

AGREEMENT NO. 2025-07
PROFESSIONAL ENGINEERING SERVICES FOR FIXED WEIR NOS. 157 AND 158 REPLACEMENTS

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 2025, by and between the City Of North Port, Florida, a municipal corporation of the State of Florida ("CITY") and **KIMLEY-HORN AND ASSOCIATES, INC.** a Foreign Profit Corporation registered to conduct business in the State of Florida, with a local business address of 1800 2nd Street, Suite 900, Sarasota, FL 34236 ("CONSULTANT").

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

1. CONSULTANT'S SERVICES; TERM

- A. CONSULTANT agrees to diligently and timely perform services for the CITY relating to Professional Engineering for the design, permitting and limited construction engineering services for the replacement of Fixed Weir (FW) No. 157 and 158 as identified in the Request for Proposal (RFP) No. 2025-07 and CONSULTANT'S proposal submitted **January 17, 2025**. The overall Scope of Services as described in the attached **Exhibit A** ("Scope of Services") with detailed tasks and associated fees as described in the Fee Schedule as attached **Exhibit B** ("Fee Schedule").
- B. This Agreement must commence immediately upon the execution of this Agreement by both the CITY and CONSULTANT and upon CONSULTANT'S receipt of a written Notice to Proceed from the CITY'S Project Manager and must continue through the completion of the project. The expected completion date is **May 2, 2028**, including bidding and construction services.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

- (1) CONSULTANT shall perform the Scope of Services, as described in Exhibit A, for a lump sum, not to exceed fee of **TWO HUNDRED SEVENTY THOUSAND, SEVEN HUNDRED NINETY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$270,798.25)**. This fee 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.
- (2) The parties acknowledge and agree that the obligations of CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of CITY that may arise under this Agreement; however, since funds are appropriated annually by the City Commission on a fiscal year basis the CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if a request for such appropriations

is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Agreement shall not constitute an indebtedness of CITY nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

- (1) The CITY shall pay CONSULTANT through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Florida Statutes, Section 218.70, *et seq*, 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 must 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 will 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 must be in a form satisfactory to the City of North Port Finance Department, who will initiate disbursements.
- (4) Payment due dates, late payments, and interest will be calculated, paid, and assessed in accordance with the Local Government Prompt Payment Act, Florida Statutes Sections 218.70, *et seq*.

3. INDEMNITY

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT MUST INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES, AND COSTS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONALLY WRONGFUL CONDUCT OF THE CONSULTANT AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONSULTANT IN THE PERFORMANCE OF THE AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**
- B. FURTHER, THE CONSULTANT SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA, FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.**
- C. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONSULTANT MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM,**

THE CITY MUST PROMPTLY NOTIFY THE CONSULTANT IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.

- D. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON THE CONSULTANT'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- E. THIS AGREEMENT MUST NOT BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.
- F. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.

4. CONSULTANT'S INSURANCE

A. Insurance.

- (1) Before performing any work pursuant to this Agreement, the Consultant must procure and maintain, during the life of this Agreement, the insurance listed below against all claims of injury to persons or damage to property which may arise from or in connection with its performance of the Agreement work, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Florida Department of Financial Services, and meet a minimum financial A.M. Best and Company, Inc. rating of no less than "A - Excellent: FSC VII." No changes can be made to these specifications without prior written approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with the Consultant. The insurance policies must remain in place until all of the Consultant's and subconsultant(s)' obligations and warranty periods in place pursuant to this Agreement have been discharged or satisfied.
- (2) The below insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work done pursuant to this Agreement by the Consultant, its agents, representatives, employees, or subconsultants. Consultant is free to purchase additional insurance as it may determine necessary. The extent of Consultant's liability for indemnity of the City must not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Consultant and its carrier.

- B. Workers' Compensation and Employer's Liability Insurance: Coverage to apply for all employees at the statutory limits provided by state and federal laws. Include proof of current Workers'

Compensation Coverage or Workers' Compensation Exemption (notarized affidavit). 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.

