

**AGREEMENT #2011-08
PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
FOR THE PERMITTING, DESIGN AND CONSTRUCTION MANAGEMENT SERVICES
FOR THE BUTLER PARK 50-METER AQUATIC FACILITY**

THIS AGREEMENT ("Agreement") is made and entered into this 13th day of June, 2011, by and between CITY OF NORTH PORT, a political subdivision of the State of Florida, hereinafter referred to as the "CITY" and Kimley-Horn and Associates, Inc., Suite 200, 3660 Maguire Blvd., Orlando, FL 32803, a corporation registered to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, the CITY has determined that it is necessary, expedient, and in the best interest of the CITY to retain a professional consultant for Architectural/Engineering Services for the Permitting, Design and Construction Management Services for the Butler Park 50-Meter Aquatic Facility.

WHEREAS, the CITY issued a Request for Proposal, #2011-08, on March 4; 2011, and

WHEREAS, the CITY evaluated and ranked the proposals in accordance with Florida Statute §287.055; and

WHEREAS, the CITY desires to employ the CONSULTANT for Architectural/Engineering Services for the Permitting, Design and Construction Management Services for the Butler Park 50-Meter Aquatic Facility, upon the terms and conditions herein, and the CONSULTANT is desirous of obtaining such employment, has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with its terms.

NOW, THEREFORE, the CITY and the CONSULTANT, in consideration of the mutual covenants contained herein, do agree as follows:

1. CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to diligently and timely perform professional services for the CITY relating to the Operations, with a recommended selection based on sound consulting practices. The overall Scope of Services is described in Attachment A.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the CITY and the CONSULTANT and upon the CONSULTANT's receipt of the written Notice to Proceed from the CITY's Purchasing Office and shall continue through the completion of the project (estimated completion date is January 2013).

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

- 1. The maximum compensation for this Agreement shall not exceed Four Hundred Thousand Dollars (\$400,000.00). Said total amount is to 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 is contingent upon an appropriation by the City Commission.

B. METHOD OF PAYMENT

1. The CITY shall pay the CONSULTANT through payment issued by the Finance Department in accordance with the Florida Prompt Payment Act of the Florida Statutes, Chapter 218, 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 Agreement. 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 of North Port Finance Department, who shall initiate disbursements.

3. LIABILITY OF CONSULTANT

The CONSULTANT shall indemnify 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 the CONSULTANT, or CONSULTANT's officers, employees, agents, and other persons employed or utilized by the CONSULTANT in the performance of, or the failure to perform, the Agreement.

In the event of a claim, the CITY shall 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 following address:

Mark C. Hatchel, Vice President
Kimley-Horn and Associates, Inc.
Suite 275, 2201 West Royal Lane
Irving, Texas 75063
TEL (214) 420-5625
EMAIL mark.hatchel@kimley-horn.com

Such notification may also be provided by fax transmission to the following fax number:

FAX (214) 420-5680

The CITY shall provide all available information and assistance that the CONSULTANT may reasonably require regarding any claim.

This agreement for indemnification shall survive termination or completion of the Agreement.

In the event that there is a conflict between this agreement and any other applicable indemnification agreement between the CITY and the CONSULTANT, the agreement which provides the most protection for the CITY shall take precedence.

Nothing in the award, resulting agreement, or contract shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statute § 768.28.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any contract work, CONSULTANT shall procure and maintain, during the life of the Agreement, unless otherwise specified, the insurance listed below. 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 in the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent:" VII. No changes are to be made to these specifications without prior written specific approval by the CITY's Purchasing Office.

1. Workers Compensation: Coverage to apply for all employees for the statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident; \$500,000 each employee; and \$500,000 policy limit for disease.
2. Professional Liability Insurance: with minimum \$1,000,000 per occurrence for this project with a \$2,000,000 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.
3. Comprehensive Commercial General Liability Insurance: Occurrence from required. Aggregate must apply separately to this contract/job. Minimum \$500,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 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 \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this agreement.

