

CONTRACT #2022-13-05
CONTRACT FOR GENERAL PLANNING SERVICES

THIS CONTINUING CONTRACT ("Contract") is made by and between the CITY OF NORTH PORT, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and Kimley-Horn and Associates, Inc. a North Carolina corporation registered to conduct business in the State of Florida, with a local business address of 1777 Main Street, Suite 200, Sarasota, FL 34236, hereinafter referred to as "CONSULTANT."

NOW THEREFORE, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. CONSULTANT'S SERVICES

- A. CONSULTANT agrees to diligently and timely perform services for the CITY relating to General Planning Services as identified in the Request for Proposal No. 2022-13 (the "RFP") and CONSULTANT'S proposal submitted February 14, 2022. The overall Scope of Services is described in **Attachment A** which is attached hereto and incorporated as if set forth fully herein.
- B. This Contract shall commence immediately upon the execution of the Contract by both the CITY and CONSULTANT. The term of the Agreement shall begin on the date of execution and continue for two (2) years.
- C. In the event that the work assignment schedule for completion exceeds the term of this Contract, the Contract shall continue in full force and effect until all work assignments are completed and accepted or terminated by the City.

2. CONTRACT AMOUNT AND WORK ASSIGNMENT PRICE

- A. Consultant understands that this is a nonexclusive contract. The City may issue one or more work assignments on the form as attached to the Contract.
- B. The cumulative total for all work assignments issued under this Contract shall not exceed the budgeted amount per fiscal year.
- C. In consideration of the work, labor, services, and materials to be furnished by the Consultant, and in accordance with the agreed upon work assignments and addendums, if any, the City agrees to pay, and the Consultant agrees to receive payments in accordance with the Consultant's Fee Schedule prices incorporated in this Contract. Payment will be made upon the Consultant's completion and the City's acceptance of each work assignment or percentage consistent with this Contract. The total Contract amount for all work assignments is an estimate based upon anticipated work assignments for all applicable contracts.
- D. The Contract amount set forth herein is an estimate based upon anticipated work assignments. However, the Consultant understands and acknowledges that no minimum amount of work is guaranteed under this Contract.

3. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

1. CONSULTANT shall receive payments in accordance with the fees set forth in the Fee Schedule (**Attachment B**) and approved Work Assignment (**Attachment C**) as compensation for its services; Attachments B and C are attached hereto and incorporated as if set forth fully herein. The scope of services, schedule, and maximum compensation for each work assignment shall be determined individually as the need for a project assignment arises. Work assignments issued under this Contract shall not exceed thresholds set forth in Florida Statutes, Section 287.055(2)(g). Work assignments shall require approval of the City Manager or designee. Said compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Contract but not those indicated as non-reimbursable below.
2. No claim for reimbursement of the following expenses shall be made to the CITY:
 - a. All travel and vehicle related expenses.
 - b. Three (3) sets of signed and sealed permitting plans.
 - c. Computer usage, telephone expenses, fax, copies, printing, and postage.
 - d. Subconsultant mark-up.
3. The parties acknowledge and agree that the obligations of CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Contract, or any subsequent contract entered into pursuant to this Contract or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of CITY that may arise under this Contract; however, since funds are appropriated annually by the City Commission on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Contract shall not constitute an indebtedness of CITY nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

1. The CITY shall pay the CONSULTANT through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida

Statutes, upon receipt of the CONSULTANT'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Contract. The CONSULTANT shall submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during that invoicing period.

2. For those specific services that were partially completed, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the CITY'S Administrative Agent based on the percentage of the amount for those specific services.
3. The CONSULTANT'S invoices shall be in a form satisfactory to the CITY'S Finance Department, who shall initiate disbursements.

4. INDEMNIFICATION

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT MUST INDEMNIFY AND HOLD HARMLESS THE CITY, 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 CONTRACT. THE CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**
- B. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONSULTANT MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST PROMPTLY NOTIFY THE CONSULTANT IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS CONTRACT.**
- C. THIS AGREEMENT FOR INDEMNIFICATION SHALL SURVIVE TERMINATION OR COMPLETION OF THE CONTRACT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS CONTRACT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON THE CONSULTANT'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).**
- D. NOTHING IN THIS CONTRACT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.**
- E. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS CONTRACT.**
- F. FURTHER, THE CONSULTANT SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA, FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME**

AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.

