

AGREEMENT NO. 2017-40
PROFESSIONAL DESIGN & ENGINEERING SERVICES FOR
WARM MINERAL SPRINGS PARK MASTER PLAN

THIS AGREEMENT ("Agreement") is made and entered into this 5th day of April 2018, by and between the CITY OF NORTH PORT, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and **Kimley-Horn and Associates, Inc.**, 1777 Main Street, Suite 200, Sarasota, FL 34236, a North Carolina Corporation registered to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

NOW, THEREFORE, in consideration of the mutual covenants contained herein, 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. 2017-40 and CONSULTANT'S proposal submitted October 23, 2017. The overall Scope of Services is described in **Attachment A** with detailed tasks and associated fees in **Attachment B**.

This Agreement shall commence immediately upon the execution of the Agreement by both the CITY and CONSULTANT and upon CONSULTANT'S receipt of the written Notice to Proceed from the CITY'S Purchasing office and shall continue through the completion of the project. The estimated completion date for **Phase I** is **October 19, 2018**.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

1. CONSULTANT shall receive **TWO HUNDRED EIGHT THOUSAND DOLLARS TWO HUNDRED NINETY DOLLARS AND NO CENTS (\$208,290.00)** as compensation for its services. This 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 Agreement. The Scope of Services and Fee Schedule (Attachments A and B, respectively) are attached hereto and incorporated within.
2. The CITY'S performance and obligation to pay under this Agreement are contingent upon an appropriation of funds by the City Commission.

B. METHOD OF PAYMENT

1. The CITY shall pay 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 CONSULTANT'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement. 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. CONSULTANT'S invoices shall be in a form satisfactory to the City of North Port Finance Department, who shall initiate disbursements.

3. LIABILITY OF CONSULTANT

CONSULTANT shall indemnify, defend and hold harmless the CITY, its Commissioners, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT, or CONSULTANT'S officers, employees, agents, and other persons employed or utilized by CONSULTANT in the performance of, or the failure to perform, the Agreement.

In the event of a claim, the CITY shall promptly notify 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 Agreement. Such notification may also be provided by fax transmission to the following fax number:

FAX: 561.863.8175

The CITY shall provide all available information and assistance that CONSULTANT may reasonably require regarding any claim. This agreement for indemnification shall survive termination or completion of the Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the CITY and such insurance coverage shall not be deemed a limitation on 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).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statutes Section 768.28.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work, CONSULTANT shall procure and maintain, during the life of the Agreement, 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 City Manager or designee's prior written approval. The City

Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONSULTANT.

1. 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 \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease.
2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project, 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.
3. Comprehensive Commercial General Liability Insurance: Aggregate must apply separately to this Agreement. Minimum \$300,000 each occurrence; \$600,000 general aggregate; \$600,000 products and completed ops; and \$100,000 fire damage.
4. Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

B. 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.

C. POLICY FORM

1. All policies required by this Agreement, 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 shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. 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 Agreement, and required of CONSULTANT, shall be provided by or in behalf of all subcontractors to cover their operations performed under this Agreement. CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
3. Each insurance policy required by this Agreement 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 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 Agreement. 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 Agreement 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 Agreement. 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 Agreement, as well as the Agreement 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 Agreement 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. 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 Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. CONSULTANT warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for CONSULTANT), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award of this Agreement.
- D. 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 Agreement. CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. 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.
- F. 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.
- G. Public Records Law: In accordance with Florida Statutes Section 119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:
 1. Keep and maintain public records required by the City to perform the service.

- a. 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/>).

- b. "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.
2. 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.
 3. 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.
 4. 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.
 5. **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: padkins@cityofnorthport.com.**

6. 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.

6. OWNERSHIP AND USE OF DOCUMENTS

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 Agreement 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 Agreement on any non-CITY project.

Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

7. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

The timely performance and completion of the required services 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 Agreement. CONSULTANT'S personnel assigned to perform the services of this Agreement 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 Agreement 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 Agreement.
- 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 time limitation equal to the aforementioned delay. The Project Schedule is attached as Attachment C and incorporated herein.

8. 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 Agreement. 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 Agreement.
 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 Agreement, 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 this 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.

9. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days written notice to CONSULTANT to terminate the services of CONSULTANT and, in that event, CONSULTANT shall cease work and shall deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by CONSULTANT in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to CONSULTANT and CONSULTANT shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Attachment A – Scope of Services and Attachment B – Consultant's Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in

accordance with Section II and any amounts withheld by the CITY to settle claims against or to pay indebtedness of CONSULTANT in accordance with the provisions of the Agreement.

- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the CITY and CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commission, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Agreement. The CITY will be responsible for payment of any outstanding invoices and work completed by CONSULTANT prior to such termination.
- C. In the event that CONSULTANT has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement 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 shall have the right to terminate services 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 Agreement 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. In the event CONSULTANT breaches this Agreement, the CITY shall 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 to the City's satisfaction within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement 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 Agreement;
 - 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 Agreement 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; or

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.

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

10. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be, in the performance of all work services and activities under this Agreement, 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 Agreement 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 Agreement. 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 Agreement.

11. ENTIRE AGREEMENT

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

12. AMENDMENT

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation for the services, the City Commission for the CITY and the duly authorized representative for CONSULTANT shall agree in writing to this change. For all other changes, except as provided herein, the CITY'S Administrative Agent and CONSULTANT'S representative shall agree in writing to the change.

13. ASSIGNMENT

CONSULTANT shall not assign any interest in this Agreement 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 Agreement 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.

14. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

15. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Agreement shall be 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 Agreement shall be in Sarasota County, Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

16. AUTHORITY

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

17. NO HIRE

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

18. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement 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:

CONSULTANT'S REPRESENTATIVE:

Gary Nadeau
Vice President
Kimley-Horn and Associates, Inc.
1777 Main Street, Suite 200
Sarasota, FL 34236
TEL 941.379.7600
FAX 561.863.8175
EMAIL: gary.nadeau@kinley-horn.com

THE CITY'S ADMINISTRATIVE AGENT:

Sandy Pfundheller
General Services Director

City of North Port
4970 City Hall Blvd.
North Port, FL 34286
TEL 941.429.7129
FAX (941) 429-7135
EMAIL: spfundheller@cityofnorthport.com

19. PARAGRAPH HEADINGS

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

20. ATTORNEYS' FEES

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

21. CONFLICTS


In the event of any conflict between the provisions of this Agreement and RFP No. 2017-40 or the CONSULTANT's response, which are made a part hereof by reference, the Agreement shall control.

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

ATTEST:

CITY OF NORTH PORT, FLORIDA


By: 
Patsy C. Adkins, MMC, City Clerk

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

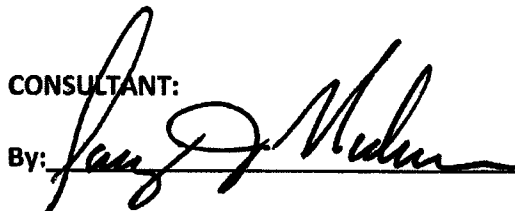
APPROVED AS TO FORM AND CORRECTNESS:

By: 
Amber L. Slayton, City Attorney

WITNESS:

By: 
SUSAN M JOHNSON

CONSULTANT:

By: 
GARY J. NADEAU
VICE PRESIDENT

ATTACHMENT A – SCOPE OF SERVICES

Project Understanding

It is our understanding that the City of North Port desires to develop a Master Plan document for the Warm Mineral Springs Park and associated improvements located within the approximately 80-acre site at 12200 San Servando Ave., North Port, FL.

The Master Plan will incorporate program elements and amenities as desired by the City Commission and those identified in stakeholder and community engagement meetings as part of this process.

Program elements previously requested by the City Commission include:

- Preservation and incorporation of existing tree canopy
- Preservation and incorporation of existing building footprints and structures
- Natural berms or noise abatement options to be located between the Warm Mineral Springs Park site and surrounding neighborhood
- Camping locations for tent and recreational vehicles (RV) camping
- Area for future camping cabins
- Parking improvements including daily park users, RV's, and horse trailers
- Large gathering / festival area
- Site access and entrances including gateway features
- Open-air amphitheater
- Trails including pedestrian, bicycle, horse trails and other passive / natural trails
- Museum and historical / education exhibits, signage or displays
- Trail connectivity to the broader community including Deer Prairie Creek and the Myakka Forest
- Light retail such as boutique shopping, ice cream, etc.
- Restroom facilities located strategically throughout the park
- Recommendations for utility upgrades as necessary (water, sewer, stormwater and electrical)
- Relocation of the community garden as required

Per City Commission direction, tree observation and condition assessment for trees within the project area will be performed by the City of North Port's staff arborist. A summary report of findings from this assessment will be provided to Kimley-Horn for use during the Phase 1 master planning process.