City of North Port is to be named additional insured on Comprehensive Commercial General Liability Policy and the Business Auto Policy. Certification of same shall be required. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under this Agreement.

Any and all deductibles to the above referenced policies are to be the responsibility of the CONSULTANT. The CONSULTANT's insurance is considered primary for any loss, except for claims under Workers Compensation or professional liability insurance, regardless of any insurance maintained by the CITY. The 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.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the CITY is provided notice as stated within the policy. It is the CONSULTANT's responsibility to provide notice to the City.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agrees 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 arises from the contractual relationship or work performed by the CONSULTANT for the CITY. It is the CONSULTANT's responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the CONSULTANT, its officers, officials, agents, employees, volunteers, and any Subcontractors, agrees 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 the CONSULTANT or its agents may be responsible for.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by Risk Management through the CITY's Purchasing Office, are to be written on an occurrence basis, 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. Insurer(s), with the exception of Professional Liability and Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.
2. Insurance requirements itemized in this Agreement, and required of the CONSULTANT, shall be provided by or in behalf of all subconsultants to cover their operations performed under this Agreement. The 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 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. The 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.
6. The 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.
7. Claims Made Policies will be accepted for professional 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, the 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.
8. 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 128, 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 the CONSULTANT will be allowed to commence or continue work.

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

5. RESPONSIBILITY OF THE CONSULTANT

- A. The 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 the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The CONSULTANT warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the 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 the 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 does not expressly or impliedly warrant or guarantee its services. The CONSULTANT covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which might enter with reference to the work performed.
- E. The CONSULTANT shall comply with all federal, state, 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. The CONSULTANT shall comply with all Federal and State laws, regulations, and guidelines that apply to the ARRA EECBG, including but not limited to the following. Proper stewardship surrounding the administration, reporting, accounting and transparency of ARRA funds is essential in the administration of the ARRA EECBG:
- The American Recovery and Reinvestment Act of 2009
 - Department of Energy State EECBG Program
 - Davis-Bacon Act (40 U.S.C. 3141, et. seq.)
 - Buy American Act (41 U.S.C. Sec. 10a)
 - National Environmental Policy Act (42 U.S.C. 4321, et. seq.)
 - National Historic Preservation Act of 1966 (16 U.S.C. 470f)
 - Office of Management and Budget reporting requirements

- Council of Economic Advisers' Estimates of Job Creation from the American Recovery & Reinvestment Act of 2009, May 2009

G. The 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 the CONSULTANT's offices for the purpose of 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. OWNERSHIP AND USE OF DOCUMENTS

It is understood and agreed that the documents, or reproducible copies, including reports, designs, specifications, other documents and data developed by the CONSULTANT in connection with its services 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. The 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 the 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. The 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. The personnel assigned by the CONSULTANT 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. The 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 the 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 the CONSULTANT shall commence within one (1) week of the CONSULTANT's receipt of written Notice to Proceed from the CITY.
- B. The 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 the CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement.
- C. The CONSULTANT agrees to provide to the CITY Administrative Agent, monthly written progress reports concerning the status of the Project. 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 the 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 the 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.

8. OBLIGATIONS OF 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, a specific program manager will be authorized 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 the CONSULTANT, and render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY 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 of the CONSULTANT's documents and payment requests.
- B. The CITY shall, upon request, furnish the 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 the CONSULTANT.
- C. The CITY's Administrative Agent shall conduct periodic reviews of the work of the CONSULTANT necessary, for the completion of the CONSULTANT's services during the period of this Agreement and may make other CITY personnel available, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the 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 the CONSULTANT in connection with any claim brought on behalf of or against the CONSULTANT.
- E. If CONSULTANT's scope of work includes services during construction, CITY will require the contractor to name CONSULTANT, its directors, officers and employees as additional insureds on the contractor's general liability insurance and/or Owner's and Contractor's Protective Policy (OCP), and any builder's risk, or other property insurance purchased by CITY or the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation therein.

