

**AGREEMENT RELATING TO  
ROADWAY IMPROVEMENTS**

**(Wekiva Road)**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between **THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA**, a public body corporate under the laws of the State of Florida (the "School Board"), and **ECONOMIC STIMULUS WORKING GROUP, LLC**, a Florida limited liability company (the "Economic Stimulus Working Group") (the School Board and Economic Stimulus Working Group are collectively referred to herein as the "Parties").

**RECITALS:**

A. On July 15, 2020, the School Board and 3 H Ranch, LLC, a Florida limited liability company, John F. Hales, as Trustee of the Norman and Carol Hales Trust for Audra Leigh Hales under agreement dated November 19, 2004, and John F. Hales, as Trustee of the Norman and Carol Hales Trust for Ethan Freeman Hales under agreement dated November 19, 2004 (collectively "Hales"), entered into that certain Easement Agreement recorded in the Official Records as Instrument Number 2020093696, Public Records of Sarasota County, Florida (the "Easement Agreement"), by which Hales granted the School Board an access easement over the area depicted in Exhibit "A" attached hereto (the "Access Easement Area").

B. The School Board owns property adjacent to the Access Easement Area (the "School Board Property").

C. In conjunction with its development of the School Board Property, the School Board is required to construct within a portion of the Access Easement Area certain roadway improvements including but not limited to a two-lane access road together with related roadway improvements and utilities, along with associated drainage facilities ("Wekiva Road").

D. The Economic Stimulus Working Group has requested an expansion of the improvements for Wekiva Road in accordance with the plans and specifications attached hereto as Exhibit "B" (the "Plans"), and the School Board has agreed to cause Wekiva Road to be constructed in accordance with the Plans (the "Improvements").

E. In consideration therefore, the Economic Stimulus Working Group has agreed to pay the increased design and construction costs for the Improvements for the specified portion of Wekiva Road associated with such expansion.

F. The Parties are entering into this Agreement to formalize their rights and responsibilities with respect to the expansion of the Improvements for Wekiva Road.

**NOW, THEREFORE**, in consideration of the mutual obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Recitals.** The recitals above are true and correct and incorporated as if set forth fully herein.

2. **Wekiva Road Expansion.** The School Board shall cause the Improvements for Wekiva Road to be constructed in accordance with the Plans, and shall diligently carry out construction of such Improvements to completion. The School Board expects, but not guarantee, that the Improvements will be completed on or about February 1, 2025.

3. **Expansion Cost.** Economic Stimulus Working Group shall pay the increased design costs for the Improvements for Wekiva Road associated with the expansion in the agreed upon amount of \$36,400.00, pursuant to the firm proposal from Kimley Horn attached hereto as Exhibit "C." Upon receipt of an invoice from Kimley Horn, Economic Stimulus Working Group shall promptly pay such invoice before it becomes past-due. Economic Stimulus Working Group shall also pay the increased construction costs for the Improvements for Wekiva Road associated with the expansion in the amount of \$328,316.04, pursuant to the firm proposal from the School Board's contractor, Tandem Construction, attached hereto as Exhibit "D." Upon receipt of an invoice from Tandem Construction, Economic Stimulus Working Group shall promptly pay such invoice before it becomes past-due.

4. **Maintenance.** The School Board shall continue to be solely responsible for and shall pay all costs of the repair and maintenance of the Access Easement Area, and all improvements therein.

5. **Binding Effect; Amendment.** This Agreement shall be binding on the Parties and their respective successors and assigns. No amendment of this Agreement shall occur unless set forth in a writing and executed by the Parties or their successors or assigns in the same manner as this Agreement.

6. **Notices.** Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered either by hand or by registered or certified mail, postage prepaid and certified return receipt requested, or by a recognized national overnight delivery service to the office of the applicable Party and addressed as follows:

**Parties:**

**As to the School Board:**

School Board of Sarasota County, Florida  
1960 Landings Boulevard  
Sarasota, FL 34231

with a copy to:

**As to Economic Stimulus Working Group:**

Patrick K. Neal  
Economic Stimulus Working Group, LLC  
5800 Lakewood Ranch Boulevard North  
Sarasota, FL 34240

with a copy to:

Edward Vogler, II, Esq.  
Vogler Ashton, PLLC  
705 10<sup>th</sup> Avenue West, Unit 103  
Palmetto, FL 34221

or to such other address as the pertinent Party may direct by written notice to the rest of the Parties. Each such notice or other communication shall be deemed delivered (a) on the date delivered if done so by hand or (b) on the date deposited in the U.S. mail or with an overnight delivery service.