5. CONSULTANT'S INSURANCE

A. INSURANCE

1. Before performing any work, CONSULTANT shall procure and maintain, during the life of this Contract, the insurance listed below, unless otherwise specified. 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 of the State of Florida and meet a minimum financial AM Best and Company, Inc. rating of no less than "Excellent." No changes are to be made to these specifications without the prior written approval of the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon agreement with CONSULTANT.
2. The below insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The CITY in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that might arise out of the performance of the work done under this Contract by the CONSULTANT, its agents, representatives, employees, or subconsultants. CONSULTANT is free to purchase such additional insurance as it may determine necessary.

B. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

Coverage must apply to all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for disease. Proof of such insurance must be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Contract.

C. COMPREHENSIVE COMMERCIAL GENERAL LIABILITY INSURANCE

Coverage must apply to all employees at the statutory limits provided by state and federal laws. The CONSULTANT must procure and maintain, and require all subconsultants to procure and maintain, during the life of this Contract, a comprehensive commercial general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit must apply separately to this Contract, or the general aggregate limit shall be twice the required occurrence limit.

The policy must include General Liability with a limit of \$1,000,000 for General Aggregate; \$1,000,000 for each occurrence; \$1,000,000 for Products and Completed Operations; and \$100,000 for Fire Damage. Proof of such insurance must be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Contract.

D. AUTOMOBILE LIABILITY INSURANCE

The CONSULTANT must procure and maintain, and require all subconsultants to procure and maintain, during the life of this Contract, automobile liability insurance to include all owned, leased, hired, and non-owned vehicles. Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned (Code 9) autos.

Proof of current Commercial Auto Liability Insurance or Sub-Limits Personal Automobile Coverage \$100,000 per person for Bodily Injury; \$200,000 per accident for Bodily Injury; and \$100,000 per accident for Property Damage. Proof of such insurance must be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Contract.

E. PROFESSIONAL LIABILITY INSURANCE

The CONSULTANT must procure and maintain, and require all subconsultants to procure and maintain, during the life of this Contract, professional liability insurance with a minimum \$1,000,000 per occurrence; and with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The CITY prefers all professional liability insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by the Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Contract is completed.

F. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the CITY, its officers, officials, employees, and volunteers, and the CITY'S insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by CONSULTANT for the CITY. It is CONSULTANT'S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, CONSULTANT, its officers, officials, agents, employees, volunteers, and any subconsultants, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained, or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which CONSULTANT, or its agents may be responsible.

G. POLICY FORM

1. All policies required by this Contract, with the exception of Professional Liability and Workers' Compensation, or unless Risk Management through the CITY'S Purchasing Office gives specific approval, are to be written on an occurrence basis and the Comprehensive Commercial

General Liability shall name the City of North Port, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Contract. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the CITY'S Purchasing Office. 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 (2) years. If provided as an option, CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.

2. Insurance requirements itemized in this Contract, and required of CONSULTANT, shall be provided by or on behalf of all subconsultants to cover their operations performed under this Contract. CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subconsultants.
3. Each insurance policy required by this Contract shall:
 - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. CONSULTANT is to notify the CITY'S Purchasing Office by written notice via certified mail, return receipt requested.
4. The CITY shall retain the right to review, at any time, coverage, form, and amount of insurance.
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. The extent of CONSULTANT'S liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between CONSULTANT and its carrier.**
6. 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 the CITY is an insured under the policy. CONSULTANT'S insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. CONSULTANT is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
7. All certificates of insurance must be on file with and approved by the CITY before commencement of any work under this Contract. All certificates of insurance required herein must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing Claims Made or Occurrences form coverage and conditions to this Contract, as well as the Contract number and description of work, are to be furnished to the CITY'S

Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) 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 Purchasing Office before CONSULTANT will be allowed to commence or continue work. The certificate of insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

8. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Contract shall be provided to CONSULTANT'S insurer(s) and the CITY'S Purchasing Office as soon as practicable after notice to the insured.

6. RESPONSIBILITY OF CONSULTANT

A. INCORPORATION OF BID DOCUMENTS

The Request for Proposal ("RFP"), including attachments and addenda, and the CONSULTANT'S response to the RFP, are specifically made a part of this Contract and are incorporated as if set forth fully herein. In the event of a conflict between or among the documents or any ambiguity or missing specifications or instruction, the following priority is established:

1. The work assignment.
2. This Contract (Contract No. 2022-13) Approved by Commission, and any attachments.
3. The RFP, including any and all attachments and addenda.
4. CONSULTANT'S response to the RFP.
5. Specific direction from the City Manager.

- B. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents, and data used or produced by or at the behest of CONSULTANT under this Contract. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents, and data.

- C. If CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

- D. 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 Contract 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 of this Contract.