9. TERMINATION

- A. The CITY shall have the right at any time upon thirty (30) calendar days written notice to the CONSULTANT to terminate the services of the CONSULTANT and, in that event, the CONSULTANT shall cease work and shall deliver to the CITY all documents (including reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to the CONSULTANT and the 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 Article II.

- B. In the event that the CONSULTANT has abandoned performance under this Agreement, then the CITY may terminate this Agreement upon three (3) calendar days' written notice to the CONSULTANT indicating its intention to do so. The written notice shall state the evidence indicating the CONSULTANT's abandonment.
- C. The CONSULTANT shall have the right to terminate services only in the event of the CITY failing to pay the 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.
- D. The CITY reserves the right to terminate and cancel this Agreement in the event the CONSULTANT shall be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors.
- E. After written notice to the CONSULTANT and a reasonable opportunity to cure, and after consultation with the CONSULTANT, the CITY shall have the right to refuse to make payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to the CONSULTANT due to:
 - 1. The quality of a portion or all of the CONSULTANT's work not being in accordance with the requirements of this Agreement;
 - 2. The quantity of the CONSULTANT's work not being as represented in the CONSULTANT's Payment Request, or otherwise;
 - 3. The CONSULTANT's rate of progress being such that, in the CITY's opinion, substantial or final completion, or both, may be inexcusably delayed;
 - 4. The CONSULTANT's failure to use agreement funds, previously paid the 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 the CONSULTANT;
 - 7. The 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 the CONSULTANT for amounts previously paid by the CITY as contemplated in the clause, the 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. MISCELLANEOUS

- A. 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. 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 material change in the Scope of Services or

any increase in the compensation for the services, the City Commissioners for the CITY and the duly authorized representative for the CONSULTANT shall agree in writing to this change. For all other changes, the CITY's Administrative Agent and the CONSULTANT's representative shall agree in writing to the change.

- B. Any reference to a specific chapter of the Florida Statutes in this Agreement shall mean that the Florida Statutes shall by reference be made a part of this Agreement as though set forth in full.
- C. The 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, except that claims for the money due or to become due the CONSULTANT from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy shall be promptly given to the CITY.
- D. 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. The rights and obligations of the parties under this Agreement shall be governed by the laws of the State of Florida and the 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.
- E. 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.
- F. The 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.
- G. Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the addresses listed below:

CONSULTANT'S REPRESENTATIVE:

Mark C. Hatchel
Vice President
Kimley-Horn and Associates, Inc.
Suite 275, 2201 West Royal Lane
Irving, TX 75063
TEL (214) 420-5625
FAX (214) 420-5680
EMAIL mark.hatchel@kimley-horn.com

CITY'S ADMINISTRATIVE AGENT:

Marquett Clemmons
Sr. Management Analyst/Project Accountant
City of North Port
4970 City Hall Blvd
North Port, FL 34286
TEL (941) 429-7113
FAX (941) 429-7135
EMAIL mclemmons@cityofnorthport.com

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

11. CIVIL RIGHTS

The following requirements apply to this Agreement:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332:

"The CONSULTANT or SUBGRANTEE shall not discriminate on the basis of race, age, creed, disability, marital status, color, national origin, or sex in the performance of this contract. The CONSULTANT or SUBGRANTEE shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the CONSULTANT or SUBGRANTEE to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy, as the CITY deems appropriate."

Each subcontract the CONSULTANT or SUBGRANTEE signs in regards to this federal aid PROJECT must include the assurance in this paragraph (see 49 CFR 26.13(b)). The CONSULTANT or SUBGRANTEE agrees to comply with all applicable federal implementing regulations and other implementing requirements the Federal government may issue.