7. **Entire Agreement.** It is mutually acknowledged and agreed by the Parties that this Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and that there are no verbal agreements, representations, warranties or other understandings affecting the same.

8. **Governing Law; Venue.** This Agreement shall be governed by, and be construed in accordance with, the laws of the State of Florida. Any legal proceedings concerning this Agreement shall be brought and maintained solely in Sarasota County, Florida

9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below.

**THE SCHOOL BOARD OF SARASOTA  
COUNTY, FLORIDA**

By: \_\_\_\_\_

Printed Name: Bridget Ziegler

As its: Chair

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of The School Board of  
Sarasota County, only.

RUMBERGER, KIRK & CALDWELL, P.A., Counsel

By:  \_\_\_\_\_

David C. Willis, Esq.

Rumberger, Kirk & Caldwell, P.A.

Date: August 7, 2023

**ECONOMIC STIMULUS WORKING GROUP, LLC**

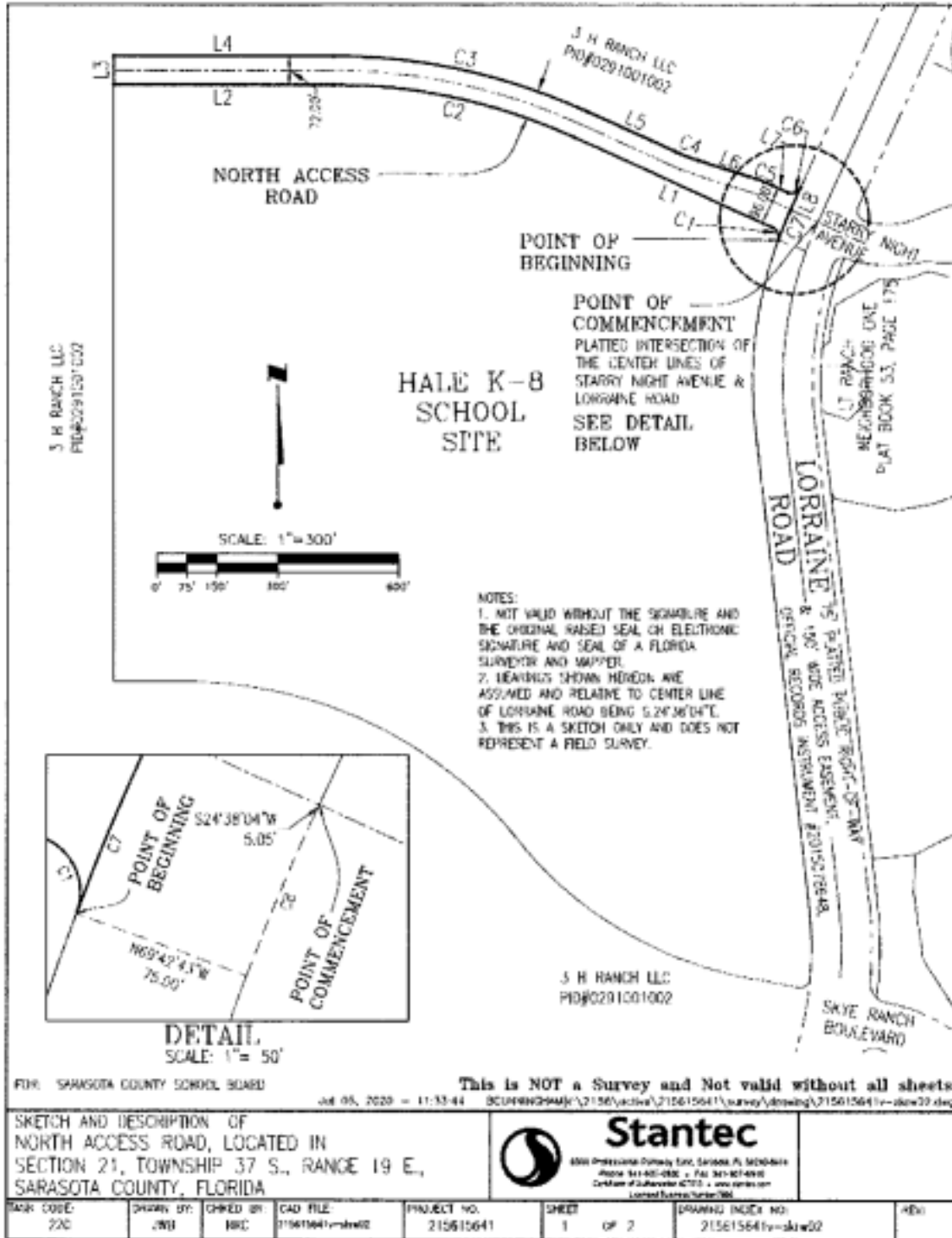
By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