- E. CONSULTANT shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent consultant firms in effect at the time CONSULTANT'S services are rendered. CONSULTANT covenants and agrees that it and its

employees shall be bound by the standards of conduct in Florida Statutes, Section 112.313, as it relates to work performed under this Contract. CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

- F. CONSULTANT shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- G. CONSULTANT shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at CONSULTANT'S offices for inspection, audit, and copying during normal business hours by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.

7. PUBLIC RECORDS LAW

In accordance with Florida Statutes, Section 119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:

- A. Keep and maintain public records required by the CITY to perform the service.
 - 1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.

(See <http://dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - 2. "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CITY. CONSULTANT'S records under this Contract include but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Contract.
- B. Upon request from the CITY'S custodian of public records, provide the CITY, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format compatible with the information technology systems of the CITY.
- C. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and, if CONSULTANT does not transfer the records to the CITY following completion of the Contract, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.

- D. Upon completion of the Contract, transfer, at no cost, to the CITY all public records in CONSULTANT'S possession or keep and maintain public records required by the CITY to perform the service. If CONSULTANT transfers all public records to the CITY upon completion of the Contract, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon the completion of the Contract, CONSULTANT shall meet all applicable requirements for retaining public records.
- E. **IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, 941.429.7063 OR HOTLINE 941.429.7270;
E-MAIL: publicrecordsrequest@cityofnorthport.com.**
- F. Failure of CONSULTANT to comply with these requirements shall be a material breach of this Contract. Further, CONSULTANT may be subject to penalties under Florida Statutes, Section 119.10.

8. OWNERSHIP AND USE OF DOCUMENTS

- A. It is understood and agreed that all the documents, or reproducible copies, developed by CONSULTANT in connection with its services, including but not limited to reports, designs, specifications, and data, shall be delivered to, and shall become the property of the CITY as they are received by the CITY and when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Contract to the CITY. Specific written authority is required from the CITY'S Administrative Agent for CONSULTANT to use any of the work products of this Contract on any non-CITY project.
- B. Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

9. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

- A. The timely performance and completion of the required services under the Contract is vitally important to the interest of the CITY. CONSULTANT shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Contract. CONSULTANT'S personnel assigned to perform the services of this Contract shall comply with the information presented in the professional services response proposal made a part hereof by reference. CONSULTANT shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to CONSULTANT'S key personnel must receive the CITY'S Administrative Agent's written approval before said changes or substitution can become effective.

- B. The services to be rendered by CONSULTANT shall commence within one (1) calendar week of CONSULTANT'S receipt of written Notice to Proceed from the CITY.
- C. CONSULTANT specifically agrees that all work performed under the terms and conditions of this Contract shall be completed within the time limits as set forth, subject only to delays caused through no fault of CONSULTANT or the CITY. Time is of the essence in the performance of this Contract.
- D. CONSULTANT agrees to provide to the CITY'S Administrative Agent, monthly written progress reports concerning the status of the work. The CITY'S Administrative Agent may determine the format for this progress report. The CITY shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by CONSULTANT.
- E. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by CONSULTANT which delay the Project Schedule completion date, the CITY shall not unreasonably withhold the granting of an extension of the Project Schedule (**Attachment C**) time limitation equal to the delay.

10. OBLIGATIONS OF THE CITY

- A. The CITY'S Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Contract. If necessary, the CITY may authorize a specific program manager to perform the responsibilities of the CITY'S Administrative Agent. The CITY shall designate any specific program manager in the Notice to Proceed. The responsibility of the CITY'S Administrative Agent shall include:
 - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by CONSULTANT, and render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of the CITY'S policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Contract.
 - 3. Review for approval or rejection all CONSULTANT'S documents and payment requests.
- B. The CITY shall, upon request, furnish CONSULTANT with all existing data, plans, studies, and other information in the CITY'S possession which may be useful in connection with the work of this project, all of which shall be and remain the property of the CITY and shall be returned to the CITY'S Administrative Agent upon completion of the services to be performed by CONSULTANT.
- C. The CITY'S Administrative Agent shall conduct periodic reviews of the work of CONSULTANT necessary for the completion of CONSULTANT'S services during the period of this Contract, and may make other CITY personnel available, where required and necessary to assist CONSULTANT. The availability and necessity of said personnel to assist CONSULTANT shall be determined solely within the discretion of the CITY. The CITY'S technical obligations to the project, if any, are stated in specific authorizations and work authorizations.

- D. The CITY shall not provide any services to CONSULTANT in connection with any claim brought on behalf of or against CONSULTANT.

