, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

2. INSURANCE COMPANY REQUIREMENTS.

- 2.1. SUPPLIER shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- 2.2. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to maintain the requisite Best's Rating and Financial Size Category, SUPPLIER shall, as soon as SUPPLIER has knowledge of any such circumstance, immediately notify CITY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as SUPPLIER has replaced the unacceptable insurer with an insurer acceptable to CITY, SUPPLIER shall be deemed to be in default of this Agreement.

3. **COVERAGE.** Without limiting any of the other obligations or liability of SUPPLIER, SUPPLIER shall, at SUPPLIER'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum

requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

3.1. Workers' Compensation/Employer's Liability.

A. Workers Compensation Coverage SUPPLIER'S insurance shall cover SUPPLIER for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. SUPPLIER will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SUPPLIER and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

B. Employers Liability Coverage
 \$500,000.00 (Each Accident)
 \$500,000.00 (Disease-Each Employee)
 \$500,000.00 (Disease-Policy Limit)

3.2. Commercial General Liability.

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

| | LIMITS |
|---|--|
| General Aggregate (per project) greater) | \$2,000,000.00 or 2x Per Occurrence (whichever is greater) |
| Personal & Advertising Injury Limit | \$1,000,000.00 |
| Each Occurrence Limit | \$1,000,000.00 |

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

3.3. Business Auto Policy.

SUPPLIER'S insurance shall cover SUPPLIER for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by SUPPLIER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, SUPPLIER shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by SUPPLIER shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

| | LIMITS |
|---|----------------|
| Each Occurrence Bodily Injury and Property Damage Liability Combined | \$1,000,000.00 |

3.4. Professional Liability: SUPPLIER shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting SUPPLIER against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by SUPPLIER.



City of PALM COAST

Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: Residential Speed Limit Posting Study - RFSQ-SWE-23-68

Date: 11/27/2023

Appeal Deadline: Appeals must be Filed by 5:00 PM on 11/30/2023

| Firm | Points |
|------------------------------|--------|
| Kimley-Horn. | 88.67 |
| England-Thims & Miller, Inc. | 81.33 |
| LTG, Inc. | 53.67 |

The intent of the City of Palm Coast is to award Residential Speed Limit Posting Study to Kimley-Horn.

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director

For questions regarding the NOIT please contact Procurement Coordinator sknolan@palmcoastgov.com.

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the Assistant City Manager, Lauren Johnston (LJohnston@palmcoastgov.com) shall constitute a waiver of the protest proceedings.





RFSQ-SWE-23-68 - RESIDENTIAL SPEED LIMIT POSTING STUDY

Project Overview

| | |
|----------------------------|---|
| Project Details | |
| Reference ID | RFSQ-SWE-23-68 |
| Project Name | RESIDENTIAL SPEED LIMIT POSTING STUDY |
| Project Owner | Shannon Nolan |
| Project Type | RFSQ |
| Department | Procurement |
| Budget | \$0.00 - \$0.00 |
| Project Description | Florida Statutes provide guidance for posting of speed limits on residential roadways. Those guidelines refer to an engineering study in cases where a speed limit lower than 30 mph is posted for residential or central business district roadways. |
| Open Date | Sep 27, 2023 8:00 AM EDT |
| Intent to Bid Due | Nov 08, 2023 2:00 PM EST |
| Close Date | Nov 09, 2023 2:00 PM EST |

| Highest Scoring Supplier | Score |
|--------------------------|-----------|
| Kimley-Horn | 86.67 pts |

Seal status



| Requested Information | Unsealed on | Unsealed by |
|-----------------------------|--------------------------|---------------|
| RFSQ Proposal | Nov 09, 2023 2:41 PM EST | Shannon Nolan |
| Required Forms 1 - 5 | Nov 09, 2023 2:41 PM EST | Shannon Nolan |
| Addendum (Signed and Dated) | Nov 09, 2023 2:41 PM EST | Shannon Nolan |

