





TO: TRACY TELLE, ASSISTANT CITY ENGINEER, ENGINEERING

FROM: CAMILLE WALLACE, ESQ., SENIOR ASSISTANT CITY ATTORNEY 

THROUGH: SARA HEDGES, CITY ATTORNEY 

RE: CO No. 3 - SPECIFIC AUTHORIZATION No. 4-REVIEW OF KIMLEY-HORN & ASSOCIATES, INC.

CAO RLS#: 25-225

DATE: AUGUST 4, 2025

I have reviewed the above Request for Legal Services (RLS) related to Change No. 3 pursuant to Specific Authorization #4 regarding Department of Commerce (formerly DEO) cost-reimbursement grant agreement to the City of Fort Pierce for the Indian River Drive Historic Downtown Waterfront Corridor Improvement Project. Please note the following comments:

1. The Master Agreement commenced on July 23, 2020, as a 5-year Initial Term without an option to renew and expired on July 23, 2025.
2. The First Amendment to RFQ No. 2019-027 Continuing Contract for Professional Engineering Services revised the Master Agreement as to insurance requirements and additional legal requirements only.
3. Change Order No 3 reflects design revisions to construction plans and specifications authorized under Specific Work Authorization No. 4. Per our conversation on 7/31/25, the Design Phase of this project is near completion, and the Department *has already authorized* commencement of the design revisions requested in Change Order No. 3. *Please note that Change Order No. 3 proposed contract expiration date October 20, 2025 is beyond the Term Period for the Master Agreement.*
4. As a reminder, pursuant to *Section 4 of the Master Agreement*, all Work Authorizations must adhere to the City's Purchasing Policy. According to *Section 4 Change Orders, of the Procurement Policy and Procedures Manual*, a change order request that increases the contract price by more than 10% or \$100,000 (whichever is lower) must be submitted to the City Commission for approval. Based on this Change Order request and Change Orders No 1 and 2, that threshold appears to have been met.
5. Due to the expiration of the Master Agreement, the City has no legal coverage (terms and conditions) to enforce performance if the Contractor fails to perform as agreed. While the Department and Contractor executed a letter to extend the Master Agreement Term Period to December 31, 2025, in my opinion, the extension letter is not an effective method for amending the Term Period in a manner as prescribed by City Ordinance, City

policy, and state law. However, Change Order No. 3 is approved as to form only based on the following:

- a. Per the Department, the Contractor has begun the design revisions requested in Change Order No. 3 and discontinuing the work would not be in the best interest of the City because taking such action could subject the City to a civil suit.
 - b. Per the Department of Commerce Agreement (Exhibit 1 to Exhibit B) and the information shared during the 7/31/25 meeting, this award is partially funded by ARPA dollars and consequently the City must also adhere to federal requirements, conditions, and guidelines for this Project. To ensure those requirements are met, Specific Authorization No 4 Addendum has been drafted to reflect the federal contract provisions required for projects supported by federal funds (*see the Specific Authorization No 4 Addendum attached*).
 - c. Change Order No. 3 is within the total allowable grant funds allocated for the design phase (\$1,000,000).
 - d. The City could lose funding if the funds for the design and construction phases of this project in total are not expended by June 30, 2026.
6. Based on the comments noted above, I recommend the Department place Change Order No. 3 and Specific Authorization No 4 Addendum on the City Commission agenda as soon as practical.

If you have any questions, please do not hesitate to contact this Office via phone or e-mail. Thank you.