






**CITY MANAGER'S REPORT AGENDA ITEM REQUEST
FINANCE DEPARTMENT**

TO: Ed Lavallee, City Manager 
THROUGH: Linda Senne, Interim Finance Director 
FROM: Peter Boers, Procurement Manager 
DATE: March 30, 2016
MEETING DATE: April 12, 2016
SUBJECT: **Approval of Continuing Contract for Landscape Architectural Services**

Background:

At the request of the Public Works Department, Procurement has solicited request for qualifications (RFQ) for Landscape Architectural Services. The solicitation did specify preparation of several conceptual designs for landscaping the downtown commercial area along West Venice Avenue as the primary project in the scope of work. However, it is the intention the City to engage the selected firm under a continuing contract, for an initial term of three (3) years with three (3) optional one-year renewals, for additional projects as needed.

On January 6, 2016, four (4) proposals were received from; David Conner & Associates, David M Jones Jr. & Associates Inc., Kimley Horn and Associates, Inc. and Stantec. All the proposals were deemed "responsive" to the requirements of the request for qualifications.

On February 16, 2016 the evaluation review committee met to review, discuss, and score the proposals. The submitting firms were scored and ranked in the following order:

- | | |
|--|-----------|
| 1. Kimley-Horn & Associates, Inc. | 57 points |
| 2. Stantec | 49 points |
| 3. David Conner & Associates | 40 points |
| 4. David M. Jones Jr. & Associates, Inc. | 38 points |

Staff has negotiated a continuing contract with the top ranked firm, Kimley Horn and Associates, Inc., with no guarantee of contract amount. Separate Work Authorizations will be issued for each project.

Requested Action:

Approval of continuing contract for Landscape Architecture Services for an initial term of three (3) years with three (3) optional one-year renewals.

City Attorney Review:

The City Attorney has reviewed and approved this agreement.

Risk Management Review:

The Risk Manager has reviewed this agreement and finds no risk management objections.

Funds Availability (account number):

Funds appropriated in departments account for budget year 2015-2016

Cc: John Veneziano, Public Works Director
Kathleen Weeden, City Engineer



"City on the Gulf"

CITY OF VENICE

401 W. Venice Avenue Venice, FL. 34285

NOTICE OF ACTION

REQUEST FOR QUALIFICATIONS (RFQ) # 3020-15

RFQ TITLE: Landscape Architecture Services


SUBMITTAL DEADLINE: 01/06/2016

SUBJECT: NOTICE OF RECOMMENDED AWARD

Based on Evaluation Committee's review of proposals on February 16, 2016. The City of Venice (City) has ranked proposers responding to the above referenced RFQ as follows:

- | | |
|---|------------------|
| 1. Kimley-Horn | 57 points |
| 2. Stantec | 49 points |
| 3. David Conner & Associates | 40 points |
| 4. David M. Jones & Associates, Inc. | 38 points |

It is the City's intent to initiate contract negotiations with the first ranked firm. Upon completion of negotiations a contract will be submitted to the Venice City Council.

By: 
Peter A. Boers, Procurement Manager

Date: 02/22/2016

RFQ 3020-15 Landscape Architecture Services
Summary Score Sheet

	Evaluator 1	Evaluator 2	Evaluator 3	Total Points	Rank
David Conner & Associates.	10	16	14	40	3
David M Jones & Associates, Inc.	11	15	12	38	4
Kimley Horn	20	20	17	57	1
Stantec	15	18	16	49	2

AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2016, by and between the CITY OF VENICE, FLORIDA, a Municipal Corporation (hereinafter called "OWNER") and KIMLEY-HORN AND ASSOCIATES, INC., a Florida Corporation, (hereinafter called "CONSULTANT") with an office located in Sarasota, Florida.