Conflict of Interest

Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: * has direct or indirect financial interest in the award of the contract to any proponent; * is currently employed by, or is a consultant to or under contract to a proponent; * is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, * has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

| Name | Date Signed | Has a Conflict of Interest? |
|-------------------|--------------------------|-----------------------------|
| Tyler Gibson | Nov 14, 2023 7:08 AM EST | No |
| Michael Grunewald | Nov 16, 2023 4:02 PM EST | No |
| Vineesh Crawford | Nov 21, 2023 8:21 AM EST | No |
| Shannon Nolan | Nov 09, 2023 2:57 PM EST | No |



Project Criteria

| Criteria | Points | Description |
|------------------------------------|-----------|---|
| Administrative Review | Pass/Fail | Check for submission as requested and completeness |
| Project Understanding and Proposal | 10 pts | This section shall establish that the Proposer understands the City's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements |
| Experience with Similar Projects | 20 pts | Provide a listing of similar projects, maximum of three, by a team member who is specifically part of the team proposed in the response. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets |



| | | |
|------------------|--------|--|
| | | Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements |
| Project Study | 30 pts | Provide a detailed Study. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements |
| Project Team | 10 pts | Identify the project team members, including major and minor sub-consultants, and provide their contact information and technical resumes. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements |
| Project Schedule | 30 pts | Provide detail that identifies anticipated major milestones and their associated phasing as well as the allocation of existing resources. 0 = Unacceptable – No Response Provided or Information Does not Meet or Comply with Criteria 1 = Poor – Partial submittal or very limited info meets requirements 2 = Below |



| | | |
|--------------|----------------|--|
| | | Standard – Mostly does not meet requirements 3 = Marginal – Partially Meets Criteria 4 = Average – Barely Meets Requirements 5 = Above Average – Meets Requirements 6 = Good – Slightly above Requirements 7 = Very Good – Meets Requirements with partial that exceed 8 = Well above average – Meets Requirements with majority that exceed 9 = Excellent – Exceeds Requirements 10 = Outstanding – Far Exceeds Requirements |
| Total | 100 pts | |



Scoring Summary

Active Submissions

| | Total | Administrative Review | Project Understanding and Proposal | Experience with Similar Projects | Project Study |
|------------------------------|------------------|------------------------------|---|---|----------------------|
| Supplier | / 100 pts | Pass/Fail | / 10 pts | / 20 pts | / 30 pts |
| Kimley-Horn | 86.67 pts | Pass | 8.667 pts | 16 pts | 25 pts |
| England-Thims & Miller, inc. | 81.33 pts | Pass | 8.667 pts | 15.67 pts | 22.67 pts |
| LTG, Inc. | 53.67 pts | Pass | 6.667 pts | 13.33 pts | 15 pts |



| | Project Team | Project Schedule |
|------------------------------|---------------------|-------------------------|
| Supplier | / 10 pts | / 30 pts |
| Kimley-Horn | 9.333 pts | 27.67 pts |
| England-Thims & Miller, inc. | 8.333 pts | 26 pts |
| LTG, Inc. | 9.333 pts | 9.333 pts |



December 4, 2023

Mr. Michael Grunewald
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

RE: Residential Speed Limit Posting Study

Project Understanding

It is our understanding that the City of Palm Coast wants to perform a speed limit posting study on their residential and Central Business Districts (CBD) roadways as depicted in the RFQ document (RFSQ-SWE-23-68). Kimley-Horn understands the City wants a cost estimate for replacing speed limit signs identified in the speed limit posting study.

Kimley-Horn understands the City wants an assessment of the completed design for central diversion medians (traffic calming device) at two (2) locations on Florida Park Drive to determine the following: probable speed reduction, traffic diversion impact, crash prediction analysis, and identify the impact on the travel time of an emergency vehicle along the segment. Kimley-Horn understands the City wants an all-way stop sign warrant for two (2) intersections along Florida Park Drive and a cost estimate for the construction of the Florida Park Drive central diversion median.

Scope of Services

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

Task 1: Speed Limit Posting Study

Task 1A: Project Kickoff – Kimley-Horn will conduct one (1) kickoff meeting with the City to discuss and confirm the overall project objectives and collaborate on determining the field speed sample locations. Kimley-Horn, along with City staff, will consider data collection locations based on the local street network, including block length, street connectivity, neighborhood access points, and boundaries.