11. TERMINATION

A. TERMINATION WITH OR WITHOUT CAUSE

The performance of work under this Contract may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the CITY'S best interest. Any such termination shall be effective by delivery to the CONSULTANT of a written notice of termination at least thirty (30) calendar days before the date of termination, specifying the extent to which performance of the work under the Contract is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONSULTANT shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims. CONSULTANT must deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its services. Upon delivery of the documents, the CITY shall pay the CONSULTANT in full settlement of all claims by it hereunder as the work actually completed bears to the entire work under the Contract, as determined by the CITY, less payments already made to the CONSULTANT, and any amounts withheld by the CITY to settle claims against or to pay indebtedness of the CONSULTANT in accordance with the provisions of the Contract. Under no circumstances shall the CITY make any payment to CONSULTANT for services that have not been performed or that are performed subsequent to the termination date.

B. NON-APPROPRIATION

The parties acknowledge and agree that the obligations of the CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Contract, or any subsequent contract entered into pursuant to this Contract or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of CITY that may arise under this Contract; however, since funds are appropriated annually by the City Commission on a fiscal year basis, CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Contract shall not constitute an indebtedness of CITY, nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation. It is expressly understood by the parties that funding for any subsequent fiscal year of the Contract is contingent upon appropriation of monies by the City Commission. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Contract.

The CITY will be responsible for payment of any outstanding invoices and work completed by the CONSULTANT prior to such termination.

C. ABANDONMENT

In the event that CONSULTANT abandons performance under this Contract, the City Manager or designee may terminate this Contract upon three (3) calendar days' written notice to CONSULTANT indicating its intention to do so. The written notice shall state the evidence indicating CONSULTANT'S abandonment.

D. TERMINATION FOR NONPAYMENT

CONSULTANT may terminate this Contract only in the event of the CITY failing to pay CONSULTANT'S properly documented and submitted invoice within ninety (90) calendar days of the approval by the CITY'S Administrative Agent, or if the project is suspended by the CITY for a period greater than ninety (90) calendar days.

E. RIGHTS RESERVED

The City Manager or designee reserves the right to terminate and cancel this Contract in the event CONSULTANT is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for CONSULTANT, or an assignment is made for the benefit of creditors.

F. BREACH

In the event CONSULTANT breaches this Contract, the CITY must provide written notice of the breach and CONSULTANT shall have ten (10) days from the date the notice is received to cure. If CONSULTANT fails to cure within the ten (10) days, the City Manager or designee can immediately terminate the Contract and/or refuse to make any additional payment, in whole or in part, and if necessary, may demand the return of a portion or the entire amount previously paid to CONSULTANT due to:

1. The quality of a portion or all of CONSULTANT'S work not being in accordance with the requirements of this Contract;
2. The quantity of CONSULTANT'S work not being as represented in CONSULTANT'S Payment Request, or otherwise;
3. CONSULTANT'S rate of progress being such that, in the CITY'S opinion, substantial or final completion, or both, may be inexcusably delayed;
4. CONSULTANT'S failure to use Contract funds, previously paid CONSULTANT by the CITY, to pay CONSULTANT'S project related obligations including, but not limited to, subconsultants, laborers and material and equipment suppliers;
5. Claims made, or likely to be made, against the CITY or its property;
6. Loss caused by CONSULTANT;

7. CONSULTANT'S failure or refusal to perform any of the obligations to the CITY, after written notice and a reasonable opportunity to cure as set forth above; or
8. Violation of any local, state, or federal law in the performance of this Contract which will constitute a material breach of this Contract.

G. RETURN OF PAYMENT

In the event that the CITY makes written demand upon CONSULTANT for amounts previously paid by the CITY as contemplated in this section, CONSULTANT must promptly comply with such demand. The CITY'S rights hereunder survive the term of this Contract and are not waived by final payment and/or acceptance.

H. REMEDIES

In the event of a default or breach of the contract terms, the City may avail itself of each and every remedy specifically given to it now existing at law or in equity, and each and every such remedy will be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise, or the beginning of the exercise, of one remedy will not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

12. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be, in the performance of all work services and activities under this Contract, an independent contractor and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times and in all places be subject to CONSULTANT'S sole direction, supervision, and control. CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CONSULTANT'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY. CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement, or representation other than as specifically provided for in this Contract. CONSULTANT shall not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

13. ENTIRE AGREEMENT

This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter.

14. AMENDMENT

The City Manager or designee may agree to amendments that do not increase compensation to the CONSULTANT. Only the City Commission can approve increases in compensation under this Contract. In the event the CONSULTANT begins work on unauthorized changes to scope prior to receiving a signed Change Order by the City Manager or designee, the CONSULTANT does so at its own expense and risk as unauthorized work shall not be paid for by the CITY.