- C. Comprehensive Commercial General Liability Insurance: Aggregate must apply separately to this Agreement. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.
- D. Automobile Insurance: To include all vehicles owned, leased, hired, and non-owned vehicles limits of not less than \$300,000 per person; \$300,000 per accident; and \$300,000 property damage, with contractual liability coverage for all work performed under this Agreement.
- E. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project with a \$1,000,000 policy term general aggregate. Coverage must 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 Agreement is written on a claims-made basis, Consultant warrants that any retroactive date under the policy precedes the effective date of this Agreement; 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 Agreement is completed.
- F. Waiver of Subrogation: All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers, and the CITY'S insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by CONSULTANT for the CITY. It is CONSULTANT'S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. ADDITIONALLY, CONSULTANT, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, VOLUNTEERS, AND ANY SUBCONTRACTORS, AGREE TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY AND ITS INSURANCE CARRIERS FOR ANY LOSSES PAID, SUSTAINED, OR INCURRED, BUT NOT COVERED BY INSURANCE, THAT ARISE FROM THE CONTRACTUAL RELATIONSHIP OR WORK PERFORMED. THIS WAIVER ALSO APPLIES TO ANY DEDUCTIBLES OR SELF-INSURED RETENTIONS FOR WHICH CONSULTANT OR ITS AGENTS MAY BE RESPONSIBLE.
- G. POLICY FORM
 - (1) All policies required by this 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 must name the City of North Port, Florida, its Commissioners, officers, agents, and employees, as additional insureds 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 in this Agreement must 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, must be provided by or on behalf of all sub-consultants to cover their operations performed under this Agreement. Consultant must be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-consultants.
- (3) Each insurance policy required by this Agreement must:
 - (a) Apply separately to each insured against whom a claim is made, and suit is brought, except with respect to limits of the insurer's liability.
 - (b) Be endorsed to state that coverage must not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. Consultant is to notify the City's Purchasing Office by written notice via certified mail, return receipt requested.
- (4) The City must retain the right to review, at any time, coverage, form, and amount of insurance.
- (5) The procuring of required policies of insurance must not be construed to limit CONSULTANT'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONSULTANT'S liability for indemnity of the CITY must 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 must be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and must 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, or equivalent). 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 must 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 must 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 must 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 must 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 must, 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 must 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 must 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 must 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 must comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof. The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. CONSULTANT must not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.
- F. CONSULTANT must 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 must be retained for a minimum of three (3) years after completion of the services.

- 6. PUBLIC RECORDS LAW:** In accordance with Florida Statutes, Section 119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:

A. Keep and maintain public records required by the City to perform the service.

- (1) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.

(See <http://dos.state.fl.us/library-archives/records-management/general-records-schedules/>).

- (2) "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CITY. CONSULTANT'S records under this Agreement include but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Agreement.

- B. Upon request from the CITY'S custodian of public records, provide the CITY, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format compatible with the information technology systems of the CITY.
- C. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, if CONSULTANT does not transfer the records to the CITY following completion of the Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
- D. Upon completion of the Agreement, 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 Agreement, 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 Agreement, CONSULTANT shall meet all applicable requirements for retaining public records.
- E. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, 941.429.7063 OR HOTLINE 941.429.7270;**

E-MAIL: Publicrecordsrequest@northportfl.gov.

- F. Failure of CONSULTANT to comply with these requirements shall be a material breach of this Agreement. Further, CONSULTANT may be subject to penalties under Florida Statutes, Section 119.10.

7. OWNERSHIP AND USE OF DOCUMENTS

- A. It is understood and agreed that the Consultant must deliver to the City the Consultant's work product, including reports and other documents and data developed in connection with its services; this work product will become the City's property 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 work product to the City.
- B. The Consultant may not use any of the work product on any non-City project unless the City agrees in writing. The City's reuse of the work product on other projects will be at the City's risk.
- C. The City records all land related changes and/or activities in its corporate based Geographic Information System (GIS). The Consultant must provide the City at no additional cost all GIS or Computer Aided Drafting (CAD) formatted data created or modified in support of each project, as a project deliverable for inclusion into the City's GIS. GIS data files submitted in support of a project must adhere to City GIS standards, and CAD drawings submitted must adhere to City CAD standards as provided in writing by the Administrative Agent.
- D. Computer systems and databases used for providing the documents necessary to this Agreement must be compatible with existing City systems. The Administrative Agent will advise the Consultant of the systems and databases in writing or in the Notice to Proceed, and upon any changes thereafter.

8. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

- A. The timely performance and completion of the required services is vitally important to the interest of the CITY. CONSULTANT must assign an Administrative Agent, together with such other personnel as are necessary for 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 must 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 any changes or substitution can become effective.
- B. The services to be rendered by CONSULTANT shall commence within one (1) calendar week of CONSULTANT'S receipt of written Notice to Proceed from the CITY.

- C. CONSULTANT specifically agrees that all work performed under the terms and conditions of this Agreement must be completed within the time limits as set forth, subject only to delays caused through no fault of CONSULTANT or the CITY.
- D. CONSULTANT agrees to provide to the CITY'S Administrative Agent, monthly written progress reports concerning the status of the work. The CITY'S Administrative Agent may determine the format for this progress report. The CITY must be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by CONSULTANT.
- E. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by CONSULTANT which delay the Project Schedule completion date, the CITY must 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 **Exhibit C**, which is attached hereto and incorporated as if set forth fully herein.

9. OBLIGATIONS OF THE CITY

- A. The City's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this 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.
 - (4) 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.
 - (5) 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.
 - (6) The City shall not provide any services to Consultant in connection with any claim brought on behalf of or against Consultant.

10. TERMINATION

- A. City's Termination With or Without Cause. The City Manager or designee may terminate any Work and this Agreement, or both, with or without cause, in whole or in part, whenever the City Manager or designee determines that termination is in the City's best interest.

- (1) The City may effectuate termination by delivering to the Consultant a written notice of termination at least thirty (30) calendar days before the date of termination, specifying the extent to which performance of the Work is terminated and the date upon which the termination becomes effective.

Except as otherwise directed in the notice, the Consultant must: (i) cease all work on the date of receipt of the notice of termination or other date specified in the notice; (ii) place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the portion of the Work not terminated; (iii) terminate all vendors and subcontracts; and (iv) settle all outstanding liabilities and claims. City to settle claims against or to pay indebtedness of Consultant in accordance with the provisions of this Agreement.

- (2) Upon termination, the Consultant must deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Consultant in connection with its services. 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 Exhibit A- Scope of Services and Exhibit B - Consultant's Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments made to CONSULTANT in accordance with Section 2 of this Agreement and any amounts withheld by the CITY to settle claims against or to pay indebtedness of CONSULTANT in accordance with the provisions of this Agreement. The CITY has no obligation under any circumstance to make any payment to the Consultant for terminated Work that has not been performed or that is performed after delivery of the notice of termination.

- B. Non-Appropriation: The parties acknowledge and agree that the obligations of the City to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent contract entered into pursuant to this Agreement or referenced herein to which City is a party, are subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. Since funds are appropriated annually by the City Commission on a fiscal year basis, the City's legal liability for the payment of any costs must not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission. No liability must arise, if a request for such appropriations is excluded from the budget approved by the City Commission. Notwithstanding the foregoing, any commissioner, officer, employee, director, member or other natural person or agent of City must not have any personal liability in connection with the breach of the provisions of this section or in the event of a default by City under this section. This Agreement must not constitute an indebtedness of City, or an obligation for which the City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation. It is expressly understood by the parties that funding for any subsequent fiscal year of the Agreement is contingent upon

appropriation of monies by the City Commission. If funds are not available or appropriated, the City reserves the right to terminate the Agreement. The City will pay any outstanding invoices for work completed by the Consultant prior to such termination.

