



CITY OF NORTH PORT PROCUREMENT REQUEST FORM
EMERGENCY/EXIGENCY PROCUREMENT
(IN ACCORDANCE WITH FEDERAL GUIDELINES)



DEPARTMENT/DIVISION Public Works / Road and Drainage

NAME OF REQUESTOR Garrett Woods

NAME OF PREPARER Garrett Woods

DATE COMPLETED 10/19/2022

The City shall not be bound by any transactions made contrary to procurement procedures.

For the Procurement Official to process a requisition or visa purchase request related to an emergency or exigent purchase, this form must be completed and submitted by the requesting party to Purchasing with the request. **THE CITY MANAGER MUST BE NOTIFIED IMMEDIATELY (VIA EMAIL/PHONE), FOLLOWED BY THE PURCHASING DIVISION.**

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid and action. The difference between the two is as follows:

In the case of an exigency, there is a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the applicant, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.

In the case of an emergency, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

Emergency or Exigency (in accordance with FEMA guidelines, must specify, see definitions above):

EMERGENCY

Name of Event (if applicable): Hurricane Ian - WCS 106 Remediation

Project Number for Event (if applicable): IAN22

A. Description of Item(s) Purchased and Detailed Circumstances of the Emergency or Exigency Purchase/Service: Must answer who, what, when, where, why and how in the box below or separate memo. (Attach quote back-up).

The Public Works Department Road and Drainage District is in need of emergency engineering services to address severe erosion at Water Control Structure (WCS) No. 106 due to Hurricane Ian. This 500-year storm raised the water level in Cocoplum Waterway above the canal banks and severely eroded the south banks collapsing the Winn Dixie parking lot to within 23.6 ft of the building and compromised the watermain. Services include providing remediation through site visits and providing an expedited design to repair the erosion.

The Department of Public Works did not advertise this service to other companies because Kimley-Horn and Associate is very familiar with this structure as they were awarded agreement No. 2017-18 for professional engineering services for the WCS No. 106 in 2017.



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B. Total Cost of Purchase: \$ 10,000.00

Account #: 107-5000-541.31-05

Project #: IAN22

C. Vendor Information

Vendor Name: Kimley-Horn and Associates Contact: Trenton Strackbein

Address: 1777 Main Street, Suite

City: Sarasota State: Florida Zip: 34236

Phone: 941-379-7622 Email or Website Address: trenton.strackbein@kimley-Horn.com

I acknowledge that the procurement described herein was made in a manner consistent with the emergency procurement requirements of the City of North Port Procurement Code and Procurement Manual. I have been made aware of the Procurement Code (available on the P-Drive and Intranet) and the policies and procedures related to the City's procurement system.

GARRETT WOODS
Digitally signed by GARRETT WOODS
Date: 2022.10.21 10:57:17 -04'00'

Chuck Speake
Digitally signed by Chuck Speake
Date: 2022.10.21 14:41:16 -04'00'

Requestor
Lisa Herrmann
Digitally signed by Lisa Herrmann
Date: 2022.10.24 08:23:28 -04'00'

Department Director
Ginny Duyn
Digitally signed by Ginny Duyn
Date: 2022.10.24 08:32:51 -04'00'

Budget Administrator
Kimberly Williams
Digitally signed by Kimberly Williams
Date: 2022.10.24 15:25:34 -04'00'

Purchasing
Janet Parkers
Date: 2022.10.24 16:18:48 -04'00'

Finance Director
Jerome Fletcher
Digitally signed by Jerome Fletcher
DN: cn=Jerome Fletcher, o=City of North Port, ou=City of North Port, email=jfletcher@cityofnorthport.com
Reason: I am the author of this document
Location: my signing location here
Date: 2022.10.25 17:23:06 -04'00'
Font: PDF Reader Version: 11.1.0

Assistant City Manager

City Manager

PRINT Clear All Fields

PROJECT WORK PLAN PERSON-HOUR ESTIMATE

Project Name: WCS 106 Remediation
 Project Number: TBD
 Date Prepared: 10/20/2022
 Estimated By: TTS, PVB, SES