As its: \_\_\_\_\_

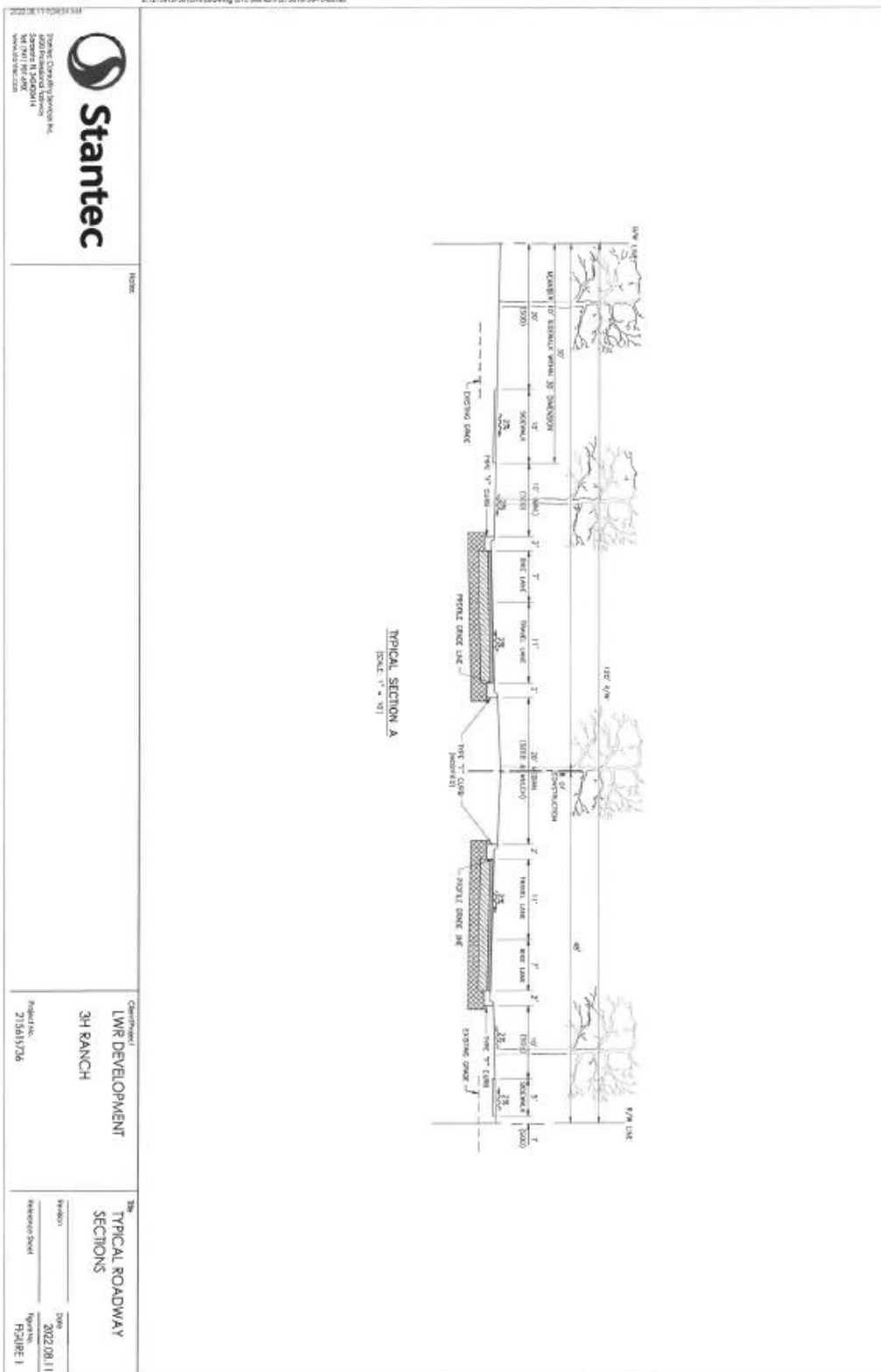
# EXHIBIT "A"