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT or SUBGRANTEE agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONSULTANT or SUBGRANTEE agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONSULTANT or SUBGRANTEE agrees to comply with any implementing requirements the Federal government may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT or SUBGRANTEE agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT or SUBGRANTEE agrees to comply with any implementing requirements the Federal government may issue.
3. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONSULTANT or SUBGRANTEE agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT or SUBGRANTEE agrees to comply with any implementing requirements the Federal government may issue.
4. Access to Services for Persons with Limited English Proficiency – To the extent applicable and except to the extent that FTA determines otherwise in writing, the CONSULTANT or SUBGRANTEE

agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001. The CITY's LEP Plan is available at CITY offices or may be viewed online at www.cityofnorthport.com

5. Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections – To the extent applicable, the CONSULTANT or SUBGRANTEE agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 et seq., and any amendments to these laws.
6. Other Nondiscrimination Laws – The CONSULTANT or SUBGRANTEE agrees to comply with all applicable provisions of other federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. The CONSULTANT or SUBGRANTEE also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance, modified only if necessary to identify the affected parties.

12. TITLE VI NONDISCRIMINATION POLICY STATEMENT

During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONTRACTOR") agrees as follows:

- A. Compliance with Regulations: The CONTRACTOR shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") TITLE 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- B. Nondiscrimination: The CONTRACTOR, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the CONTRACTOR, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- D. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, the Federal Motor Carrier Safety Administration and/or the U.S. Department of Energy to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of

another who fails or refuses to furnish this information the CONTRACTOR shall so certify to the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, the Federal Motor Carrier Safety Administration and/or the Department of Energy as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, the CITY shall impose such contract sanctions as the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, the Federal Motor Carrier Safety Administration and/or the Department of Energy may determine to be appropriate, including, but not limited to:
- withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies, and/or
 - cancellation, termination or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, the Federal Motor Carrier Safety Administration and/or the Department of Energy may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

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

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: Patty Adams for Helen Rainbeau By: Jonathan R. Lewis
Helen Rainbeau, City Clerk MMC Jonathan R. Lewis, ICMA-CM, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

By: Robert K. Robinson for
Robert K. Robinson, City Attorney

WITNESS:

By: Mark C. Hatchel
Mark C. Hatchel, ASLA
Vice President/Senior Project Manager
Kimley-Horn and Associates, Inc.
2201 West Royal Lane, Suite 275
Irving, Texas 75063

CONSULTANT

By: Jay R. Jackson
Jay R. Jackson, P.E.
Senior Vice President/Principal
Kimley-Horn and Associates, Inc.
3660 Maguire Blvd., Suite 200
Orlando, FL 32803

DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE BUTLER PARK 50 METER AQUATIC FACILITY

ATTACHMENT A – SCOPE OF SERVICES

The Scope of Services as outlined on the following pages is based upon our meetings and conversations with the City of North Port, Florida.

Project Understanding

Kimley-Horn and Associates, Inc. ("CONSULTANT" or "Kimley-Horn") understands that the City of North Port, Florida ("CITY") intends to master plan, prepare construction documents, and advertise for bids the **Architectural/Engineering Services for the Permitting, Design and Construction Management Services for the Butler Park 50 meter Aquatic Facility** ("Project"). The area available for the aquatic facility is the site prepared at Butler Park during the construction of the adjacent community center and parking area. The amenities for this aquatic facility shall be finalized during a final programming session with CITY representatives.

Basic design features are currently anticipated to include a new 50-Meter Pool and some Water Play/Spray Features; Bathhouse/Filtration Building; Shade Structures; Lighting; On-Site Utilities; Walkways; Pool Piping and Filters; and other typical items in swimming pool complexes of this type.

We understand that the project is currently budgeted at approximately \$4.3 million total (inclusive of surveying, geo-technical investigations, design services, site specific operations planning, owner's contingencies, and reimbursable expenses.)

CITY's Responsibilities

The CONSULTANT understands that the CITY will provide the following information, on which we may rely, for our use in completing this Scope of Services:

- 1) Any existing Final Plat of the site.
- 2) Any additional City of North Port design requirements or standards applicable to the project.
- 3) Any available plans of the existing community center, utilities, parking, and streets within or adjacent to the site.

Professional Services

The CONSULTANT will provide the following Basic and Special Services as set forth below:

Basic and Special Services

Task I Coordination and Design Management

The CONSULTANT will serve as the lead design consultant and project team manager. Items of work included in this task are:

- A) Coordination of survey and geo-technical work.