WHEREAS, the OWNER has advertised for professional consulting services which will consist of professional landscape architecture services deemed necessary by OWNER; and

WHEREAS, pursuant to Section 287.055, Florida Statutes, and the applicable procedures of the OWNER, the OWNER selected the CONSULTANT to provide said Professional Landscape Architecture Services; and

WHEREAS, the CONSULTANT is willing and able to perform such professional services for the OWNER within the basic terms and conditions hereinafter set forth; and

WHEREAS, the purpose of this AGREEMENT is not to authorize a specific project but to set forth certain terms and conditions which may be incorporated into subsequent "Work Assignments" for specific projects or services when required; and

NOW THEREFORE in consideration of the premises and mutual covenants herein contained, it is hereby agreed that the CONSULTANT shall serve as the OWNER's professional representative for those Work Assignments to which this agreement applies, and will give consultation and advice to the OWNER during the performance of its services on the terms and conditions hereinafter set forth.

SECTION 1 BASIC SERVICES OF THE CONSULTANT

1.1 General

OWNER requires CONSULTANT to provide Professional Services to include planning, design and management of landscape architecture projects. Projects may include, but are not limited to, street and highway medians, parking lots, parks and beaches, public building grounds, mitigation areas, neighborhood development projects, utility sites, bikeways, drainage areas, retention/detention ponds, and sidewalk projects. Also required will be residential, commercial and industrial landscape plan review and comment. Services may include planning, design and management of landscape architecture projects. Projects may include, but are not limited to, street and highway medians, parking lots, parks and beaches, public building grounds, mitigation areas, neighborhood development projects, utility sites, bikeways, drainage areas, retention/detention ponds, and sidewalk projects. Also required will be residential, commercial and industrial landscape plan review and comment.

CONSULTANT shall have the capability to provide the following services:

1.1.1 Provide landscape design, planting plans and specifications, in AutoCAD or like program.

1.1.2 Provide irrigation design, plans and specifications, in AutoCAD or like program

1.1.3 Prepare cost estimates and plans for bidding purposes and provide oversight of design implementation

1.1.4 Perform site inventory and analysis

1.1.5 Provide permitting services

1.1.6 Attend and participate pre-bid, pre-proposal, and other various meetings

1.1.7 Perform on-site project management for design implementation

1.1.8 Perform construction administration and oversight activities

1.2 Work Assignments

OWNER shall, from time to time at its sole discretion, authorize CONSULTANT in writing to provide Professional Services under the terms of this AGREEMENT. Said authorization will be referred to herein as a "Work Assignment," a draft form for which is attached hereto as ATTACHMENT A. Work Assignments will, by mutual agreement, set forth (1) the scope of services, (2) the deliverables (3) the time of performance, (4) method and amount of

compensation, and (5) the provisions of Sections 1 and 2 of this AGREEMENT which are applicable. The provisions in Sections 3 thru 6 of this AGREEMENT will apply to each and every Work Assignment unless otherwise agreed to in writing.

END OF SECTION 1

SECTION 2 ADDITIONAL SERVICES OF CONSULTANT

2.1 General

If requested by OWNER and agreed to in a Work Assignment, CONSULTANT will furnish (or obtain from others) Additional Services of the following types which are not considered normal or customary Basic Services. These services may include but are not necessarily limited to, the following:

2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project or any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Obtaining permits, establishing operational protocols, conducting rate studies or masterplans.

2.1.4 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond CONSULTANT's control.

2.1.5 Providing renderings or models for OWNER's use.

2.1.6 Preparing documents for alternate bids requested by OWNER for contractor(s), work, which is not executed, or documents for out-of-sequence work.

2.1.7 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.8 Furnishing the services of special consultants for other than Basic Services (which include, but are not limited to customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto); such as consultants for interior design,

furniture, furnishings, communications, acoustics, and providing data or services of the types described in paragraph 3.3 when OWNER authorizes CONSULTANT to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3

2.1.9 Services resulting from the award of more than one separate prime contract for construction, materials, equipment or services for the Project and services resulting from the arranging for performance by persons other than the principal prime contractors of services for the OWNER and administering OWNER's contracts for such services.