Kimley-Horn will provide landscape architectural design services for the City of North Port consisting of the following:

Scope of Services

PHASE 1

TASK 1 – PROJECT MANAGEMENT

In this task, Kimley-Horn will provide a project manager and staff to administer the professional services described in this scope and coordinate work with the General Services Department and/or the City's Project Manager. As part of this task, Kimley-Horn will:

- A. Create, monitor and update project schedule.
- B. Provide monthly invoices and progress reports.

- C. Facilitate and attend meetings with City staff associated with the project including progress reviews, presentation of information, receiving direction and recommending direction. Monthly meetings are anticipated throughout the five-month master planning process.

Deliverables:

- Project schedule in PDF format, developed in Microsoft Project
- Progress reports in Microsoft Word / PDF format
- Meeting minutes in Microsoft Word / PDF format

TASK 2 – REVIEW OF PLANNING DOCUMENTS / DATA COLLECTION

In this task, Kimley-Horn will collect and analyze data associated with the project site and surrounding areas to assist in the evaluation of opportunities and constraints related to the development of the proposed Master Plan for the Warm Mineral Springs Park. As part of this task, Kimley-Horn will:

- A. Prepare an aerial exhibit identifying the Warm Mineral Springs project area, existing structures, streets, etc.
- B. Review history of previous studies, relevant planning documents, surveys and public comments, as provided by the City. Kimley-Horn will consider environmental impacts, archaeological and historic relevance of the mineral springs site and how it may influence development of the Master Plan.
- C. Conduct an on-site field review with the City to review existing above ground conditions and areas for development opportunities.
- D. Create a photo documentation of existing conditions for use in the Summary Book developed in Task 5.
- E. Create an Opportunities and Constraints map identifying existing conditions, site context, and opportunities / constraints related to project development.

Deliverables:

- Aerial exhibit defining the study area to serve as visual aid in PDF format.
- Brief summary of each document reviewed in Task 2.B including relevance to the Master Plan development.
- Opportunities and Constraints Map in PDF format.

TASK 3 – STAKEHOLDER AND COMMUNITY ENGAGEMENT

This task consists of the preparation for and facilitation of a series of meetings with the community and key stakeholders to solicit their opinions on site opportunities and constraints for the Warm Mineral Springs Park improvements. As part of this task, Kimley-Horn will:

- A. Develop a series of image boards / maps to facilitate Stakeholder and Community Engagement workshops. Exhibits are anticipated to include the following:
 - 1. Updated Opportunities and Constraints Map
 - 2. Design imagery of relevant park improvement features. Features may include:

- Enhanced hardscape
 - Landscape
 - Site Furnishings
 - Shade structures
 - Trails, boardwalks, circulation system
 - Lighting
 - Streetscape enhancements
 - Playground opportunities
 - Fitness / Wellness equipment
 - Programmatic activities
 - Public Art
 - Camping facilities (tent, RV, and cabin)
- B. Develop and host an online survey through Mentimeter to obtain public input on park improvement options. Kimley-Horn will coordinate with the General Services Department and/or Project Manager to develop the survey content and timeframe for the live survey. Kimley-Horn will provide a summary of survey results to the City and the results will be included in the Summary Book prepared in Task 5.
- C. Facilitate a series of interviews / workshops with key stakeholders and focus groups. Key stakeholders and focus groups are anticipated to include:
- Mayor
 - City Commissioners (Commissioners may choose to meet one on one, or in a large group setting)
 - City Manager
 - Parks and Recreation Advisory Board
 - Local historical, environmental and cultural groups
 - Existing food service concessionaire at Warm Mineral Springs Park
- The City will provide a final list of stakeholders to be included in focus group meetings. Stakeholder workshops are anticipated to be conducted over a period of two (2) days. The City will be responsible for scheduling the appropriate stakeholders, and each meeting is anticipated to be 2 hours maximum.
- D. Prepare for and Facilitate a series Community Engagement Meetings with local neighborhood groups, organizations and general public. This task will consist of three (3) Community Engagement Meetings anticipated to be 2 hours each plus 1 hour setup and breakdown. One of the Community Engagement Meetings will be held onsite at Warm Mineral Springs, the location of the additional two (2) meetings will be determined and coordinated with the City. Kimley-Horn will coordinate with the General Services Department and/or Project Manager to develop

the meeting format, content and exercises. Summaries of each meeting will be prepared and provided to the City and used in the Summary Book.