KHA Task # Subtask ID	KHA Task Name Subtask Name/Description	Direct Labor (Person-Hours)										KHA Labor Total (\$)	
		Project Manager Trenton Strackbein \$184.50	Principal In Charge Peter Van Buskirk \$254.00	Structural Engineer Seh Schmid \$275.00	Electrical Engineer Peter Synlax \$262.00	Environ. Consulting Ronnie VanFleet \$232.00	Environ. Consulting Chris Kennedy \$127.00	Designer \$168.00	Analyst Scott Wedgeworth \$120.00	CEI Support \$140.50	Support Staff \$85.00		
A	Initial Site Observations		3.0								1.0		\$882.00
B	Prepare a Plan and Associated Structural Calculations	2.0	6.0	3.0							15.0		\$4,518.00
C	Construction Observation	7.0	12.0								1.0	1.0	\$4,600.00
	Subtotal (Hours)	9.0	21.0	3.0	0.0	0.0	0.0	0.0	0.0	17.0	1.0	0.0	
	Task Total (Dollars)	\$1,661	\$5,324	\$825	\$0	\$0	\$0	\$0	\$0	\$2,040	\$141	\$0	\$10,000.00



October 18, 2022

Elizabeth Wong, P.E.
City of North Port
Stormwater Manager
1100 North Chamberlain Boulevard
North Port, FL 34286

Re: Professional Services Agreement for Water Control Structure No. 106 Remediation

Dear Ms. Wong:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of North Port ("Client") related to remediation measures to address erosion at Water Control Structure No. 106.

Project Understanding

Water Control Structure No. 106 is an existing flood control facility located within the Cocoplum Waterway near the North Port Boulevard bridge over the waterway. Erosion occurred along the canal bank adjacent to the existing structure as a result of Hurricane Ian. The Client has requested Kimley-Horn's services to conduct site observations and provide a design to repair the canal bank where the erosion occurred.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

- A. Conduct initial site observations to inform the design of the remediating measures.
- B. Prepare a plan and associated structural calculations for the canal bank remediation.
- C. Conduct site observations during construction on an as-needed basis. These observations are limited to twenty (20) total hours.

Services Not Included

Any other services not specifically included in this agreement are not included.

Kimley-Horn cannot provide a determination on the suitability of any facility for post disaster use by the Client, the public or third parties based upon this preliminary site observation.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project.

Responsibilities of Client

The Client agrees to retain the services of other design consultants that might be needed for the completion of the Scope of Services. The Client also agrees to provide legal and safe access to the site.

In addition to other responsibilities set out in this Agreement, the Client shall agree to the following:

The Consultant agrees, to the fullest extent permitted by law, to indemnify, but not defend, and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, arising from the project that is the subject of this Agreement.

The Consultant is not obligated to indemnify the Client in any manner whatsoever for the Client's own negligence.

Fee and Expenses

Kimley-Horn will provide the Scope of Services in Tasks A-B for the total lump sum fee of **\$5,400**. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Kimley-Horn will provide the Scope of Services in Task C on a Not to Exceed (NTE) labor fee plus expense basis for the maximum fee of **\$4,600**. NTE labor fee will be billed on an hourly basis according to our then-current rates. As to this task, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of NTE labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

COVID-19

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the Client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of North Port.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the

invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

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

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

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.


By: William E. Conerly, P.E.
Vice President


By: Trenton Strackbein, P.E.
Project Manager

CITY OF NORTH PORT

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachments: Request for Information; Standard Provisions

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Request for Information

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

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

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

Property Owner Identification

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

Project Funding Identification – List Funding Sources for the Project

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

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an

electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.
- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be

limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

- 16) **Construction Phase Services.**
 - a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
 - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**(20) PURSUANT TO FS 558.0035, EMPLOYEES OF CONSULTANT
MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES
RESULTING FROM NEGLIGENCE UNDER THIS
AGREEMENT.**