Following the meeting, Kimley-Horn will develop a speed data collection plan (map) illustrating the locations where speed will be measured on the roadways within the City. Contiguous neighborhoods for inclusion within each areawide “blanket” speed restriction will be identified and mapped. Kimley-Horn will submit the speed data collection plan to city staff for review before collecting the data.

Task 1B: Data Collection – Upon city approval of the locations, Kimley-Horn will collect traffic speed and volume counts at up to fifty (50) locations within the City. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days when local schools are in normal operation. Data collection reports for each location will be included in the analysis documentation. Kimley-Horn will perform a windshield field visit to assess traffic behavior. Additional data collection could be performed under **Tasks 1F and 1G**.

Kimley-Horn will develop a list of city streets within each neighborhood that are not subject to the areawide “blanket” speed study due to possessing a type and character different from the sample streets selected for data collection.

Task 1C: Analysis – Speed limit analysis will be performed for the identified streets to determine if the criteria outlined in Section 316.189 F.S. support creating an areawide speed limit. Kimley-Horn will analyze common descriptive statistical measures utilized in determining prevailing speeds. Following the analysis, Kimley-Horn will meet with City staff to discuss the findings. Kimley-Horn will perform up to three (3) meetings, in addition to the kickoff meeting, for a total of four (4) meetings as part of **Task 1**.

Task 1D: Documentation – Kimley-Horn will develop a report documenting all data collection efforts, data, analysis, conclusions, and recommendations described in the preceding tasks. Kimley-Horn will prepare the draft report documentation for submittal to City staff. Kimley-Horn will address up to two (2) rounds of comments.

Task 1E: City Council Presentation Materials – Kimley-Horn will prepare a PowerPoint Presentation summarizing the analysis and findings of the speed limit posting study. Kimley-Horn will present the findings to the City Council during one (1) regularly scheduled meeting.

Task 1F: Additional Data Collection #1 – If requested by the City, Kimley-Horn will collect traffic speed and volume counts at up to twenty-five (25) locations within the City, in addition to **Task 1B**. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days, when local schools are in normal operation.

Task 1G: Additional Data Collection #2 – If requested by the City, Kimley-Horn will collect traffic speed and volume counts at up to twenty-five (25) locations within the City, in addition to **Tasks 1B and 1F**. Speed and volume data will be collected for a continuous 24-hour period at each location during good weather and roadway conditions on a standard weekday (Tuesday, Wednesday, or Thursday). Data collection will be performed on school days, when local schools are in normal operation.

Task 2: Florida Park Drive (FPD) Study

Task 2A: FPD Speed Reduction Evaluation – Kimley-Horn will evaluate the speed differential along Florida Park Drive as a result of the traffic calming design provided by the City. Collected speed data will be compared to projected speed with the traffic median design along FPD. The forecasted speed along FPD and at the traffic calming locations will be estimated by performing travel time runs at up to two (2) similar locations.

Task 2B: FPD Traffic Diversion – Kimley-Horn will evaluate the FPD median design for probable traffic diversion to other roadways. Kimley-Horn will review alternate routes to FPD and compare travel times. Kimley-Horn will collect intersection traffic counts at up to two (2) intersections.

Task 2C: FPD Crash Prediction Analysis – Kimley-Horn will review the most recent five (5) years of crash data along FPD and perform a crash prediction analysis in accordance with the *Highway Safety Manual* (HSM) methodology. Kimley-Horn will review HSM for countermeasure and crash reduction

factors appropriate to the proposed median designs. The analysis will summarize existing total crashes and projected crashes with the traffic calming in place.