- E. Meet with designated City Staff to review findings from the Stakeholder and Community Engagement Meetings and online survey, and discuss strategy for incorporating results into the Park Master Plan.
- F. Summarize program opportunities discussed with staff, key stakeholder / focus groups, and the community for use in the Park Master Plan.

Deliverables:

- Updated Opportunity and Constraints Map in PDF format
- Image boards in PDF format
- Summary of Task 3 meetings, workshops, and community engagement meetings
- Summary of online survey results
- Summary of Park Master Plan program opportunities

TASK 4 – ARCHAEOLOGICAL REVIEW

Kimley-Horn will contract with Janus Research to prepare a limited archaeological survey for areas of the site not previously surveyed. As part of this task, the Kimley-Horn team will:

- A. Conduct a literature and background research for the Project area. Background research shall include an archaeological and historical literature review and environmental information search pertinent to the Project area. This research shall determine the types, chronological placement, and location patterning of cultural resources within the Project area. This shall include a search of the Florida Master Site File (FMSF), County and local site inventories, books and journal articles, and unpublished Cultural Resource Management (CRM) reports. A summary of the background research and literature review shall be prepared including the Project area's history, prehistoric and historic archaeology and salient environmental features. This brief overview will describe the project areas archeological record, important events, locations, historical structures and individuals associated with the area. The environmental description will include a discussion of both present and past environmental conditions. The results of the literature and background research will be presented in the form of a Summary Report.
- B. Janus Research will assist in the development of a management plan to assist Kimley-Horn and the City of North Port with the development of a Park Master Plan for the Warm Mineral Springs archaeological site. The management plan will include an assessment of existing conditions, mapping of known site components and archaeological features, the identification of specific measures to remedy threats to the site, and recommendations for improvements that would not impact the integrity of the site.

This task will also include coordination with the project team, the City of North Port, and if necessary, the Sarasota County Archaeologist, Florida State Historic Preservation Officer (SHPO), and/or Florida Bureau of Archaeological Research (BAR).

- C. Present the Summary Report prepared in Task 4.A to the City Commission prior to Kimley-Horn preparing the Master Plan.
- D. Attend and assist in facilitating one of the Community Engagement Workshops in Task 3.D to address questions and approach related to cultural resource management.
- E. Participate in up to three (3) conference call meetings to for coordination / review of archaeological resources and Master Plan components.

Deliverables:

- Summary report of literature and background research in PDF format.
- Archaeological management plan in PDF format.

TASK 5 – MASTER PLAN CONCEPT

Kimley-Horn will provide design services for the preparation of a Master Plan for Warm Mineral Springs Park. The Master Plan will incorporate stakeholder and community comments received in Task 3, as well as program elements previously requested by the City Commission identified in the project understanding, and information gathered in the online survey. As part of this task, Kimley-Horn will:

- A. Prepare one (1) Master Plan Concept identifying proposed park features, program elements, spatial relationships and areas for improvement. The Master Plan Concept will identify proposed access, circulation, landscape enhancements, vehicular circulation, proposed buildings and park features. The Master Plan Concept may include enlargements or detailed studies of key areas within the park.
- B. Prepare design imagery boards illustrating design elements similar to those being proposed in the master plan. Proposed design elements are anticipated to include the following:
 - Landscape
 - Hardscape/Special Paving
 - Site Furnishings/Custom Furniture
 - Small scale architectural enhancements (shade structures, pergolas, etc.)
 - Lighting
 - Pedestrian walkability and safety improvements including ADA
 - Wayfinding and environmental graphics
 - Public Art
 - Playground equipment
 - Fitness / Wellness elements
 - Building Renovations
- C. Kimley-Horn will meet with the City to review the Master Plan Concept and obtain feedback and comments. The City will provide one set of consolidated comments to Kimley-Horn for incorporation into the Master Plan.