- B) Assisting the CITY in evaluating three potential design options (low, medium, and high cost), defining project scope, design budgets, and assignment of design team responsibilities.
- C) Perform initial due diligence to determine utility services and CITY requirements.
- D) Manage the project and direct the consulting team of Counsilman-Hunsaker (Pools) and Wannemacher-Jensen (Architectural, Structural, MEP/HVAC) during the design phase.
- E) Communicate regularly with the CITY as needed.
- F) Communicate regularly with the Sarasota County Health Department as needed.

Task II Topographic Survey and Geo-technical Investigation

Task A Existing Conditions and Topographic Survey

The CONSULTANT will utilize Strayer Surveying to provide a topographic survey of the site in AutoCAD 2004. The topographic survey will be a detailed ground survey based upon a 50' grid, showing existing above and below ground conditions, easements, setbacks, utilities, contours at one-foot (1') intervals, spot elevations, physical features, single trees greater than six inches (6") in diameter in the vicinity of planned improvements. The limits of the existing adjacent parking improvements will be shown. Also, all other adjacent park improvements will be shown (parking and striping, planters, play areas, fencing, ball fields, etc.) Datum will be based upon N.G.V.D 1929 datum and two to four temporary bench marks will be provided on-site. The CONSULTANT will use the AutoCAD files of the topographic and survey for base maps and to prepare an existing conditions and demolition plan for the proposed pool, building structures, and related site development.

Task B Geo-technical Report / Soils Investigation

The CONSULTANT will utilize Ardaman and Associates to provide a geo-technical engineering services report for the park site. This work will consist of doing six to seven borings 10 to 25 feet below the ground surface in the vicinity of proposed pool and building structures. The reports will provide recommendations for any required soil modification, dewatering, building foundation, pool structures, concrete paving, and footing designs. The CONSULTANT will utilize the existing conditions topographic and boundary survey to locate the proposed type and position of borings and provide an electronic file for use by geo-technical engineer.

Task III Master Planning / Programming / Facility Specific Business Plan Options

Task A Master Planning / Programming

The CONSULTANT will prepare final design program and three site specific master site plan options (low, medium, and high cost) for the aquatic facility. To accomplish this, the CONSULTANT will conduct one meeting with CITY representatives to finalize the design program and priorities for the pool, site, and bathhouse. From this meeting, a final design program will be developed and three design concepts for the pool (low, medium, and high cost) will be developed for the aquatic facility. The CONSULTANT will then work with the CITY's staff to develop a colored master plan display and final budget estimate of each. These master plans will then be presented at one City Commission Meeting (if required) to receive final comments and for approval to begin the construction documents.

Task B Facility Specific Business Plan Options

The CONSULTANT will utilize Counsilman-Hunsaker to prepare an updated comprehensive operational site specific business plan for each of the three design options of the proposed aquatic facility. This business plan will provide the CITY with facility specific revenue and expenses information regarding management and staffing. The Facility Specific Business Plan will incorporate a detailed opinion of projected operations expenses (staffing, utilities, and commodities costs) and expected revenue for each of the three design options.

The above will be provided in the form of an 8 1/2" x 11" printed report with supporting tables, graphs, and exhibits.

Meetings/Site Visits: Two (2) Kimley-Horn, One (1) Counsilman-Hunsaker, One (1) Wannemacher-Jensen

Task IV Design Development (50% Construction Documents)

The Design Development phase will consist of the following tasks:

- A) Preparation of design development plans and specifications for the pools, buildings, and site development.
- B) Provide an opinion of probable cost and coordinate based upon the design development plans.
- C) Provide information on finishes equipment, lighting, outlets, pool water supply and waste, structural design, and site utilities.
- D) Meet with CITY representatives and the health department to present the 100% design development design and to obtain design development comments.
- E) Finalize the 100% design development package to reflect changes and comments determined by consensus at a meeting with CITY representatives.

