

CONTRACT #2020-58-10

PROFESSIONAL ENGINEERING SERVICES – CONTINUING SERVICES CONTRACTS FOR
CITY OF NORTH PORT UTILITIES

THIS CONTINUING CONTRACT ("Contract") is made and entered into this 13 day of Oct, 2020, 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 Professional Engineering Services as identified in the Request for Proposal No. 2020-58 (the "RFP") and CONSULTANT'S proposal submitted July 20, 2020. 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 three (3) years, with the option to renew for two (2) additional one-year terms, subject to CONSULTANT'S satisfactory performance and mutual agreement of the CITY and CONSULTANT to renew the Contract on the same terms and conditions.

2. 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(s) (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 Statute, Section 287.055(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. Subcontractor 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.

3. 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. 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.

4. 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 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 subcontractors. CONSULTANT is free to purchase such additional insurance as it may determine necessary.

- B. Workers' Compensation and Employers' Liability Insurance: Coverage to apply for 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 subcontractors 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, contractual liability coverage pursuant to ISO form CG001, 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 and \$100,000 for damage to rented premises. 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 subcontractors 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.

The policy must include liability insurance with a limit of \$1,000,000 for Combined Single Limit (CSL) for each accident; \$1,000,000 per person for Bodily Injury; \$1,000,000 per accident for Bodily Injury; and \$1,000,000 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 subcontractors 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 subcontractors, 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 must 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, must 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 must 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 or not 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.

5. 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. This Contract (Contract No. 2020-58) Approved by Commission, and any attachments.
 2. The RFP, including any and all attachments and addenda.
 3. CONSULTANT'S response to the RFP.

4. 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.
6. **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.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/subcontractor 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.

7. 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.

8. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL: 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.

- A. 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.
- B. 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.
- C. 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.
- D. 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 aforementioned delay.

9. 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.

10. 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. 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. 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, subcontractors, 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. 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.
- 11. 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.
- 12. ENTIRE AGREEMENT:** This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.

13. **AMENDMENT:** No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. 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.
14. **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
15. **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.
16. **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.
17. **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.
18. **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.
19. **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:

Gary J. Nadeau, PE
Senior Vice President
Kimley-Horn and Associates, Inc.
1777 Main Street, Suite 200, Sarasota, FL 34236
Phone: 941.379.7600
Email: gary.nadeau@kimley-horn.com

AS TO CITY:

Michael Acosta
Utilities Engineering Manager
City of North Port
6644 West Price Blvd., North Port, FL 34291
Phone: 941.240.8013
Email: macosta@cityofnorthport.com

**WITH COPIES OF
NOTICES TO:**

City Attorney's Office
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.

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

21. 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.

22. SCRUTINIZED COMPANIES:

- A. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or less, the CONSULTANT shall certify on a form provide 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 \$1,000,000.00 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.

23. FORCE MAJUERE:

1. Should performance of any obligation created under this Agreement become illegal or impossible by reason of:
 - a. A strike or work stoppage, unless caused by a negligent act or omission of either Party;
 - b. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
 - c. 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;
 - d. A declared emergency of the federal, state, or local government; or
 - e. 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:

- f. 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;
 - g. The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;
 - h. No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and
 - i. The non-performing party uses all reasonable diligence to remedy its inability to perform.
2. 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.

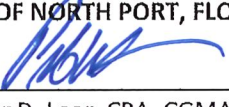
3. The non-performing party's affected obligations under this Agreement will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding 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.
 4. 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.
- 24. 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 Contractor 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.

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

ATTEST:

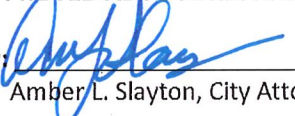
By: 
Heather Taylor, CMC, City Clerk

CITY OF NORTH PORT, FLORIDA:

By: 
Peter D. Lear, CPA, CGMA, City Manager

Date: 10-13-2020

APPROVED AS TO FORM AND CORRECTNESS:

By: 
Amber L. Slayton, City Attorney

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES, INC.

By: *Gary J. Madeau*
Gary J. Madeau, PE
Senior Vice President

Date: SEPTEMBER 11, 2020

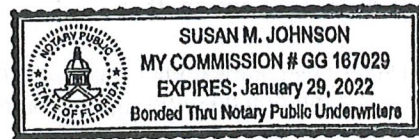
STATE OF FLORIDA

COUNTY OF Pinellas

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online
notarization, this 11th day of September 2020, by *Gary J. Madeau*.

Susan M. Johnson
Notary Public - State of Florida

X Personally Known OR ___ Produced Identification
Type of Identification Produced _____



ATTACHMENT A – SCOPE OF SERVICES

General Scope of Services – Continuing Contract No. 2020-58-10

The following scope of services is a general guide to the work the City expects to be performed under Contract No. 2020-58 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 Statute §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. Any work assignment over \$100,000.00 will require Commission approval.