D. Prepare a Draft Summary Book of the Master Plan process. The summary book is anticipated to include the following sections:

- Project overview
- Summary of existing reports and their relevance to the Master Plan development
- Existing conditions analysis
- Opportunity and constraints analysis
- Summary of stakeholder and community engagement process and findings
- Master Plan Concept
- Final master plan (to be updated with the completion of Task 7)
- Summary of presentations and comments (to be updated with the completion of Task 8)
- Implementation and phasing strategy (to be updated with the completion of Task 7)

The Draft Summary Book will be submitted concurrent with the Draft Master Plan as part of Task 6 below. Some sections of the book will be placeholders at this point, but will be updated as the process is finalized.

Deliverables:

- One (1) Master Plan Concept in PDF format.
- Design imagery boards in PDF format
- Draft Summary Book in PDF format

TASK 6 – DRAFT MASTER PLAN

Kimley-Horn will prepare a Draft Master Plan and Summary Book based on comments received in Task 5. As part of this task, Kimley-Horn will:

- A. Prepare one (1) updated, Draft Master Plan Concept incorporating comments received from the City on the Master Plan Concept during Task 5.
- B. Prepare an Opinion of Probable Construction Cost (OPCC) for the Draft Master Plan. The OPCC will include costs for elements proposed in the Draft Master Plan and is anticipated to include:
 - Park features
 - Utility improvements
 - Site improvements and infrastructure (parking, stormwater, electrical, etc)
 - Building renovations
 - New buildings / structures
- C. Refine the Draft Summary Book based on comments received in Task 5.
- D. Submit the Draft Master Plan Concept and Draft Summary Book to the City for review and comment, and incorporate one (1) round of comments. The refined Draft Master Plan Concept

and Draft Summary Book will be used for the Preliminary Presentation to the Mayor and City Commission as identified in task 8.A below.

Deliverables:

- Draft Master Plan in PDF format.
- OPCC in PDF format
- Draft Summary Book in PDF format

TASK 7 – FINAL MASTER PLAN

Kimley-Horn will prepare a Final Master Plan based on comments received in Task 6. As part of this task, Kimley-Horn will:

- A. Prepare one (1) updated, Final Master Plan incorporating comments received from the City and City Commission during Task 8.A.
- B. Prepare the Final Summary Book based on comments received in Task 8.A
- C. Update the Opinion of Probable Construction Cost (OPCC) based on the Final Master Plan.
- D. Prepare a summary of revenue opportunities and operational costs based on the program elements included in the Final Master Plan. This summary will be included as part of the Final Summary Book.
- E. Submit the Final Master Plan and Final Summary Book to the City for review and incorporate one round of comments. The Final Master Plan and Final Summary Book will be used for the Final Presentation to the Mayor and City Commission as identified in Task 8.B.
- F. Update the Final Master Plan and Final Summary Book based on comments received from the City Commission presentation in Task 8.B below.
- G. Facilitate one (1) Implementation Meeting with the City Manager, Project Manager, General Services Director, Finance Director and/or other key staff to discuss funding and implementation strategies for the Master Plan components.

Deliverables:

- Final Master Plan in PDF format.
- OPCC in PDF format
- Ten (10) copies of Final Summary Book in hardcopy format and PDF
- Summary of Implementation Meeting results in PDF format

TASK 8 – PRESENTATIONS

Kimley-Horn will present the proposed Master Plan and associated documents at the stages identified below. As part of this task, Kimley-Horn will:

- A. Present at a Preliminary Presentation to the Mayor and City Commission. Presentation content is anticipated to include the following:
- Findings from community engagement meetings, stakeholder / focus group interviews, and online survey results.
 - Draft Master Plan of Warm Mineral Springs Park as prepared above in Task 6
 - Draft Summary Book
 - Opinion of Probable Construction Costs
- B. Present at a Final Presentation to the Mayor and City Commission. Presentation content is anticipated to include the following:
- Findings from community engagement meetings, stakeholder / focus group interviews, and online survey results.
 - Final Master Plan of Warm Mineral Springs Park as prepared above in Task 7
 - Final Summary Book
 - Opinion of Probable Construction Costs

Deliverables:

- Copy of PowerPoint presentation in .ppt and PDF format
- Ten (10) printed copies of PowerPoint presentation
- 24" x 36" Illustrative Master Plan board

Deliverables as outlined above will be provided for both the Preliminary Presentation, and the Final Presentation.