Meetings/Site Visits: One (1) Kimley-Horn, One (1) Counsilman-Hunsaker, One (1) Wannemacher-Jensen

Task V Construction Documents

The Construction Document phase will consist of the following tasks:

- A) Preparation of final construction plans and specifications for the pools, buildings, and site development.
- B) Provide an opinion of probable cost based upon the 100% construction documents. Because the CONSULTANT does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry.
- C) Provide final specifications and details on finishes equipment, lighting, outlets, pool water supply and waste, structural design, and site utilities.
- D) Meet with CITY representatives and the health department to present the 100% construction documents.

- E) Finalize the 100% construction documents to reflect changes and comments determined by consensus at a meeting with CITY representatives.

Items to be included in the construction documents set are:

- 1) Site development plans (removal items, layout, grading, onsite storm sewer and drainage areas, onsite water and gravity sanitary sewer, lighting, power distribution, erosion control, planting and irrigation, and details.)
- 2) Building plans (floor plans, elevations, section, details, HVAC, plumbing, electrical, food service equipment, finishes, and structural).
- 3) Pool Plans (layout, details, pressure piping, return piping, filters, pumps, controls, and details.)
- 4) Project manual consisting of technical specifications and the CITY's front-end master contract documents.

Meetings/Site Visits: One (1) Kimley-Horn, One (1) Counsilman-Hunsaker, One (1) Wannemacher-Jensen

Task VI Bidding Phase Services

The CONSULTANT will provide Bidding Phase Services as follows:

- A) Assistance with the preparation of the advertisement for bids and bid documents.
- B) Assistance with pre-qualification of pool contractors and general contractors.
- C) Attend a pre-bid meeting approximately one week prior to the bid opening date to review the project with prospective bidders.
- D) Answer questions from Bidders and prepare addenda as necessary.
- E) Attend the bid opening with the CITY.
- F) Provide bid tabulations and Letter of Recommendation. (A summary of the bid analysis will be provided to the CITY use in selection and award of the construction contract.)

Meetings/Site Visits: Two (2) Kimley-Horn

Task VII Construction Phase Services

The CONSULTANT will provide Construction Phase Services for the project as requested by the CITY, as outlined below. Please note these services do not provide a full-time resident project representative:

- A) Provide site observation visits as directed by the CITY in order to observe the progress of the work. site observation visits and observation of all major systems installations shall be provided for the purpose of ascertaining for the CITY that the work is in substantial or general conformance with the contract documents and design intent.

1. Should non-conforming or defective work be observed, the CONSULTANT will endeavor to immediately inform the CITY's representative and Contractor conforming or remedial action is required.

2. The CONSULTANT shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall CONSULTANT have any authority or responsibility to stop or direct the work of any contractor. The CONSULTANT's visits will be for the purpose of endeavoring to provide the CITY a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the CONSULTANT. CONSULTANT neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

4. The CONSULTANT is not responsible for any duties assigned to the CONSULTANT in the construction contract that are not expressly provided for in this Agreement. The CITY agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the CITY and the CONSULTANT for all claims and liability arising out of job site accidents; and that the CITY and the CONSULTANT shall be made additional insureds under the contractor's general liability insurance policy.

- B) Conduct monthly in person coordination meetings with contractors, inspection personnel, and CITY representatives and weekly telephone conferences as needed to discuss strategy, problem areas, progress, and any required or requested coordination. Prepare a summary of these meetings and distribute them to both the CITY and the contractor (maximum of twelve meetings total to be conducted in conjunction with a site observation visit.) It is estimated that construction will take approximately nine months.
- C) Review shop drawings and other submittal information for the purpose of ascertaining conformance with the design intent and construction documents.
- D) Provide written responses to requests for information or clarifications.
- E) Prepare and process change orders, if required.
- F) Review and approve monthly pay requests by the contractor.
- G) Assist the CITY in conducting substantial completion and final completion observations and provide a written punch list for completion by the contractor.
- H) Review and approval of Contractor furnished As Built / Record Drawing Plans.
- I) When complete, recommend final acceptance of work.