15. ASSIGNMENT

CONSULTANT shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due to CONSULTANT from the CITY under this Contract may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

16. WAIVER

No delay or failure to enforce any breach of this Contract by either CITY or CONSULTANT shall be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver must not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.

17. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations, and remedies of the parties under this Contract are governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract is in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida. The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void.

18. BINDING EFFECT/COUNTERPARTS

By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Contract is binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.

19. NO HIRE

CONSULTANT shall not hire any CITY employee associated with this project throughout the duration of the Contract and for a period of one (1) year after completion.

20. NOTICES

Any notice, invoice, report, demand, or other type of documentation required by this Contract shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

AS TO CONSULTANT:

Name: B. Kelley Klepper, AICP
Title: Vice President/Project Manager
Address: 1777 Main Street
Sarasota, Florida 34236
Phone: 941.379.7600
Email: Kelley.klepper@kimley-horn.com

AS TO CITY:

Name: Alaina Ray
Title: Neighborhood Development Services Director
Address: City of North Port
4970 City Hall Boulevard
North Port, FL 34286
Phone: 941.429.7098
Email: aray@cityofnorthport.com

WITH COPIES OF NOTICES TO:

Name: City Attorney's Office
Address: 4970 City Hall Boulevard
North Port, FL 34286
Email: northportcityattorney@cityofnorthport.com

Notices are effective when received at the addresses specified above. Changes to the respective addresses which such notice is to be directed may be made from time to time by either party by written notice to the other party. Nothing in this Section shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and CITY.

21. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

22. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Contract, the prevailing party must be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings, at both trial and appellate levels.

23. SCRUTINIZED COMPANIES

As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000 or less, the CONSULTANT shall certify on a form provided by the CITY, that it is not on the Scrutinized

Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel.

- B. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000 or more, the CONSULTANT shall certify on a form provided by the CITY, that all of the following are true:
1. It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel; and
 2. It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes, Section 215.473; and
 3. It is not engaged in business operations in Cuba or Syria.
- C. If the CONSULTANT provides a false certification or has been placed on one of the above-noted Lists of Scrutinized Companies or has engaged in business operations in Cuba or Syria, the CONSULTANT will be in breach of this Contract and the CITY may terminate the Contract.
- D. PENALTY
1. A CONSULTANT that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of the Contract, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
 2. Shall be ineligible to bid on any contract with the CITY for three (3) years after the date the CITY determined that the CONSULTANT submitted a false certification.

24. E-VERIFY

The CITY, CONSULTANT and every subconsultant shall register with and use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all new employees as required by Florida Statutes, Section 448.095. A consultant who enters into a contract with a subconsultant, must require that the subconsultant provides the consultant a certification by affidavit stating that at the time of such certification and during the term of the contract, the subconsultant does not and will not employ, contract, or subcontract with an unauthorized alien, who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. S. 1324A(H)(3). The CONSULTANT shall comply with all other federal laws pertaining to the subconsultant.

25. FORCE MAJUERE

- A. Should performance of any obligation created under this Agreement become illegal or impossible by reason of:
1. A strike or work stoppage, unless caused by a negligent act or omission of either Party;

2. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
3. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
4. A declared emergency of the federal, state, or local government; or
5. Any other like event that is beyond the reasonable control of the non-performing party;

Then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided that:

6. The non-performing party provides written notice within five (5) days of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has precluded the non-performing party from performing, and the means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Agreement;
 7. The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;
 8. No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and
 9. The non-performing party uses all reasonable diligence to remedy its inability to perform.
- B. Economic hardship of a party does not constitute an event of *force majeure*. A party will not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.
- C. The non-performing party's affected obligations under this Agreement will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance shall not be excused under this Section for a period exceeding two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term.
- D. The term of the Agreement will be extended by a period equal to that during which the non-performing party's performance is suspended under this Section.

26. NON-DISCRIMINATION

The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The CONSULTANT shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

27. AUTHORITY TO EXECUTE AGREEMENT

The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES, INC.

B Kelley Klepper
B. KELLEY KLEPPER, AICP
VICE PRESIDENT

SWORN ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Lawson

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 6th day of May, 2022, by Kelley Klepper, as Vice-President for Kimley-Horn and Associates, Inc.

Kelley
Susan M. Johnson
Notary Public

Personally Known OR Produced Identification
Type of Identification Produced _____



Approved by the City Commission of the City of North Port, Florida on _____, 2022.