TASK 9 – ARCHITECTURAL CONCEPT AND COORDINATION

Kimley-Horn will contract with Sweet Sparkman Architects for conceptual architectural design services for renovations to the existing Jack West buildings onsite. Sweet Sparkman Architects will also be involved in the park master planning process in support to Kimley-Horn. Services for this task are anticipated to include the following:

- A. Perform building code and zoning research as required for a preliminary analysis of building condition(s).
- B. Prepare a Historic Designation Draft Application for the existing Jack West structures (includes 2 meetings with Owner).
- C. Survey and measure the existing Jack West structures and develop as-built drawings for use in the Historic Designation Draft Application, concept development and pricing estimate.
- D. Coordinate with landscape architect, civil engineer on the Park Master Plan, utilities, pedestrian access, and construction phasing.

- E. Attend two (2) community engagement meetings for the Park Master Plan.
- F. Attend up to two (2) meetings with the Owner to establish Building Program requirements.
- G. Prepare a written building program document to include a list of spaces required in the building(s) along with their size, use, function, occupancy, space adjacency relationships, environmental and engineering needs for existing buildings.
- H. Prepare conceptual building drawings and narrative documents for Architectural / Structural / MEPF/Food Service based upon Historic Designation review, and Building Program for existing buildings. A cost estimate for renovation of existing buildings will be provided at completion of Concept Design.

Deliverables:

- Architectural plans, elevations, and building sections at 1/8" scale.
- Preliminary exterior material selections
- (1) exterior rendering (for each building)
- Structural, Mechanical, Electrical, Plumbing & Fire Protection narratives of the proposed engineering systems describing design criteria, systems analysis and options
- Food service program
- Coordination with civil engineer on Master Plan and preliminary design.
- (3) full size sets of printed drawings and electronic documents in PDF format.

PHASE 2 - FUTURE TASKS

Future tasks will require written authorization from the City to proceed and may be authorized at any time during or after the master planning process. Specific scope and fee for future tasks 12 and 13 will be developed as the master planning process is completed and the scope of work is better defined. Future tasks may include:

TASK 10 – SITE CIVIL AND UTILITY DUE DILIGENCE

Kimley-Horn will prepare a limited due diligence report for site civil and utility infrastructure improvements. As part of this task, Kimley-Horn will:

- A. Collect and review the available record drawings and information for the existing water, wastewater and reclaim water infrastructure. Kimley-Horn will estimate flow demands based on the projected use considering the proposed Master Plan features. Kimley-Horn will prepare for and attend a meeting with the City of North Port to discuss the utility service alternatives for the property. Findings will be summarized and documented in the Master Plan.
- B. Prepare a limited due diligence report for the subject property. The due diligence will include research of existing published records and relevant issues consisting of existing land use (zoning, future land use), site stormwater requirements, and floodplains. Kimley-Horn will also outline Southwest Florida Water Management District (SWFWMD) and North Port policies and

procedures specific to permit types, procedures, time frames and typical application requirements.

Deliverables:

- Summary of existing utility infrastructure and outline of infrastructure improvements required to service the proposed Master Plan.
- Summary of site stormwater requirements, existing permits and an outline of permitting processes required for implementation of the Master Plan.

TASK 11 – MEETINGS AND COORDINATION

Kimley-Horn will facilitate and attend additional meetings beyond those specified above. Additional meetings are anticipated to include:

- A. Up to six (6) additional meetings with City staff as required, and six (6) conference calls / online meetings for City coordination.

Deliverables:

- Meeting minutes / summary of coordination meetings in PDF format

TASK 12 - CONSTRUCTION DOCUMENTS / PERMITTING

Construction Document and Permitting scope and fee for site civil, landscape architecture and architecture is to be determined based upon the final approved Master Plan / Implementation plan in coordination with available funding and direction from the City. As the scope for implementation will not be clear until the completion of the above Tasks 1-11, the final scope and fee for Phase 2 construction documents shall be negotiated with the City at a later date.

Services Not Included

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

1. Biological / environmental consulting services beyond those specified
2. Geotechnical services
3. Civil site design services
4. Building permit submittal.
5. Mechanical, Electrical and Plumbing (MEP) design and engineering.