The consultant shall perform, on an as-needed basis, professional services necessary for Engineer of Record projects for North Port Utilities. Consultant shall conduct analyses and prepare reports regarding maintenance and operation of existing facilities, systems and connections; provide technical assistance on utilities operational, technical and engineering issues. Consultant shall provide required services for select utilities' projects incorporated into the North Port Utilities Capital Improvement Plan (CIP). Other work may include a variety of tasks and special projects associated with utilities engineering services. Engineering service specialties shall include, but are not limited to, construction cost estimation; civil; structural; mechanical; electrical/instrumentation including plant SCADA system planning, installation, and training; environmental; and, industrial. Other service specialties shall include, but are not limited to, biological and ecological evaluations; geological; geotechnical and hydrogeological investigations; mapping and surveying.

CONSULTANT has qualified to provide engineering services in Categories 1 - 3 of the following categories:

1. Category 1 - Water, Wastewater, and Reclaimed Water Treatment & Storage Systems: Assistance with study, permitting, design, construction/engineering/inspection (CEI), and operations and maintenance (O&M) activities associated with water and wastewater treatment plants, facilities and process improvements including facility expansions and improvements. This category shall also include indirect and direct potable reuse.
2. Category 2 - Water, Wastewater, and Reclaimed Water Conveyance Systems: Assistance with the study, permitting, design, CEI, and O&M activities associated water/wastewater/reclaimed water distribution, collection and transmission systems as well as utility relocations within the City of North Port and Florida Department of Transportation (FDOT) rights of way.

3. Category 3 - Water, Wastewater, and Reclaimed Water Planning: Assistance with the evaluation of the OWNER's service area needs for growth planning. Work efforts may include evaluating growth and new service impacts to the utility, surface and ground water resource management, consumptive use permitting, system engineering reports, flow monitoring data analysis, master planning efforts and updates, Geographical Information System (GIS) analytics, as well as hydraulic modeling.
4. Category 4 - Electrical and Instrumentation/Controls: Assistance with study, planning, design and CEI activities associated with specific electrical and/or instrumentation/control system improvements or modifications at all NPU facilities.
5. Category 5 – Geotechnical: Assistance with geotechnical services to support design and construction activities. Services may include studies, reports, field investigations and testing, as well as laboratory analysis for utility projects.

Firm	Category 1	Category 2	Category 3	Category 4	Category 5
	Water, Wastewater, and Reclaimed Water Treatment & Storage Systems	Water, Wastewater, and Reclaimed Water Conveyance Systems	Category 3 - Water, Wastewater, and Reclaimed Water Planning	Category 4 - Electrical and Instrumentation/Controls	Category 5 – Geotechnical
Ardaman & Associates, Inc.					X
Ardurra Group, Inc.	X	X	X	X	
Arehna Engineering Inc.					X
Black & Veatch Corporation	X	X	X	X	
CDM Smith Inc.	X	X	X	X	X
Giffels-Webster Engineers, Inc.		X	X		
Hanson Professional Services Inc.	X	X	X	X	X
Infrastructure Solution Services, LLC	X	X	X	X	X
Jones, Edmunds & Associates, Inc.	X	X	X		
Kimley-Horn and Associates, Inc.	X	X	X		
Reiss Engineering, Inc.	X	X	X		
Stantec Consulting Services Inc.	X	X	X		
Tierra, Inc.					X
Universal Engineering Sciences, LLC					X

Work shall include services that are required for, but not limited to, evaluation, report preparation, design, bidding services, construction cost estimation, and CEI.

The consultant shall serve as NPU's professional engineering 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 NPU. The firms shall be required to submit any and all presentations or publications relating to City work for review and approval by NPU prior to distribution.

The Consultant shall work in close cooperation and coordinate their work through North Port Utilities 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 utilities engineering and other professional services that

consist of record services for basis of design reports, design and specifications, bid and construction services, construction permits, preparation of as-built drawings based on value engineering practices.

All deliverables required in the performance of Work Assignments shall be submitted to North Port Utilities 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 Utilities. 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.

Consultant must be certified to practice engineering in accordance with Florida Statute 471 and have proven professional experience in potable water, wastewater, and reclaimed water systems. Experience must have been demonstrated in systems of similar size and complexity of those in the North Port Utilities Department. Minimum experience shall be demonstrated in the following:

- a) The selected firms, and sub-consultants, shall be registered in the State of Florida to perform the professional services requested in this RFQ. The firm shall have State of Florida registered professionals for specified fields. (i.e. Professional Engineer, Professional Geologist, etc.).
- b) Contract manager shall be licensed in the State of Florida to provide at least one of the service categories/disciplines listed; have a minimum 10 years' experience with municipal professional service contracts shall have served as the contract manager for similar contracts.
- c) Team members proposed to provide project management or technical expertise services for this contract shall hold current either a State of Florida Professional Engineer license or State of Florida Professional Geologist license.
- d) Professional ability to represent the City before any and all regulatory agencies and City departments as necessary.
- e) The selected firms, and their proposed subconsultants, shall each have a minimum of five (5) consecutive years of engineering/design services related directly to the disciplines seeking qualification, preferably for governmental agencies, in particular the professional services contemplated under this RFP.
- f) State of Florida licensed engineering firm.
- g) State of Florida licensed professional engineer as client manager.
- h) State of Florida licensed professional geologist on staff or subconsultant.
- i) Design, permitting, construction and operation of surface water treatment plants in Florida.
- j) Design, permitting, construction and operation of low and high pressure reverse osmosis systems in Florida.
- k) Design, permitting, construction and operation of aquifer storage and recovery well systems in Florida.
- l) Design, permitting, construction and operation of wastewater reclamation facilities.
- m) Design, permitting, construction and operation of deep injection well systems.
- n) Design, permitting, construction and operation of force main, master pumping and lift station systems including gravity collection and vacuum sewer systems.