2.1.10 Providing any type of property surveys or field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.11 Services in connection with change orders to reflect changes required by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered; services after the award of each contract in evaluating substitutions proposed by contractor(s), and in making revisions to Drawings and Specifications occasioned thereby; services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages; and services in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services.

2.1.12 Services during out-of-town travel required of CONSULTANT other than visits to the site as required by Section 1.

2.1.13 Preparing for OWNER, on request, a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by contractor(s) to CONSULTANT and which CONSULTANT considered significant.

2.1.14 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of contractor(s), (3) prolongation of the contract time of any prime contract by more than thirty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by any contractor(s).

2.1.15 Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.

2.1.16 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

2.1.17 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, public hearing or other legal or administrative proceeding involving the Project.

2.1.18 Assistance in the preparation of ordinances.

2.1.19 Assistance in the preparation of agreements between the OWNER and others (including, but not limited to, other units of government, developers, districts and authorities and special legislative acts.)

2.1.20 Special studies, reports, investigations or analyses (such as soils investigations, hydrogeological studies, water quality analyses, infiltration and inflow studies), briefings documents, executive summaries.

2.1.21 Additional services in connection with the project, including services normally furnished by OWNER and services not otherwise provided for in this AGREEMENT.

2.2 Resident Services During Construction

2.2.1 If requested by OWNER and agreed to in a Work Assignment, a Resident Project Representative will be furnished and will act as directed by CONSULTANT in order to assist CONSULTANT in observing performance of the work of contractor(s). Such services will be paid for by OWNER as indicated in the Work Assignment.

2.2.2 The duties and responsibilities and the limitations on the authority of the Resident Project Representative and assistants will be as set forth in the Work Assignment.

2.2.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, CONSULTANT shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of contractor(s); but the furnishing of such Resident Project Representative will not make CONSULTANT responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for the failure of contractor(s) to perform their work in accordance with the Contract Documents.

2.2.4 If OWNER designates another person to represent OWNER at the Project site who is not CONSULTANT's agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of CONSULTANT under this AGREEMENT will be set forth in an exhibit that is to be identified, attached to and made a part of the Work Assignment before such services begin.

END OF SECTION 2

SECTION 3 OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.2 Assist CONSULTANT by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.3 Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services (except to the extent provided otherwise in the Work Assignment to accomplish such work), data prepared by or services of others, including without limitation borings, probings, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data or consultations not covered in Section 2; all of which CONSULTANT may use and rely upon in performing its services.

3.4 Provide field control surveys and establish reference points and base lines (except to the extent provided otherwise in the Work Assignment to accomplish such work) to enable contractor(s) to proceed with the layout of the work.

3.5 Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.

3.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

3.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.8 Designate, in writing, a person to act as OWNER's representative with respect to the services to be rendered under this AGREEMENT if that representative is to be other than the City Manager or his authorized representative. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions

with respect to materials, equipment, elements and systems pertinent to CONSULTANT's services.

3.9 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of Contractor(s).

3.10 Furnish, or direct CONSULTANT to provide, necessary Additional Services as stipulated in Section 2 of this AGREEMENT or other services as required.

3.11 Bear all costs incident to compliance with the requirements of this Section 3.

END OF SECTION 3

SECTION 4 PERIOD OF SERVICE

4.1 Term of Agreement

This AGREEMENT shall continue in full force for a period of three (3) years from the date of signing by the OWNER. It may be renewed in one or two-year increments by written notice from the OWNER up to a maximum of six years, or until terminated in accordance with SECTION 6.

4.2 Work Assignment

Each Work Assignment shall specify the Period of Service agreed to by OWNER and CONSULTANT for services to be rendered under said Work Assignment.

4.3 Orderly and Continuous Progress

The provisions of this Agreement and each Work Assignment (unless stated otherwise) anticipate the orderly and continuous progress of the Project(s). If specific dates or specific periods of time for performance are exceeded through no fault of CONSULTANT, all rates, measures, and amounts of compensation shall be subject to equitable adjustment.