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER TAYLOR, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY

ATTACHMENT A – SCOPE OF SERVICES

General Scope of Services – Contract No. 2022-13-05

The following scope of services is a general guide to the work the City expects to be performed under Contract No. 2022-13 and is not a complete listing of all services that may be required or desired. An additional scope of work specific to each task will be developed as each Letter of Interest is issued.

Per Florida Statutes, Section 287.055(2)(g), as amended, – A “continuing contract” is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

Under this contract, the Consultant shall be performing work of a specific nature consistent with the procedures and description of the work assignment.

The primary need currently identified for these on-call Consultant services consists of professional support to supplement the City’s Planning staff to conduct review of development proposals and applications, including review of site plans, rezoning proposals and other similar applications and proposals related to new development to determine conformance with the City’s Unified Land Development Code (“ULDC”) and Comprehensive Plan. On-call services may also encompass long-range planning efforts such as environmental resources and sustainability studies, small area and community plans, community engagement campaigns, research, graphic design, report, and white paper development, and other short- and long-term planning-related tasks. Consultant staff will work under the general management of the Neighborhood Development Services Director and/or assigned City staff.

Some of the work assignments issued as a result of this RFP will have aggressive timeframes that require meeting strict deadlines. However, all of these requests will require strong technical expertise, written communication skills, and comprehensive public participation and community outreach skills. Because of the above requirements and needs, the City is seeking to establish contracts that will provide professional planning services on ‘an as needed basis’. Work performed by Consultant staff under this RFP will be completed remotely or onsite at North Port City Hall located at 4970 City Hall Boulevard, North Port, Florida.

The Consultant shall serve as North Port Neighborhood Development Service’s professional representative for each work assignment, as applicable, and may be required to present reports and recommendations to Commissioners or public as requested and scheduled by North Port Neighborhood Development Services. The firms shall be required to submit any and all presentations or publications relating to City work for review and approval by North Port Neighborhood Development Services prior to distribution.

The selected firm(s) shall work in close cooperation and coordinate their work through Neighborhood Development Services Director and/or assigned City staff.

The Consultants shall perform all the services specified in accordance with generally accepted professional standards. The Consultants shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. All work of any kind shall conform to and be in compliance with applicable practices, codes, laws, ordinances, regulations, and restrictions. The Consultant services will include the necessary planning and other professional services listed in this scope of services.

All deliverables required in the performance of the work assignments shall be submitted to North Port Neighborhood Development Services in the appropriate electronic media format via flash drives, email, and/or FTP site. Word processing documents shall be in Word format, spreadsheet data in Excel format, presentations shall be in Power Point, project schedules shall be in Microsoft Project and all maps, plans, and surveys shall be in suitable CAD, ArcGIS, and PDF format for utilization by North Port Neighborhood Development Services. All deliverables shall become the property of the City upon delivery.

The City, at its sole discretion, may expand the scope of work to include additional requirements. The City reserves the right to investigate as it deems necessary to determine the ability of any firm to perform the work or services requested. Information the City deems necessary in order to make a determination shall be provided by the firms upon request.

I. WORK ASSIGNMENTS:

A detailed Scope of Services will be developed by the City Project Manager for each work assignment issued under an awarded contract. The Consultant shall make every effort to keep the personnel assigned to a work assignment consistent. The Consultant shall assign a Project Manager to each work assignment to provide consultation and management services. The Consultant's Project Manager will be responsible for staffing the work and the review of all submittals, reports, and work products prior to submission to the City. The Consultant's Project Manager will have the final responsibility for quality control.

The City may award an individual work assignment to any Consultant awarded a contract. Selection of the Consultant and award of the work assignment will comply with the following criteria:

Letter of Interest process will be followed as stated in this Attachment A.

II. DISCIPLINE AREAS/WORK ASSIGNMENTS TO BE PERFORMED

This section outlines the main task areas anticipated to be conducted under an awarded contract and the knowledge and skills needed within the associated disciplines to achieve success. The Consultant should demonstrate to the City the ability and capacity to successfully perform these tasks.

A. Land Development Review

This task is the primary driver for on-call Consultant assistance. This task encompasses a variety of knowledge and skills necessary to complete the review process of applications for land development, re-zonings, site plans, etc. The knowledge and skills required for this discipline include, but are not limited to, the following: land use planning and analysis; zoning ordinance interpretation; local and regional impact analysis; transportation impacts; environmental preservation; site, building, and streetscape design; mixed-use planning and design; landscape design; bicycle, pedestrian, and interconnectivity design; presentation development and delivery; data analysis; technical report writing and communication; vesting and entitlement research;

facilitating interdepartmental and interagency collaboration; time management; and autonomous management of multiple assignments.