Task 2D: All-way Stop Sign Warrant – Kimley-Horn will perform an all-way stop sign warrant at two (2) intersections along FPD. All-way stop sign warrants will be performed in accordance with MUTCD Chapter 2B. Kimley-Horn will collect intersection traffic counts at two (2) intersections for a period of eight (8) hours. Kimley-Horn will perform a field visit to survey the study intersections and document traffic conditions and other roadway and traffic and roadway characteristics. Field visits will be performed by a licensed professional engineer (P.E.). Kimley-Horn will perform an operational analysis at the two (2) study intersections for existing and all-way stop-controlled conditions during the AM (7:00 AM – 9:00 AM) and PM (4:00 pm – 6:00 PM) peak hours of the adjacent street traffic. The operational analysis will be performed based on the *Highway Capacity Manual* (HCM) with the use of *Synchro* software.

Task 2E: FPD Median Additions Opinion of Probable Cost (OPC) – Kimley-Horn will perform an opinion of probable cost (OPC) for the median design along FPD. The OPC will be based on the plan sheets provided by the City. Kimley-Horn will use the latest FDOT unit cost to develop the cost estimate. The OPC will be summarized in a table and included in the report.

Task 2F: Documentation – Kimley-Horn will develop a report documenting all efforts, data, analysis, conclusions, and OPC described in **Tasks 2A** through **Task 2F** to be included as an attachment of the report for **Task 1**. Kimley-Horn will prepare the draft report documentation for submittal to City staff. Kimley-Horn will address up to two (2) rounds of comments.

Task 3: Speed Limit Sign Replacement Opinion of Probable Cost (OPC)

Kimley-Horn will perform a site visit to geolocate the speed limit signs to be replaced. Signage locations will be mapped and illustrated in an exhibit. Kimley-Horn will perform an opinion of probable cost (OPC) for the replacement of the speed limit signs within the neighborhoods of the City as identified in **Task 1**. The OPC will be performed in accordance with the latest FDOT unit cost.

Additional Services

Any services not specifically provided for in the above scope will be considered additional services. Additional services we can provide include, but are not limited to, the following:

- Additional data collection beyond described above
- Additional intersection operational analysis
- Corridor Studies
- Feasibility Analysis
- Conceptual planning and design
- Traffic Signal design

Schedule

Kimley-Horn will provide our services as outlined on the project schedule attached to this proposal.

Fee

Kimley-Horn will perform the services included in the Tasks above for the fee shown below.

| | Hours | | | | | | Fee |
|---|--------------------|-----------------|------------|----------------|---------------|---------------------|----------------------|
| | Engineering Intern | Project Manager | Engineer 2 | Chief Engineer | Admin Support | Data Collection Fee | |
| Hourly Rate | \$ 138.94 | \$ 178.75 | \$ 178.75 | \$ 286.02 | \$ 95.57 | - | |
| Task 1: Speed Limit Posting Study | | | | | | | \$ 63,248.05 |
| <i>Task 1A: Kick off</i> | 4 | 4 | | 4 | | | \$ 2,414.81 |
| <i>Task 1B: Data Collection</i> | 18 | 9 | | | 2 | \$ 12,250.00 | \$ 16,550.76 |
| <i>Task 1C: Analysis</i> | 40 | 9 | 9 | | | | \$ 8,775.01 |
| <i>Task 1D: Documentation</i> | 27 | 18 | | 9 | 2 | | \$ 9,734.09 |
| <i>Task 1E: City Council Presentation Materials</i> | 27 | 18 | | 9 | 4 | | \$ 9,925.22 |
| <i>Task 1F: Additional Data Collection #1</i> | 9 | | 2 | | 2 | \$ 6,125.00 | \$ 7,924.08 |
| <i>Task 1G: Additional Data Collection #2</i> | 9 | | 2 | | 2 | \$ 6,125.00 | \$ 7,924.08 |
| Task 2: Florida Park Drive (FPD) Study | | | | | | | \$ 33,497.00 |
| <i>Task 2A: Speed Reduction Evaluation</i> | 18 | 2 | 4 | | | | \$ 3,573.39 |
| <i>Task 2B: FPD Traffic Diversion</i> | 18 | 2 | 4 | | | \$ 1,000.00 | \$ 4,573.39 |
| <i>Task 2C: FPD Crash Prediction Analysis</i> | 18 | 2 | 9 | | | | \$ 4,467.12 |
| <i>Task 2D: All-way Stop Sign Warrant</i> | 40 | 2 | 9 | | | \$ 2,500.00 | \$ 10,023.78 |
| <i>Task 2E: FPD Median Additions OPC</i> | 40 | | 9 | 1 | | | \$ 7,452.30 |
| <i>Task 2F: Documentation</i> | 18 | 4 | | | 2 | | \$ 3,407.02 |
| Task 3: Sign Replacement OPC | 27 | | 5 | 1 | | | \$ 4,931.10 |
| | | | | | | TOTAL FEE | \$ 101,676.15 |