- o) Design, permitting, construction and operation of nitrification/denitrification activated sludge (Modified Ludzak-Ettinger) wastewater treatment facilities.
- p) Preliminary engineering and feasibility investigations (Basis of Design Reports) engineering estimates, value engineering cost analyses, and peer design reviews.
- q) Design and construction-phase services including start to finish coordination of the interdisciplinary work of design and construction engineering including: utilities operations input and reviews, complete bid services, contract management services, contract closeout, as-built-drawing certification, State Revolving Fund (SRF) required documentation, final punch lists and follow up throughout warranty period.
- r) Management for utilities operations of similar size, scope and complexity as North Port Utilities' systems.
- s) Professional ability to represent the City before any and all regulatory agencies and City departments as necessary.
- t) Minimum three (3) consecutive years of engineering/design services related directly to the disciplines seeking qualification, preferably for governmental agencies.
- u) Team members proposed to provide project management or technical expertise services for this contract shall hold a current State of Florida Professional Engineer's license or State of Florida Professional Geologist's license.

PROCEDURE & SELECTION OF CONSULTANTS WITHIN THE CONTINUING CONTRACT

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 Florida State Statutory Limits provided for continuing contracts in Florida Statute §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 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 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.

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, Utilities (UT) 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 UT 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 scope and issue a Work Assignment.

The City reserves the right to be the sole determination of responsiveness and responsibility of any 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 course of 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 or not 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 or not 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.

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.

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.

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.

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. Subcontractor 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.

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, and as otherwise provided in this Agreement.

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.

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 – FEE SCHEDULE

HOURLY BILLING RATE SCHEDULE

Kinley-Horn and Associates, Inc.		
Title	Description	Rate
Analyst	Entry level w/engineering degree	\$125-\$190
Professional	Entry level Professional Engineer	\$175-\$220
Senior Professional I	Licensed Professional Engineer w/ 12+ years of post-registration experience	\$210-\$265
Senior Professional II	Professional Engineer w/ 20+ years of post registration experience	\$255-\$285
Technical Support	Entry level technical support w/ HS degree or equivalent, non-registered, non-degreed	\$75-\$110
Senior Technical Support	10 + years of design experience, non-registered, non-degreed	\$120-\$185
Support Staff	Entry level support staff, non-registered, non-degreed	\$80-\$110

- Direct costs are not reimbursable. Direct costs are defined as, but not limited to, the use of communication equipment, computers, copiers, and all other equipment required to perform services. Mileage and meals are considered direct costs and are not reimbursable.
- Permit Fees: Cost
- The City will allow rate adjustments to be submitted for each successive year prior to the end of the current contractual year. Rates are to be firm for each one-year period. No price adjustments will be considered mid-year. Adjustments should not exceed the Bureau of Labor Statistics, Producer Price Index for the industry in the North Port market area.

END OF ATTACHMENT B



ATTACHMENT C
City of North Port
CONTINUING CONTRACT NO. 2020-58-
WORK ASSIGNMENT



CONSULTANT

CONTINUING CONTRACT
TITLE

PROFESSIONAL ENGINEERING SVCS - CONTINUING CONTRACTS FOR CITY OF NORTH PORT UTILITIES

THIS WORK ASSIGNMENT

WORK ASSIGNMENT #

SHORT TITLE

Attach justification and supporting documentation

DATE SUBMITTED

AMOUNT (LUMP SUM)

SCHEDULED COMPLETION

CONTRACT AND BUDGET OVERVIEW FISCAL YEAR _____

	DEPARTMENT	CITYWIDE (completed by Purchasing)
TOTAL OF PREVIOUS ASSIGNMENTS	\$	\$
THIS WORK ASSIGNMENT	\$	\$
TOTAL WORK ASSIGNMENTS	\$	\$
ACCOUNT NO/PROJECT NO		

All work assignments require City Manager approval. In presenting this work assignment, it is understood that:

1. Unless specified herein, work does not involve watercraft, boat pliers and/or other activities requiring additional workers compensation endorsements.
2. Contact or involvement with hazardous materials is not anticipated, should hazardous materials be encountered, the City shall be informed.

SUBMITTED BY:

|

CONSULTANT

DATE

APPROVED BY:

DEPARTMENT DIRECTOR

DATE

BUDGET ADMINISTRATOR

DATE

PURCHASING

DATE

FINANCE DIRECTOR

DATE

ASSISTANT CITY MANAGER

DATE

CITY MANAGER

DATE

END OF ATTACHMENT C