(Access Easement Area)



5657577.v3

(the Plans)



**EXHIBIT “C”**

**(See attached – Kimley Horn Proposal)**



June 8, 2023

Mr. Pat Neal  
Chairman, Executive Committee  
Indiantown Dairies c/o  
Neal Communities, Inc.  
5800 Lakewood Ranch Blvd  
Sarasota, FL 34240

**RE: Proposal for Professional Engineering Services for  
The Lorraine Road K-8 School – North Roadway Re-design, Sarasota County, FL**

Dear Mr. Neal,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant") is pleased to submit this Agreement for Professional Services (the "Agreement") to Indiantown Dairies c/o Neal Communities, Inc. ("Client") for professional engineering services related to the above noted project. Our project understanding, scope of services, and fees are described below.

#### **Project Understanding**

The scope of services and fees described herein are based upon our understanding of the project and assumptions as follows:

1. The permitted K-8 site is located southwest of the Starry Night Avenue and Lorraine Road intersection and is approximately 65.09 acres in size in Section 21, Township 37 South, Range 19 East, Sarasota County, Florida. The site is west of the existing Skye Ranch development.
2. The School District has been rezoned the property to GU.
3. Kimley-Horn assumes that a boundary survey, existing conditions survey, and topographic survey are available in electronic format for our use.
4. Kimley-Horn has assumed no wetlands impacts will be required for the proposed roadway improvements.
5. The current Lorraine Road K-8 plans include the extension of the North Road from Lorraine Road west to the school entrance. This roadway was designed and permitted through the Southwest Florida Water Management District (SWFWMD) with two (2) 11' wide travel lanes and open drainage. An east to north bound left turn lane was also shown on the plans.
6. A typical divided section with closed drainage for the proposed roadway has been provided by Stantec and will be used for the re-design except for the 10' wide sidewalk/trail along the north side of the section which will not be included with the plans.



7. The scope of the re-designed North Road will follow the alignment of the current roadway from Lorraine Road west to the school entrance.
8. Except for the force main currently shown on the project plans, no additional utility extensions along the North Road have been included in this scope of services.
9. The Client will provide copies of all available information pertinent to our services on the project.
10. It is assumed that the roadway extension will be designed and constructed after the turn-over of Lorraine Road to the County. Therefore, a right-of-way use permit through a Development Review Committee (DRC) submittal process would be required for the proposed intersection. An additional task has been included for a right-of-way use permit application and submittal to the Development Review Committee (DRC) for review of the proposed roadway.
11. Any legal services necessary for this project will be provided by others.
12. It is assumed that environmental consulting services is not required for the roadway extension as this area has already been permitted with the original school project.
13. Construction Phase Services for the roadway is already included with the K-8 letter agreement with the School District.

**Scope of Services****TASK I – CIVIL DESIGN AND CONSTRUCTION PLAN MODIFICATIONS**

Based on the turn lane lengths established in the Site Access Assessment report prepared by Palm Traffic, Kimley-Horn will perform design services related to the preparation of revised Construction Plans for the North Road per the Stantec's revised roadway section.

Kimley-Horn will review the stormwater management system designed for the K-8 site to confirm there is sufficient capacity for revised roadway section. Minor adjustments to the stormwater system may be required for the revised section and have been included in this scope and fee.