B. Long Range Planning

This discipline encompasses a variety of knowledge and skills necessary to create goals, objectives, policies, strategies, and graphics for community and small area plans and other long-range planning initiatives. The knowledge and skills required for this discipline include, but are not limited to, the following: land use planning and analysis; environmental resources and sustainability; historic and cultural planning; site, building, and streetscape design; small area, village, and opportunity area planning; site-specific and regional planning; mixed-use planning and design; forecasts and potential impacts of development; transportation policy and analysis, including bicycle and pedestrian connections; policy writing and analysis; presentation development and delivery; research data analysis; GIS-based mapping; public engagement and outreach; and interdepartmental and interagency collaboration.

C. Zoning Administration

This discipline encompasses a variety of knowledge and skills necessary to interpret and implement the City's ULDC. The knowledge and skills required for this discipline include, but are not limited to, the following: zoning concepts and best practices; federal, state, and local regulatory and legal frameworks; zoning appeal processes; zoning interpretations; zoning variances; site planning, development, and review; site and building design concepts; environmental preservation; landscape design; multi-modal transportation; bicycle, pedestrian, and interconnectivity design, technical writing; vesting and entitlement research; presentation development and delivery; data analysis; public engagement and outreach; and interdepartmental and interagency collaboration.

D. Customer Service

This discipline encompasses a variety of knowledge and skills necessary to provide customer service to citizens, applicants, and decision-makers who have planning and zoning inquiries. The knowledge and skills required for this discipline include, but are not limited to, the following: Site Plan criteria, including application checklist compliance; in-person, telephone, and email interaction with customers; technical writing and communication; entitlement research; land management system research; and GIS mapping and research.

III. PROCEDURE AND SELECTION OF CONSULTANTS WITHIN THE CONTINUING CONTRACT

A. Work Assignments

Work assignment size may vary. No guarantee is expressed or implied as to the quantity of services, if any, to be procured under this Request for Proposals by the City.

No work assignment will exceed the statutory limits provided for continuing contracts in Florida Statutes, Section 287.055(2)(g), as amended. If these limits are amended in the future the new limits will apply to the proposed contract.

All work assignments \$100,000 or greater requires Commission approval.

Reasonable attempts will be made to equalize projects amongst qualified candidates in terms of project worth with the objective of effecting an equitable distribution of work assignment fees

among qualified firms provided such distribution does not violate the principle of selection of the most highly qualified firm responding to a particular Letter of Interest. The respondent to a Letter of Interest deemed most qualified will be chosen to submit a scope and lump sum fee for the work assignment. The City may use direct select for work assignments or request for letters of interest method for individual work assignments as outlined below.

B. Non-Exclusivity

No guarantee of certain services, volume of work, or quantity of projects is implied. This contract does not entitle any firm to exclusive rights to City contracts. The City reserves the right to acquire professional services from other firms or perform "in-house" services for any purpose as it deems appropriate. The City may, in its sole discretion, procure the services of any Consultant at any time for any project other than those selected for this continuing contract.

1. Letter of Interest Process

When the City requires professional services, it is anticipated, but not necessarily required, that the process will proceed in the following manner:

- i) For each specific project to be completed under a continuing services contract, Neighborhood Development Services (NDS) will send a Letter of Interest to all qualified firms awarded the continuing services agreement. The Letter of Interest that will include, but not be limited to, the following information along with request for interested firms to submit a qualifications-based proposal for the specific project.
 - a. Project description;
 - b. General scope of work;
 - c. Goals of project;
 - d. Potential unknowns;
 - e. Any special conditions associated with the project;
 - f. Proposed schedule for project;
 - g. Proposed budget for project;
 - h. Limited references request;
 - i. Limited page limit on qualifications-based project-specific proposal; and,
 - j. Deadline for submittal of qualifications-based proposal for the project.
- ii) Each firm shall then have the opportunity to submit a qualifications-based proposal for the specific project.
- iii) City staff will evaluate the qualifications-based proposals on general criteria including, but not limited to, the following:
 - a. Understanding of project and required deliverables;
 - b. Ability and relevant expertise/qualifications of the firm's personnel to be used in performing the service;
 - c. Availability of staff and ability to meet project schedule;
 - d. Evaluations on prior NDS projects;
 - e. Firm's proposed cost saving measures for the project,
 - f. Conflict of Interest form,
 - g. Disclosure form for Consultant/Engineer/Architect; and

h. Scrutinized Company Certification Form

- iv) City staff will obtain from selected Consultant a finalized detailed scope with tasks, fee schedule based on hourly rates submitted with master contract, and project schedule. Negotiations may be required to fine tune the scope and to issue a work assignment consistent with the form attached as Attachment C.

