

CONTRACT FOR CONTINUING PROFESSIONAL SERVICES

This Contract and Agreement is made and entered into on the date appearing on the last page hereof, between THE CITY OF DAYTONA BEACH, Volusia County, Florida, a municipal corporation, created and existing under the laws of the State of Florida, hereinafter referred to as the CITY, and Kimley-Horn and Associates, Inc., a Florida Corporation, authorized by the Florida Department of State to conduct business in the State of Florida, hereinafter referred to as the CONSULTANT.

WHEREAS, the CITY intends to obtain professional services as defined in the Request for Qualifications attached as Exhibit A.

WHEREAS, the CITY desires the services, as defined the Request for Qualifications and the Negotiated scope of services agreement working with City Departments to maintain compliance with the Program, any additional local, Federal or foundations grants received, in compliance with Florida Administrative Code and City purchasing requirements, and

WHEREAS, the CITY has duly advertised for proposals from consultants desiring to provide such services; and

WHEREAS, the CITY's Selection Committee has recommended that the CITY enter into negotiations with the CONSULTANT for purposes of securing a contract for services; and

WHEREAS, negotiations ensued between the CITY and the CONSULTANT, and an agreement has been reached for a Contract for Professional Services subject to approval by the City Commission.

WITNESSETH, that in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I – Definition of Understanding: This Contract and Agreement defines all items of responsibility and is the only understanding between the parties. No oral understanding or agreement exists for performing the scope of work as set forth herein.

ARTICLE II – Overall Scope of Services: The Scope of Services to be provided by the CONSULTANT shall be as defined in the Invitation to Submit Statements of Qualifications, the Request for Qualifications, and authorized by sequentially-numbered Work Authorization Agreements in the format attached hereto as part of this Contract, further described as Exhibit B. The specific services to be provided under this Contract, however, may vary from the services defined in the "REQUEST FOR QUALIFICATIONS".

ARTICLE III – Work Authorization Agreements: The Scope of Service for Work may be modified from time to time to provide for additional services, deletions of service, or redefinitions of services, within the overall Scope of Services, or for specific work assignments, as deemed necessary by the CITY. All such modifications as to services, schedules, and fees for Work Authorizations, shall be clearly described, subject to negotiation between the CITY and the CONSULTANT, and approval by the City Commission, the City Manager, or his designee. The modifications shall become a part of the amended contract.

ARTICLE IV – CITY's Responsibilities: The CITY agrees to make available for review and use by the CONSULTANT, reports, studies, and data relating to the project. The CITY will establish a Project Implementation Team to meet periodically with the CONSULTANT to insure expeditious review of product and facilitate coordination.

ARTICLE V – Compensation: Compensation for the specific services to be provided are as identified and defined in the Request for Qualifications and the negotiated scope of services, and represent the total compensation for all services, equipment and work products to be provided by the service provider in this Contract.

Fees for work authorized can be either Lump Sum fees, or Hourly Rate with a Budget Estimate, whichever is approved.

Lump Sum:

The Lump Sum fee constitutes a total cost for the services for the Scope of Services negotiated prior to the start of CONSULTANT's services, generally with an allowance for reimbursable expenses associated with the work. Lump Sum fees shall be based upon an identifiable scope of work. Prior to finalizing the negotiation of a Lump Sum fee, CONSULTANT shall provide the CITY with a detailed breakdown of man-hours by task and discipline used in preparing the proposed Lump Sum.

Hourly Rate with a Budget Estimate

CONSULTANT Services will be performed on an hourly basis with a budget estimate in accordance with the Fee Schedule attached as Exhibit C. The Fee Schedule contains the rate for the CONSULTANT and Sub-Consultant(s). Hourly rate with a Budget Estimate fees shall be based upon actual hourly wages paid to CONSULTANT professionals time a multiplier of 3.0 for services rendered by employees assigned to the project. Reimbursable expenses associated with the project shall be invoiced to the CITY at the actual cost incurred by the CONSULTANT. The not-to-exceed budget estimate shall be negotiated prior to the start of CONSULTANT's services. The budget estimate can be increased only upon written authorization from the CITY.

CONSULTANT agrees that the hourly rates used to determine rate charges for employees rendering services to the CITY pursuant to the Agreement shall not exceed the hourly rates as shown in the schedule attached hereto as Exhibit C throughout the

duration of the Work. The rates listed in the schedule shown in Exhibit C may be modified to compensate for CONSULTANT's salary adjustments for subsequently authorized Work as approved by the City.