END OF SECTION 4

SECTION 5 PAYMENTS TO CONSULTANT

5.1 Methods of Compensation

Within each Work Assignment the OWNER and CONSULTANT may agree on, but not be limited to, one of the following methods of compensation. If a different method of compensation is to be used, the Work Assignment will set forth the basis for such compensation.

5.1.1 Hourly Rates Method

OWNER shall pay CONSULTANT for services rendered an amount based on CONSULTANT's current Hourly Rate for services rendered by principals and employees assigned to the Project (ATTACHMENT B). CONSULTANT's Hourly Rate Schedule may be amended annually upon written request by CONSULTANT to OWNER. In addition to the charges for labor, OWNER will pay for Direct Project Expenses, and Special Consultants. CONSULTANT will invoice OWNER monthly.

5.1.2 Lump Sum Method

For services rendered the OWNER shall pay the CONSULTANT a lump sum fee including or excluding Direct Project Expenses and Special Consultants as mutually agreed upon and set forth in the Work Assignment. CONSULTANT will invoice OWNER monthly based upon CONSULTANT's estimate of the portion of the total services actually completed at the time of billing, and attach a full narrative to the invoice for work performed.

5.2 Special Consultants

For services and direct project expenses of Special Consultants employed by the CONSULTANT to render Additional Services, the OWNER will be invoiced the amount billed to CONSULTANT thereof times a factor of 1.00, unless otherwise set forth in the Work Assignment. Special Consultants include, but are not limited to: aerial photogrammetrists; surveyors; laboratory testing; soils investigations, testing, and geotechnical engineering; and other services of a similar nature.

5.3 Direct Project Expenses

Direct Project Expenses means the actual expenses incurred in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, and similar project-related items; and other expenses of a similar nature. Owner will be invoiced the amount of actual expenses billed to CONSULTANT times a factor of 1.00, unless otherwise set forth in the Work Assignment. OWNER will not be charged for travel expenses between CONSULTANT's offices and Venice.

5.4 Computer Services

Costs for computer services, such as microcomputer equipment and software for word processing, computer-aided drafting, and spreadsheets will not be considered Direct Project Expenses and will not be invoiced. CONSULTANT shall provide all electronic documents, reports, executive summaries, etc., in such format(s) that are compatible with OWNER's existing computer software.

5.5 Payments by Owner

Monthly invoices shall be paid by OWNER within thirty (30) days of its receipt thereof unless, within such thirty (30) day period, OWNER notifies CONSULTANT in writing of its objection to the amount of such invoices, together with OWNER's determination of the proper amount of such invoice. Such invoices shall be accompanied by CONSULTANT's written description of work accomplished as described in the invoice. Such notice shall be accompanied by OWNER's payment of any undisputed portion of such monthly invoices. If OWNER shall give such notice to CONSULTANT within such thirty (30) day period, such dispute over the proper amount of such invoice statement shall be resolved, and after final resolution of such dispute, OWNER shall promptly pay CONSULTANT the amount so determined, less any amounts previously paid by OWNER with respect to such monthly invoice. In the event it is determined that the OWNER has overpaid such monthly invoice, CONSULTANT shall promptly refund to OWNER the amount of such overpayment.

5.6 Late Payment

If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT's invoice therefore, the CONSULTANT may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until it has been paid in full all amounts due for services and expenses. Any portion of an invoice that is disputed by the OWNER in accordance with paragraph 5.5 shall not be considered due for the purposes of this paragraph until the matter is resolved in accordance with the procedure provided herein.

5.7 Overtime

Overtime premium will be paid by the OWNER only if authorized in advance for work to be performed to meet a particular deadline for which there is insufficient time to accomplish the task during normal hours, through no fault of the CONSULTANT. If overtime premium is authorized by OWNER, it shall be defined as standard hourly rates or salary and wages times 1.5 for all those overtime hours worked.

5.8 Taxes

OWNER shall pay all applicable sales taxes or provide to CONSULTANT the appropriate tax exemption number.