The City reserves the right to be the sole determination of responsiveness and responsibility of any submittals and to reject all submittals received in response to requests for proposals, requests for qualifications, and/or letters of interest.

The Consultant shall neither commence any work, nor enter a City work premise, until the Consultant has received a **fully executed work assignment** from the City serving as written Notice to Proceed (“NTP”).

The parties agree that the scope of services for any work assignment is a description of Consultant’s obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Consultant impractical, illogical, or unconscionable.

Consultant and City acknowledge that Scope of Services may not delineate every detail and minor work task required to be performed by Consultant to complete the project. If, during the performance of the services included in the work assignment, Consultant determines that work should be performed to complete the project which is in the Consultant’s opinion outside the level of effort originally anticipated, whether the Scope of Services identifies the work items, Consultant shall notify the City in writing in a timely manner before proceeding with the work. If Consultant proceeds with said work without notifying the City, said work shall be deemed to be within the original level of effort, whether specifically addressed in the Scope of Services. Notice to the City does not constitute authorization or approval by City to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without prior written City approval is at Consultant’s sole risk.

Consultant acknowledges and agrees that services under this Agreement will be requested by City on an as-needed basis only, and no representation or guarantee is made by City to Consultant that City will utilize Consultant’s services exclusively or at all.

C. Direct Select Work Assignment Process

Upon approval from the Sr. Purchasing Administrator or designee, City staff may forego the Letter of Interest process and proceed directly with the work assignment process. A scope with itemized tasks and fee schedule based on contracted hourly rates will be obtained from one of the contracted firms, reviewed, negotiated, and awarded. This process will be used when circumstances warrant a more expedient process.

D. Invoicing Specifics

Consultants shall invoice the City for each project or assignment, as negotiated. Each invoice shall identify the invoice number; project or assignment; detail the contract price; payments made to date; percentage of completion of the assignment/project/phase and/or employees names, titles,

direct labor rates, and multiplier; payment due this invoice; remaining balance due; attached list of approved reimbursables with appropriate receipts. Invoices shall itemize hours, hourly wage, or other unit agreed upon as measurement of payment during negotiations, if requested. If hourly, invoices shall identify the name and title of personnel who performed the work.

Invoices shall also include a detailed bullet list of work completed within the period of the invoice. Bullet list of work completed shall clearly identify the work associated with the current billing.

E. Compensation

Compensation to the Consultant shall include the following: all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, and all other costs not indicated as non-reimbursable below.

No claim for reimbursement for these expenses shall be made to the City:

- A. All travel and vehicle related expenses.
- B. Three (3) sets of signed and sealed permitting plans.
- C. Computer usage, telephone expenses, fax, copies, printing, and postage.
- D. Subconsultant mark-up.

A copy of the invoice for each reimbursable expense shall be attached to Consultant's invoice.

The City will not allow prime consultant markups on any services provided by a sub-consultant.

F. Change Orders

All requests for changes to the resulting Agreement shall be made in writing and are subject to approval by the appropriate level of City authority.

All change orders, including no-cost change orders, to work assignments require approval by City Manager, at a minimum. Some change orders will require Commission approval.

The Consultant shall fully understand the City's Change Order policy. In the event the Consultant begins work on unauthorized changes to scope prior to receiving a signed Change Order by the City's appropriate level of authority, they do so at their own expense and risk not being compensated by the City for performing unauthorized work.

G. Schedule

An understanding and agreement, by and between the Consultant and the City, that the completion time will be as specified in approved work assignments and that all work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure full completion thereof as specified in the Scope of Services.

END OF ATTACHMENT A

ATTACHMENT B to Contract No. 2022-13-05

FEE SCHEDULE

| | |
|--|-----------------------|
| Project Manager | \$200 - \$250 |
| Principal-in-Charge | \$225 - \$280 |
| Senior Engineer | \$190 - \$245 |
| Senior Professional/Planner | \$180 - \$275 |
| Chief Landscape Architect | \$175 - \$240 |
| Senior Landscape Architect | \$145 - \$175 |
| Professional | \$145 - \$195 |
| Analyst | \$125 - \$155 |
| Senior CADD Operator | \$120 - \$185 |
| Administrative/Clerical/Technical | \$ 80 - \$ 110 |

All rate ranges are subject to annual adjustment.

END OF ATTACHMENT B