SUB-CONSULTANT(s):

The cost of services and reimbursable expenses for SUB-CONSULTANT(s) required for a project and employed by the CONSULTANT shall be negotiated as an element of the Lump Sum fee for the project. All such special SUB-CONSULTANT(s) proposed to be used shall be named by the CONSULTANT at the time the Lump Sum fee is negotiated. No other special SUB-CONSULTANT(s) shall be used on the project unless and until approved by the City. Nothing contained herein shall be deemed to preclude the CITY from contracting for the services of special SUB-CONSULTANT(s) directly with the provider of such services.

When SUB-CONSULTANT(s) are engaged for an Hourly Rate with a budget estimate, the CONSULTANT will invoice the CITY for the work provided by the SUB-CONSULTANT at the actual fee amount invoiced by the SUB-CONSULTANT.

Modifications to Append Work:

In the event that the CITY requests a modification within the Scope of Service, the fees for such modification shall be negotiated based upon the specific services requested and at a level of compensation acceptable to both parties. The final authorization shall be subject to CITY approval.

ARTICLE VI – Method of Payment: The CONSULTANT shall invoice the CITY no greater than once monthly and such invoices shall contain a Progress Certification Statement. The statement shall state that the Work is completed to at least the percentage shown on the invoice and further supported by adequate documentation to justify the percentage completed, to the satisfaction of the CITY. The CITY shall pay monthly progress invoices based upon the CITY's review and approval of the Work.

All monthly invoices submitted by the CONSULTANT and approved by the CITY shall be due and payable within 30 calendar days after such approval. The CITY agrees not to unreasonably withhold its approval of invoices submitted in compliance with the terms of this Contract.

The method of payment for services provided as part of appended Work of this Contract shall be negotiated to the satisfaction of both parties, with final authorization being subject to CITY approval as described in Article III of this Contract.

ARTICLE VII – Term of Contract; Termination: The Work shall be completed in accordance with the milestone schedule attached to and made part of each Work Authorization.

It is agreed by and between each of the parties hereto, respectively, that each of the parties shall have, and there is hereby reserved to such parties and each of them, the right to cancel and terminate this Contract without cause, upon thirty (30) days written notice to the other party.

Further, it is covenanted and agreed by and between the parties hereto, and each of them, respectively, that upon the expiration of such thirty (30) day period from the notice of cancellation by either party, as herein provided, this Contract shall cease, and thereafter each of the parties shall be released from further liability under the terms hereof.

It is further covenanted and agreed by and between the parties hereto, that in case or in the event this Contract shall be canceled as herein provided, the CITY will pay unto the CONSULTANT all amounts earned and due under the terms hereof as of date of cancellation. The CONSULTANT agrees that upon receipt of full payment, all documents will immediately be transmitted to the CITY for the CITY's use in accordance with the terms of this Contract.

ARTICLE VIII – Ownership of Documents: All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed during the term of and in accordance with the provisions of this Contract shall be the property of the CITY and delivered to the CITY upon demand, provided the payment of fees has been received by CONSULTANT in accordance with the terms of this Contract.

ARTICLE IX – Reuse of Documents: CITY agrees to hold harmless and indemnify the CONSULTANT from and against any claims, demands, actions or causes of actions as a result of the CITY's reuse of documents and drawings or other work products.

ARTICLE X – Nondiscrimination: CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin.

CONSULTANT agrees to comply with all local, state and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONSULTANT agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

ARTICLE XI – Contingency Fee: CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

ARTICLE XII – Indemnification: CONSULTANT shall indemnify and hold harmless The City of Daytona Beach and its officers and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Contract.

ARTICLE XIII – Insurance: CONSULTANT shall purchase and maintain, as its own expense, the following types and amounts of insurance, in a form and from companies satisfactory to the CITY.

a. Workers' Compensation Insurance:

As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of the Consultant, employed at the site of the work or in any way connected with the work, which is the subject of this service.

The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

b. Liability Insurance:

i. Automobile Liability Insurance

Automobile Insurance which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Consultant at the site of the project or in any way connected with the work which is the subject of this Contract.

ii. Professional Liability Insurance

Professional Liability Insurance insuring the CONSULTANT and other interest, including, but not limited to, any associated or subsidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Agreement. The limit of liability of Professional Liability Insurance shall be no less than \$1,000,000.

c. Proof of Insurance

The Consultant shall furnish proof of insurance acceptable to the City prior to or at the time of execution of the Contract and the Consultant shall not commence work under this Contract until he has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the City, nor shall the Consultant allow any sub-consultant to commence work on its subcontract until similar insurance required of the sub-consultant has been so obtained and approved. The Consultant shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company shall give not less than thirty (30) days advance written notice to:

City Clerk
The City of Daytona Beach
P.O. Box 2451
Daytona Beach, Florida 32115-2451"

If requested by the City, the Consultant will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City.