Based on the best available topographic and Boundary information provided by the Client or adjacent developer, Kimley-Horn will revise the current civil engineering plans for the revised roadway section.

A standalone construction plan set for the North Road is covered under Task II.

**TASK II – PERMIT APPLICATIONS**

It has been assumed a right-of-way use permit and will be required for the North Road intersection along with a submittal to the County's Development Review Committee (DRC) for construction plan review.

A separate plan set for the North Roadway would be prepared and would include the following:

## Cover Sheet

This sheet will contain all relevant project/contact information, as well as general notes and legends.

## Existing Conditions Plan

Including the boundary, topographic, and tree survey. (By others)

## Site Plan

Kimley-Horn shall prepare a Site Plan for the North Road including alignment; geometry; locations of pedestrian walks; signing and marking design including directional signage; traffic signage, pavement marking including stop bars; directional arrows; parking striping and specifications.

## Paving, Grading and Drainage Plan

Kimley-Horn shall prepare a plan for the roadway paving, grading and drainage systems to include stormwater management design with the school in accordance with the Sarasota County and SWFWMD. This plans with include pipe materials and sizing; grate and invert elevations; pavement structural section; subgrade treatment; curbs; horizontal control; sidewalks; spot elevations; demolition; and construction details and specifications and includes erosion and sedimentation control measures.

## Civil Details and Construction Specifications

Kimley-Horn shall prepare construction details for site work improvements and erosion and sediment control measures. Typically, these details will correspond with Sarasota County standard details.

Civil Engineering Plans will be submitted in electronic (.PDF) and hardcopy signed and sealed format to the project team and Client for review and submitted for permitting through Sarasota County.

Kimley-Horn will prepare and submit one (1) permit application to each of the following agencies.

### Sarasota County Development Services:

- Attend a Sarasota County Development Review Committee (DRC) Meeting to discuss application and any required additional informational needs from Sarasota County.
- Kimley-Horn will prepare a Sarasota County Land Development Review Application for concurrent Site and Development/Construction Plan review.
- Kimley-Horn will submit application, plans, calculations, and other supporting documents to the Development Services for review.
- Kimley-Horn will prepare a Sarasota County Right-of-way Use Permit Application and supporting documents for submittal by the Contractor for review.

## SWFWMD ERP Modification:

- Kimley-Horn will prepare an application for a Standard General SWFWMD Environmental Resource Permit (ERP) Modification.
- Kimley-Horn will submit applications, plans, drainage calculations, environmental narrative, and other supporting documents to SWFWMD for review.

Kimley-Horn assumes responding to no more than one (1) request for additional information (RAI) from any of the applicable regulatory agencies. Any information required beyond the first additional information request will be performed as an additional service, the terms of which will be agreed to prior to its commencement.

Consultant does not guarantee the issuance of permits or approvals. If permits are issued for this project, the conditions and expiration dates are the sole responsibility of the Client. Consultant is not responsible for extending time limited entitlements or permits. Consultant can provide hourly optional services to file for extensions, if applicable, provided the Client issues a direct written request for each requested entitlement, prior to the dates of expiration.

## **Services Not Included**

Any other services, including but not limited to the following, are not included in this Agreement.

1. Environmental (Hazardous Wastes) Services.
2. Geotechnical Services.
3. Underdrain design or plans.
4. Surveying and Construction Stakeout

## **Additional Services**

Any services not specifically provided for in the above scope, as well as any changes in the Client requests, will be considered additional services and will be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

1. Attendance at public hearings.
2. Structural design.
3. Traffic Operational Analysis Study.
4. Signalization study or design.
5. Traffic Counts
6. Revisions to any of the plans following receipt of the site plan from the Client.
7. Plan review or permit application fees.
8. Water Use Permitting through SWFWMD.
9. Services required by additional governmental regulations, which might be put into effect after the date of this agreement.
10. Meetings beyond those indicated in the scope of services.