5.9 Truth-in-Negotiation Certification

In accordance with Section 287.055(5)(a), Florida Statutes, for any professional service authorized by a Work Assignment pursuant to this contract in which the fee is over \$150,000, CONSULTANT hereby certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of said Work Assignment. The original contract price set forth in said Work Assignment and any additions thereto shall be adjusted to exclude any significant sums by which the OWNER determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within (one) 1 year following the end of the Work Assignment.

END OF SECTION 5

SECTION 6 GENERAL CONSIDERATIONS

6.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon fourteen (14) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Either party may terminate without cause upon thirty (30) days written notice. In the event all or any portion of the work prepared or partially prepared by CONSULTANT is suspended, abandoned, or terminated, the OWNER shall pay CONSULTANT for the work performed on an hourly basis not to exceed any maximum contract amount specified herein.

6.2 Reuse of Documents

All documents including Drawings and Specifications prepared by CONSULTANT pursuant to this Agreement shall become property of the OWNER.

6.3 Deliverables. Public Records

Each "Work Assignment" shall describe the number and type of Deliverables, which are to be provided by CONSULTANT to OWNER. Said Deliverables shall become a Public Record upon receipt by OWNER and OWNER shall be the custodian thereof in accordance with Chapter 119, Florida Statutes (Public Records Law).

6.4 Ownership of Documents

All documents, including original drawings, estimates, specifications, field notes, computer data files, and calculations, generated or obtained by CONSULTANT as a result of services rendered on behalf of OWNER pursuant to this Agreement, shall be the property of the OWNER.

6.5 Successors and Assigns

6.5.1 OWNER and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

6.5.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.5.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent

consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.5.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.

6.6 Waiver

The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power, or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstances shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

6.7 Governing Law

This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

6.8 Severability of Illegal Provisions

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.

6.9 Section Headings

The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

6.10 Right of Third Parties

Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

6.11 Merger Clause

This instrument constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This agreement can only be modified in a writing signed by the parties hereto and their duly authorized agents.

6.12 Notices

All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to CITY OF VENICE:

Edward Lavalley, MPA
City Manager
City of Venice
401 West Venice Avenue
Venice, Florida 34285
Phone: 941-486-2626
Fax: 941-496-2790

If to CONSULTANT:

James Pankonin, PLA, LEED AP
Project Manager
Kimley-Horn and Associates, Inc.
1777 Main Street, Suite 200
Sarasota, Florida 34236
Phone: 941-379-7600

Either party may change its address for purpose of this paragraph by written notice to the other party given in accordance with the requirements of this paragraph.

6.13 Remedies: Attorneys' Fees and Costs.

If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs

(including without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.

6.14 Jurisdiction and Venue

The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Sarasota County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Sarasota County or the United States District Court, Middle District of Florida, Tampa Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court. Service of any court paper may be affected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

6.15 Force Majeure

Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire loss of or failure to obtain permits, unavailability of labor, materials, fuel, or services; court orders; acts of God; acts, orders, laws, or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which Services may be continued.

6.16 Prohibition Against Contingent Fees.

In accordance with Section 287.055(6)(a), Florida Statutes, the CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, the OWNER shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

6.17 Mediation

The parties agree that no action shall be brought hereunder in any court unless the parties have first considered using mediation to resolve the dispute.

6.18 Liability and Limitation of Liability

6.18.1 Before performing any contract work, CONSULTANT shall procure and maintain, during the life of the contract, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent":VII. No changes are to be made to these specifications without prior written specific approval by the City's Risk Management Office.

6.18.2 **WORKERS COMPENSATION:** CONSULTANT will provide Workers Compensation Insurance, on behalf of all employees who are to provide a service under this contract, as required under Florida Laws, Chapter 440, AND Employers Liability with limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 employee per disease.

6.18.3 **COMMERCIAL GENERAL LIABILITY** - including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate covering all work performed under this contract.