The Consultant shall file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the work by the City. In the event such insurance shall lapse, the City expressly reserves the right to renew the insurance at the Consultant's expense.

d. Termination of Insurance

The Consultant may not cancel the insurance required by this Contract until the work is completed, accepted by the City and the Consultant has received written notification from the Risk Management Division of the City that the Consultant may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the City will provide such written notification at the request of the Consultant if the request is made no earlier than two weeks before the work is to be completed.

ARTICLE XIV - Truth in Negotiations Certificate: The CONSULTANT hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

ARTICLE XV – Third Parties: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CITY's benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder.

ARTICLE XVI - Standard of Care: In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

ARTICLE XVII - Opinions of Cost: Because the Consultant 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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant 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. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

ARTICLE XVIII - Certifications: The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

ARTICLE XIX - Construction Phase Services:

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant'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 the Consultant. Consultant 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) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate original this 5th day November, 2007, effective as of the 17th day of October, 2007.

WITNESSES:

Shirley L. Stickney

Tom C. Dean

WITNESSES:

RS Wild

Chris Willem

THE CITY OF DAYTONA BEACH

By: Glenn Ritchey
Glenn Ritchey, Mayor

Attest: Jennifer L. Thomas
Jennifer Thomas, City Clerk

KIMLEY-HORN AND ASSOCIATES, INC.

By: Joseph P. Mecca
Joseph P. Mecca, PE

Attest: Janice T. LaPerna
Janice T. LaPerna

Approved as to Legal Form:

Robert G. Brown
Robert G. Brown, City Attorney

ATTACHMENT "A"

THE CITY OF DAYTONA BEACH

(INSERT NAME OF PROJECT)

Cost of Construction Estimate

<u>Description</u>	<u>Estimated Cost</u>
1. Five million gallon storage vessel	\$1,200,000
2. Variable speed pumping station	\$ 260,000
3. Etc.	\$ Etc.

Total Conceptual Cost Estimate \$3,200,000

ATTACHMENT "B"**HOURLY RATE SCHEDULE**

The following schedule provides a maximum direct salary hourly rate for the disciplines, which are likely to be engaged for the project of The City of Daytona Beach.

<u>Category of Employee</u>	<u>Not to Exceed Hourly Rate</u>
1. Principal	\$ 50.00
2. Senior Project Manager	\$ 45.00
3. Senior Project Engineer	\$ 40.00
4. And Beyond <i>Etc.</i>	\$

Hourly Rate with a Budget Estimate projects will be based upon actual hourly wages paid to CONSULTANT'S professionals, not to exceed the above listed rates, times the multiplier contained in the Contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate original this day of _____, 20____, effective as of the _____ day of _____, 20____.

WITNESSES:

THE CITY OF DAYTONA BEACH

By: _____
Glenn Ritchey, Mayor

Printed Name

Attest: _____
Jennifer Thomas, City Clerk

Printed Name

WITNESSES:

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Printed Name

(Officer's Name)

Attest: _____

Printed Name

Printed Name

Approved as to Legal Form:

Robert G. Brown, City Attorney

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared (Officer's Name), well known to me to be (Officer's Title of KIMLEY-HORN AND ASSOCIATES, INC.), and that he executed the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this

_____ day _____, _____.

Notary Public

STATE OF FLORIDA
VOLUSIA COUNTY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgment, personally appeared _____ and _____, well known to me to be the Mayor and City Clerk, respectively, of THE CITY OF DAYTONA BEACH, a Florida municipal corporation, and that they severally acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by THE CITY OF DAYTONA BEACH.

WITNESS my hand and official seal in the County and State last aforesaid

this _____ day _____, _____.

Notary Public

EXHIBIT “C”

CONTRACT FOR PROFESSIONAL SERVICES – CONTINUING ENGINEERING SERVICES CODB CONTRACT NO.: 2007-11

2007 Hourly Rate Schedule

The following schedule provides a maximum direct salary hourly rate for the disciplines, which are likely to be engaged for projects associated with the contract referenced above for The City of Daytona Beach.

KIMLEY-HORN AND ASSOCIATES, INC.

Category of Employee	Hourly Rate
Principal.....	\$60.00
Senior Professional.....	\$50.00
Professional.....	\$45.00
Staff Engineer, Geologist, or Scientist.....	\$40.00
Senior Designer.....	\$35.00
CAD Technician.....	\$30.00
Field Technician.....	\$30.00
Clerical.....	\$20.00

NOTE: “Actual Cost with Upset Limit” fees for Authorizations will be based upon actual hourly wages paid to CONSULTANT’s professionals, not to exceed the above listed rates, times the multiplier contained in ARTICLE V of the Contract.