Additional Services

Any services not specifically provided for in the above scope will be considered additional services and can be performed for an additional fee upon written authorization from City. Additional services we can provide include the following:

1. Pre-application meeting with the Southwest Florida Water Management District (SWFWMD)
2. Development Review Committee meeting with the City of North Port

3. Development Master Plan submittal process
4. Boundary and topographical survey
5. Engineering, or landscape architectural, services beyond those specifically outlined in the tasks above.
6. Architectural construction documents, design and permitting, or other services not specifically
7. Survey location of underground utilities
8. Survey location of wetlands, environmentally sensitive or jurisdictional areas.
9. Preparation of grant applications.
10. Preparation of permit applications and/or permit expediting.
11. Traffic studies or analysis.
12. Services required by additional governmental regulations, which might be put into effect after the date of this agreement.
13. Construction contract administration
14. Additional meetings beyond those indicated in above scope.
15. 3D modeling
16. Conceptual / Architectural design for new building onsite.
17. Attendance from sub-consultants at meetings beyond those specified.

Information Provided by City

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants or representatives. The City shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

1. Copies of all available information, studies, and reports pertinent to services for the project.
2. Existing base files and as-builts for project area, as available.

ATTACHMENT B – FEE SCHEDULE

Fee and Expenses

Kimley-Horn will perform the services described in Task 1-9 in the Scope of Services for the lump sum fees listed below. Fees for optional tasks identified in the above scope of services are listed separately. Individual task amounts are for informational purposes only.

PHASE 1 TASK FEES

TASK	DESCRIPTION	FEE
1	PROJECT MANAGEMENT	\$9,000
2	REVIEW OF PLANNING DOCUMENTS/DATA COLLECTION	\$11,000
3	STAKEHOLDER & COMMUNITY ENGAGEMENT	\$28,500
4	ARCHAEOLOGICAL REVIEW	\$19,750
5	MASTER PLAN CONCEPT	\$25,150
6	DRAFT MASTER PLAN	\$23,900
7	FINAL MASTER PLAN	\$34,850
8	PRESENTATIONS	\$8,900
9	ARCHITECTURAL CONCEPT AND COORDINATION	\$47,240
	SUBTOTAL	\$208,290

PHASE 2 TASK FEES

TASK	DESCRIPTION	FEE
10	SITE CIVIL AND UTILITY DUE DILIGENCE	\$16,500
11	MEETINGS AND COORDINATION	\$11,500
12	CONSTRUCTION DOCUMENTS / PERMITTING	\$ TBD

Scope and fee for Task 12 will be finalized upon completion of Tasks 1-11 once a better understanding of scope for this task has been established. **Phase II will be submitted via Contract Amendment requiring City Commission Approval.**

An amount has been included in the lump sum to cover certain reimbursable expenses such as in-house duplicating, plotting and printing, local mileage, telephone calls, facsimiles, postage, and word processing computer time. All permitting, application, and similar project fees will be paid directly by the City.

Schedule

We will provide our services as expeditiously as practicable based on a mutually agreed upon schedule. A draft project schedule outlining major tasks and associated timeframes has been provided and attached as Attachment C. **The project schedule for Tasks 10 – 12 will be provided in Phase II of the project.**

ATTACHMENT C - SCHEDULE

TASK 2: REVIEW OF PLANNING DOCUMENTS / DATA COLLECTION	12 days	Fri 5/11/18	Mon 5/28/18
TASK 3: STAKEHOLDER AND COMMUNITY ENGAGEMENT	26 days	Tue 5/29/18	Tue 7/3/18
TASK 4: ARCHAEOLOGICAL REVIEW	30 days	Fri 5/11/18	Thu 6/21/18
TASK 5: MASTER PLAN CONCEPT	20 days	Mon 6/18/18	Mon 7/16/18
TASK 6: DATA COLLECTION	20 days	Fri 5/11/18	Fri 6/15/18
TASK 7: FINAL MASTER PLAN	30 days	Mon 9/10/18	Fri 10/19/18
TASK 8: PRESENTATIONS	40 days	Mon 9/3/18	Fri 10/26/18
Task 9: ARCHITECTURAL CONCEPT AND COORDINATION	116 days	Fri 5/11/18	Fri 10/19/18