Meetings: Twelve (12) Kimley-Horn, Four (4) Counsilman-Hunsaker, Three (3) Wannemacher-Jensen

Exclusions

Any items requested by the CITY that are not outlined in the above scope will be considered excluded from this contract and may be provided only if requested and authorized in writing by the CITY.

The CONSULTANT can provide the following services, but they are not included in the limited scope of this proposal:

Franchise Utility Coordination
Traffic Impact Studies or Signal Design

Preparation of Traffic control plans
Revisions due to changes in regulations
Revisions to CD's after design approval other than clarifications
Archaeological Survey
Submittal, Permitting Fees, or Impact Fees
Construction Staking
Off-Site Utility Design
Off-Site Roadway Design
Off-Site Easement Descriptions
Contractor Type Detailed Estimates (As Prepared by Estimating Service)
Record Drawing Survey
Preparation of Preliminary or Final Plat
Topographic and/or Boundary Surveys
Environmental Impact Statement
Water quality and/or detention/retention ponds
Additional work due to an increase in project size (In excess of \$4.3 million)
Additional work authorized by the CITY as a part of the CITY's design contingency

Additional Services

No additional services shall be provided without prior written authorization from the CITY. Should additional services be required, the CONSULTANT will work with the CITY to develop a lump sum fee.

Fee Schedule

The CONSULTANT will perform the Basic and Special Services as described in the Scope of Services inclusive of expenses for a total lump sum fee of \$400,000. All permitting, application, and similar project fees will be paid directly by the CITY or the contractor (See Attachment "B")

Fees and expenses will be invoiced monthly in the CONSULTANT's format via e-mail, based as applicable, upon the percentage of services performed or actual services performed and an estimated portion of the expenses incurred as of the invoice date.

Project Schedule

The CONSULTANT will work with the CITY to develop a mutually acceptable project schedule (See Attachment "C")

Insurance

Insurance shall be as per City of North Port requirements.

DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE BUTLER PARK 50 METER AQUATIC FACILITY**ATTACHMENT B – FEE SCHEDULE****Basic and Special Services (Lump Sum)**

Task I	Coordination and Design Management	\$28,000
Task II	Topographic Survey/Geo-technical Investigation	\$6,000
Task III	Master Planning/Programming/ Facility Specific Business Plan	\$32,000
Task IV	Design Development	\$120,000
Task V	Construction Documents	\$120,000
Task VI	Bidding Phase Services	\$14,000
Task VII	Construction Phase Services	<u>\$50,000</u>
Sub-Total		\$370,000

Expenses (Lump Sum)

Kimley-Horn	\$16,000
Counsilman-Hunsaker	\$6,000
Wannemacher-Jensen	\$4,000
Miscellaneous Expense Allocation	<u>\$4,000</u>
(Includes – printing and distribution of review plans and specifications; fax, telephone, miscellaneous, plots, etc.)	
Sub-Total	<u>\$30,000</u>

Total Compensation (Lump Sum Fee and Expenses)	<u>\$400,000</u>
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Note: The above basic fees include basic and special services for above average complexity professional services including topographic survey, geo-technical report, and services from a specialty aquatic design sub-consultant for pool mechanical design and a facility specific business planning. Any authorized additional services will be funded from the CITY's design contingency fee of \$30,000.

DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE BUTLER PARK 50 METER AQUATIC FACILITY**ATTACHMENT C – PROJECT SCHEDULE**

April 2011	Consultant Selected and Notified
June 2011	Contract Agreed Upon and Signed
July 2011	Topographic Survey and Geo-technical Report Complete
August 2011	Master Planning and Programming Complete
September 2011	Facility Specific Business Plan Complete Approval by City Commission
November 2011	Design Development Documents Complete
February 2012	100% Construction Documents Complete
March 2012	Advertise for Bids
April 2012	Receive Bids
May 2012	Award Bid / Begin Construction
January 2013	Punch List and Construction Complete

Note: This schedule is tentative and is based upon actions by others (CITY) of which the CONSULTANT has no control. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the CONSULTANT does not control.