6.18.4 **AUTOMOBILE LIABILITY** including bodily injury and property damage including all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit covering all work performed under this contract

6.18.5 **PROFESSIONAL LIABILITY** - with limits of not less than \$1,000,000 for professional services rendered in accordance with this contract. CONSULTANT shall maintain such insurance for at least two (2) years from the termination of this contract and during this two (2) year period the CONSULTANT shall use their best efforts to ensure that there is no change of the retroactive date on this insurance coverage. If there is a change that reduces or restricts the coverage carried during the contract, the CONSULTANT shall notify the City's Administrative Services Department within thirty (30) days of the change.

6.18.6 **POLICY FORM**

6.18.6.1 All policies, required by this contract, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by the City's Administrative Services Director, are to be written on an occurrence basis, shall name the City of Venice, its Council

Members, Officers, Agents (defined as Agents in a written agreement with the CITY), Employees and volunteers as additional insured as their interest may appear under this Contract. Insurer(s), with the exception of Professional Liability and Worker Compensation, shall agree to waive all rights of subrogation against the City of Venice, its Council Members, Officers, Agents (defined as Agents in a written agreement with the CITY), Employees or Volunteers.

6.18.6.2 Insurance requirements itemized in this contract, and required of the CONSULTANT, shall be provided by or in behalf of all subcontractors to cover their operations performed under this contract. The CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

6.18.6.3 Each insurance policy required by this contract shall:

6.18.6.3.1 Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

6.18.6.3.2 Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the City's Administrative Service Department.

6.18.6.4 The City of Venice shall retain the right to review, at any time, coverage, form, and amount of insurance.

6.18.6.5 The procuring of required policies of insurance shall not be construed to limit CONSULTANT'S liability nor to fulfill the indemnification provisions and requirements of this contract.

6.18.6.6 The CONSULTANT shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this contract and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the City is an insured under the policy.

6.18.6.7 Claims made policies will be accepted for professional and hazardous materials and such other risks as are authorized by the City's Administrative Service Department. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

6.18.6.8 Certificates of Insurance evidencing Claims Made or Occurrence form coverage and conditions to this Contract, as well as the City's proposal/contract number and description of work, are to be furnished to the City's Risk Management Office (401 West Venice Avenue, Venice, FL 34285) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be

received by the City's Administrative Service Department before the CONSULTANT will be allowed to commence or continue work.

6.18.6.9 Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under this Contract, shall be provided to the CONSULTANT'S insurance company and the City Administrative Service Department as soon as practicable after notice to the insured.

6.18.7 **Indemnity**

CONSULTANT shall indemnify and hold harmless OWNER and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the AGREEMENT.

6.19 **Construction Cost Estimating**

Any opinion of the Construction Cost prepared by CONSULTANT represents its judgment as a design professional and is supplied for the general guidance of the OWNER. Since CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the OWNER.

6.20 **Construction Job Site Conditions**

The OWNER agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours. In the performance of its professional services, ENGINEER will use that degree of care and skill ordinarily exercised under similar localities.

6.21 Licenses

CONSULTANT shall procure and keep in force during the term of this AGREEMENT all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for CONSULTANT to render its services hereunder. CONSULTANT shall require all specialty consultants to comply with the provisions of this paragraph.

6.22 CONSULTANT Not Agent of OWNER

The CONSULTANT is not authorized to act as the OWNER's agent hereunder and shall have no authority, express or implied, to act for or bind the OWNER hereunder, either in CONSULTANT's relations with specialty consultants, or in any other manner whatsoever except as elsewhere provided for herein. CONSULTANT is not an "Agency" acting on behalf of OWNER as defined in Section 119.011, Florida Statutes.

6.23 Amendment

The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by writing making specific reference to this agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver, or modification is sought. No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.

6.24 Accounting Records

For each project authorized by OWNER, CONSULTANT will maintain accounting records which will include timecards, job cost records, invoices, and such other data necessary to identify project costs. Said records will be made available to OWNER's authorized financial personnel for inspection at CONSULTANT's office upon request.