**Fee and Expenses**

We will perform the services described in Tasks I and II of the Scope of Services for a lump sum fee below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

TASK	DESCRIPTION	FEE
I	CIVIL DESIGN AND CONSTRUCTION PLAN MODIFICATIONS	\$10,500
II	PERMIT APPLICATIONS	\$25,900
<b>TOTAL LUMP SUM FEE FOR TASKS I &amp; II</b>		<b>\$36,400</b>

Fees will be invoiced monthly based upon the percentage of services completed as of the invoice date. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

**Closure**

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to Indiantown Dairies c/o Neal Communities, Inc.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

\_\_\_\_\_ Please email all invoices to \_\_\_\_\_

\_\_\_\_\_ Please copy \_\_\_\_\_


If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to perform this service for you. Please contact me if you have any questions.

Very truly yours,

**KIMLEY-HORN AND ASSOCIATES, INC.**



Dean L. Paquet, P.E.  
Project Manager



William E. Conerly, P.E.  
Vice President

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Attachments – Request for Information and Standard Provisions

Agreed to this day \_\_\_\_\_ of \_\_\_\_\_, 2023.

**INDIANTOWN DAIRIES C/O NEAL COMMUNITIES, INC.**

By: \_\_\_\_\_,

\_\_\_\_\_  
Please Type/Print Name

Attest: \_\_\_\_\_,

\_\_\_\_\_  
Please Type/Print Name

Affix Corporate Seal:

Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_

Attachment – Request for Information

Attachment – Standard Provisions

### Request for Information

*Please return this information with your signed contract; failure to provide this information could result in delay in starting your project*

#### Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner		Agent for Owner		Unrelated to Owner

#### Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

#### Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

#### Project Funding Identification – List Funding Sources for the Project


*Attach additional sheets if there are more than 4 parcels or more than 4 owners*

KIMLEY-HORN AND ASSOCIATES, INC.  
STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant'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 the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
  - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
  - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
  - 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 the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant 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 the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant 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 the Consultant 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 the Consultant's transmittal of its invoice, the Consultant 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 Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
  - c. If the Client objects to an invoice, it must advise the Consultant 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 the Consultant 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 the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant 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 the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant 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 the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant 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 the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant 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 Consultant and its affiliates.
- 7) **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 the costs of construction and materials, are made solely based on its judgment as a 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.
- 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. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant'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 the Consultant's performance of services, and it is agreed that the Consultant 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 the Consultant, 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 the Consultant and the Consultant'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 the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant 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 the Consultant.
- 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 the Consultant 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. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant 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 the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, 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.
- 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.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for



isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

16) **Construction Phase Services.**

- a. If the Consultant prepares construction documents 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, and the Client waives any claims against the Consultant in any way connected thereto.
- b. 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 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 the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant 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 the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. 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 Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant 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 the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant 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 the Consultant. If Client requires Consultant 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 Consultant 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 CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**

**EXHIBIT "D"**

**(See attached – Tandem Construction Proposal)**

## SBSC K-8 at Clark and Lorraine

9501 Lorraine Road

### Budget Cost - North Road Revision

June 8, 2023

#### DESCRIPTION: Revised North Road w/ Median

Budget cost to revise the North Road construction per 05/20/23 sketch and section rec'd from Kimley Horn. Budget pricing is in ADDITION to the current scope of work for the North Road included in the 04/21/23 plans by Kimley Horn. No work outside of plan (specifically excluding extension of road west of North school entry)

DESCRIPTION	QTY	UOM	UNIT	EXTENDED COST
Asphalt (additional area and thickness)	4,474		\$	19,730.00
Storm (curb inlets & add'l pipe)			\$	34,540.00
Type F curb & striping (additional)	3,356		\$	109,868.00
Floritam Sod (additional area and type)	55,000		\$	36,465.00
Landscape & Irrigation ALLOWANCE (no spec)			\$	48,960.00
General Conditions			\$	21,997.00
EXCLUSIONS:				
ROW Permitting, 10' sidewalk, All Utilities, Electrical, Lighting, Maintenance				

**SUBTOTAL** \$ 271,560.00

CM CONTINGENCY	4.50%	12,220.20
DESIGN CONTINGENCY	10%	27,156.00
CM FEE	4%	10,862.40
INSURANCE	1.40%	3,801.84
BOND	1%	2,715.60

**TOTAL** \$ 328,316.04