Closure

We appreciate the opportunity to provide these services to you and the City of Palm Coast. If you concur with all the foregoing and wish to direct us to proceed with the services, please issue the appropriate work authorization under our existing contract. Fees and times stated in this Scope of Services are valid for sixty (60) days after the date of this letter. Please get in touch with me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Emanuelle D Rodriguez Muñiz, PE (FL, PR)
Project Manager

Michael R. Woodward, P.E.
Associate

CITY OF PALM COAST

A Municipality

By:

Mayor David Alfin

Date:

_____, Witness

(Print or Type Name)

Official Seal:

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If Kimley-Horn initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance

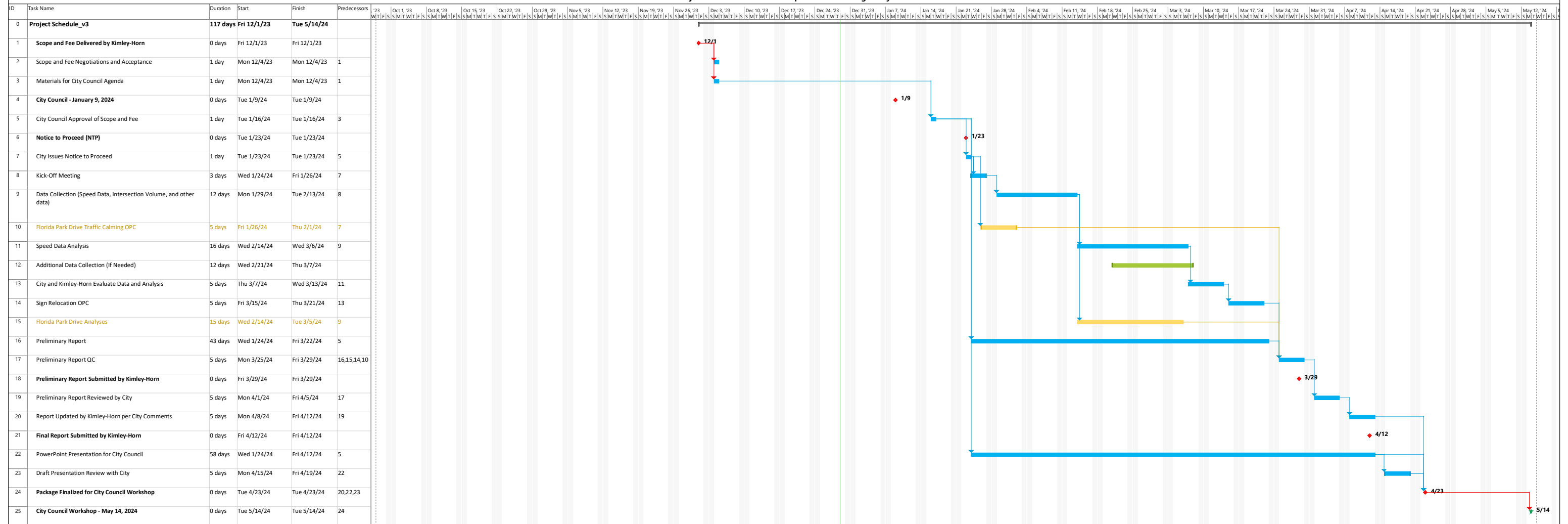
of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.

- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**

- a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

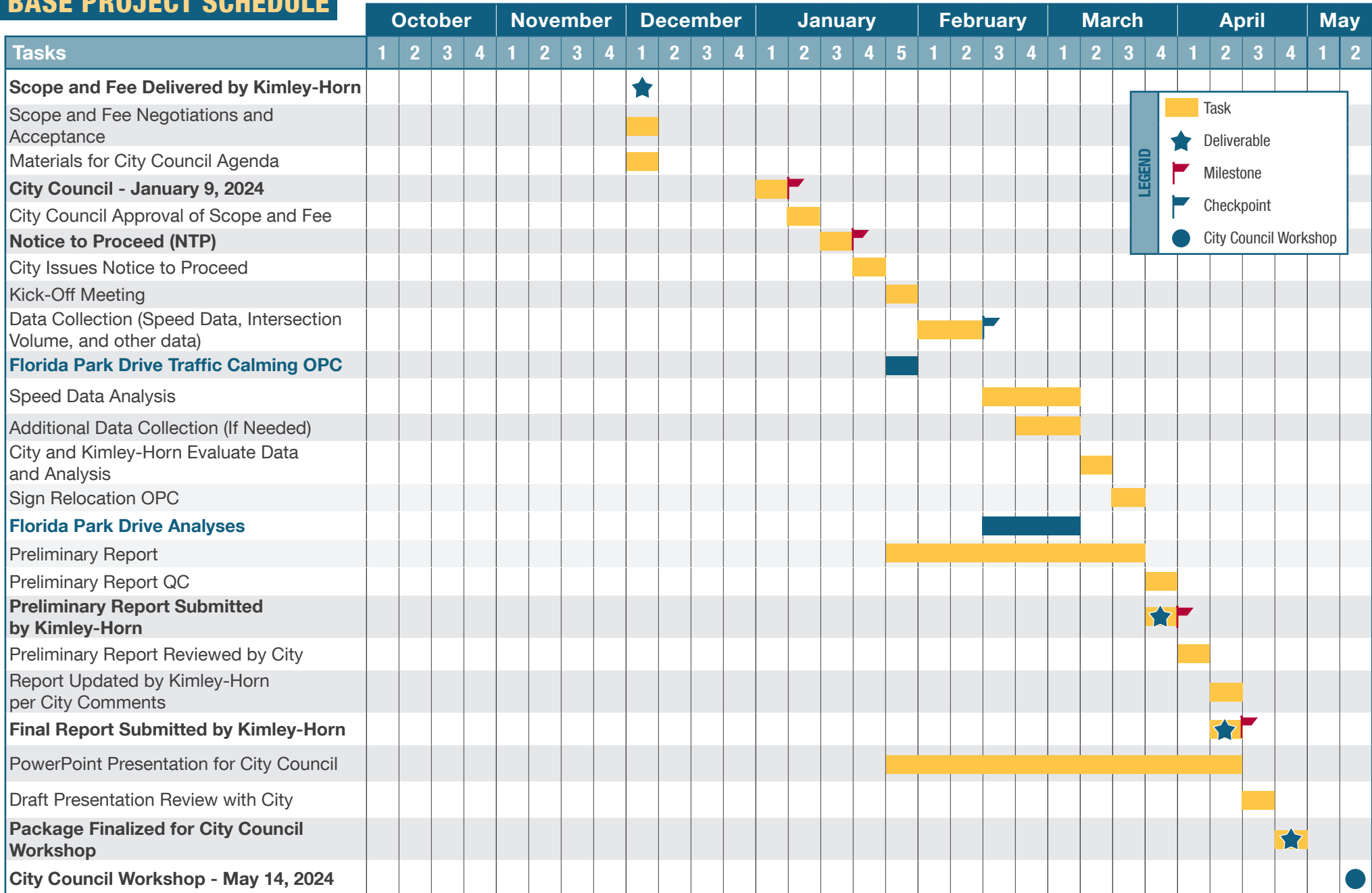
**(20) PURSUANT TO FS 558.0035, EMPLOYEES OF KIMLEY-HORN
MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES
RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**

Project Schedule: Palm Coast Speed Limit Posting Study



RESIDENTIAL SPEED LIMIT POSTING STUDY

BASE PROJECT SCHEDULE



LEGEND

- Task
- Deliverable
- Milestone
- Checkpoint
- City Council Workshop