6.25 Specific Consideration

CONSULTANT agrees to pay OWNER, or credit the OWNER against compensation due hereunder, the sum of ten dollars (\$10.00) as specific consideration for the indemnifications specified in this Agreement.

6.26 Validity Severability and Reformation

The validity, interpretation, construction and effect of this AGREEMENT shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part thereof of this AGREEMENT held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this AGREEMENT shall be reformed to replace such stricken provision or part thereof with a

valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

6.27 Public Records

CONSULTANT agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by the public agency in order to perform the service; upon the request of the OWNER's Custodian of Public Records, by providing the OWNER with copies of or access to public records on the same terms and conditions that OWNER would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed excepts as authorized by law for the duration of the term of the AGREEMENT and following completion of the AGREEMENT if the CONSULTANT does not transfer the records to the OWNER.; and upon completion of the AGREEMENT by transferring, at no cost, to OWNER all public records in possession of CONSULTANT or by keeping and maintaining all public records required by the OWNER to perform the service. If the CONSULTANT transfers all public records to the OWNER upon completion of the AGREEMENT, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the AGREEMENT, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the OWNER, upon request from the OWNER's custodian of public records, in a format that is compatible with the information technology systems of the OWNER.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS LORI STELZER, MMC, CITY CLERK, AT 401 W. VENICE AVENUE, VENICE, FLORIDA 34285, (941) 882-7390, LSTELZER@VENICEGOV.COM.

6.28 Entire Agreement


This contract and the contract documents constitute the entire agreement of the parties and may not be changed or modified, except by a written document signed by both parties hereto. This contract shall be binding upon the successors and assigns of the parties.

END OF SECTION 6

SIGNATURES ON NEXT PAGE


IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the CONSULTANT by its duly authorized officers, and the OWNER has caused the same to be duly executed in its name and in its behalf by its Mayor and City Clerk, effective as of the date hereinabove written.

WITNESS



Peggy Jean Coetjan

KIMLEY-HORN AND ASSOCIATES, INC.



Gary Nadeau, VICE PRESIDENT

ATTEST

CITY OF VENICE

Lori Stelzer, CITY CLERK

John Holic, MAYOR

Approved as to Form and Correctness

David Persson, City Attorney



**ATTACHMENT A
DRAFT FORM WORK ASSIGNMENT**

**WORK ASSIGNMENT NO. _____ PURSUANT TO
THE (date of) AGREEMENT BETWEEN THE
CITY OF VENICE, FLORIDA AND
KIMLEY-HORN AND ASSOCIATES, INC.**

WHEREAS, on (date) the parties entered into an Agreement whereby the CONSULTANT would perform professional services for the OWNER pursuant to an executed Work Assignment; and

WHEREAS, the OWNER wishes to authorize the CONSULTANT to perform professional services concerning the (name of project) as more particularly described in the Scope of Services contained herein; and

WHEREAS, the CONSULTANT wishes to perform such professional services.

NOW THEREFORE, in consideration of the premises and mutual covenants contained in the (date of) Agreement and in this Work Assignment, the parties agree as follows:

- 1. General description of the project.
- 2. Scope of services to be performed.
- 3. Compensation to be paid.
- 4. Time for completion
- 5. Any special conditions.

IN WITNESS WHEREOF, the parties have executed this work assignment on the _____ day of _____, 201_.

CITY OF VENICE, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

KIMLEY-HORN AND ASSOCIATES, INC.

**ATTACHMENT B
CONSULTANT'S HOURLY RATES**

Personnel	Labor Rate – Range
Principal	\$215.00 – \$225.00
Project Manager	\$175.00 – \$190.00
Senior Professional	\$150.00 – \$175.00
Professional	\$115.00 – \$145.00
Analyst	\$100.00 – \$115.00
Graphics/Designer	\$80.00 – \$110.00
Administration	\$60.00 – \$145.00