- C. Termination for Abandonment. If the Consultant abandons performance under this Agreement, the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the Consultant indicating the intention to do so. The written notice must state the evidence indicating the Consultant's abandonment.
- D. Termination for Non-Civility. The Consultant agrees that its employees and agents will communicate with City employees and members of the public in a civil manner. Any aspect of the Consultant's performance, including complaints received from City employees or members of the public, may cause the City to terminate this Agreement in accordance with the provisions contained herein.
- E. Consultant's Termination. The Consultant may terminate this Agreement only in the event the City fails to pay the Consultant's properly documented and submitted payment request within ninety (90) calendar days of the Administrative Agent's approval, or if the City suspends a project for longer than ninety (90) calendar days.
- F. Court Proceedings. The City Manager or designee reserves the right to terminate this Agreement immediately in the event the Consultant is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Consultant, or an assignment is made for the benefit of creditors.
- G. Breach. In the event the Consultant is in breach of this Agreement, the City must provide written notice of the breach and the Consultant will have ten (10) calendar days to cure, calculated from the date the Consultant receives the notice. If the Consultant fails to cure within the ten (10) calendar days, the City Manager or designee may immediately terminate this Agreement and/or refuse to make any additional payment, in whole or in part, and 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 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 is, in the City's reasonable opinion, whether Substantial Completion, Final Completion, or both, inexcusably delayed;
 - (4) The Consultant's failure to pay the Consultant's project related obligations, including but not limited to Consultant's subcontractors, subconsultants, laborers, materialmen, equipment, and other 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 its obligations to the City, after written notice and a reasonable opportunity to cure, as set forth above; or
 - (8) Violation of any local, state, or federal law in the performance of this Agreement constitutes a breach of this Agreement.
- H. Waiver. Any delay or failure to enforce any breach of this Agreement by either the City or the Consultant will not be binding upon the waiving party unless the waiver is in writing. In the event of a written waiver, the waiver will not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.
- I. E-Verify Violation.
- (1) If the City has a good faith belief that the Consultant has knowingly violated Florida Statutes Section 448.09(1), the City may immediately terminate this Agreement.
 - (2) If the City has a good faith belief that a subcontractor/subconsultant has knowingly violated Florida Statutes Section 448.09(1), but the Consultant has otherwise complied, then the City must without delay notify the Consultant and order the Consultant to immediately terminate its contract with the subcontractor/subconsultant.
 - (3) The Consultant must comply with Florida Statutes Section 448.095(2) for any challenge to termination of this Agreement under this Section.
- J. Remedies. In the event of a default or breach of this Agreement terms, the City may avail itself of every remedy given to it now existing at law or in equity, and every remedy must be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in the order as the City deems expedient. The exercise, or the beginning of the exercise, of one remedy must not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

11. INDEPENDENT CONTRACTOR

- A. The relationship between the Consultant and the City is that of an independent contractor. Nothing contained herein will be deemed or construed as creating the relationship of employer-employee, principal-agent, partnership, or joint venture between the parties. It is understood and agreed that no provision contained herein, or any acts of the parties, will be deemed to create any relationship between them other than that as detailed herein. The Consultant retains sole and absolute discretion and judgment in the manner and means of carrying out the services, within the established rules and regulations of the City.
- B. The Consultant is not entitled to any salary or benefits other than the compensation described in Section 2 of this Agreement. The Consultant must provide, at their sole expense, all supplies and materials needed for the services that are not otherwise provided by the City.

12. WAIVER

Any delay or failure to enforce any breach of this Agreement by either City or Consultant must not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver must not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.

13. NO HIRE

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

14. NOTICES

Except as specified elsewhere in this Agreement, all notices provided for in this Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

CONSULTANT'S REPRESENTATIVE:

B. Kelley Klepper, AICP, Vice President
Kimley-Horn and Associates, Inc.
1800 2nd Street, Suite 900
Sarasota, FL, 34236
TEL: 941.379.7600
EMAIL: kelly.klepper@kimley-horn.com

THE CITY'S ADMINISTRATIVE AGENT:

Elizabeth Wong, Stormwater Manager
City of North Port
1100 North Chamberlain Blvd.
North Port, FL 34286
TEL: 941.240.8321
Email: ewong@northportfl.gov

WITH COPIES OF NOTICES TO:

City Attorney's Office
4970 City Hall Boulevard
North Port, FL 34286
EMAIL: NorthPortCityAttorney@northportfl.gov

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

15. CONFLICTS

In the event of any conflict between the provisions of this Agreement and RFP No. 2025-07 or CONSULTANT'S response, which are made a part hereof by reference, this Agreement must control.

- 16. E-VERIFY SYSTEM:** Upon entering into this Agreement, the Consultant must be registered with and must continue during the term of this Agreement to use the Department of Homeland Security E-Verify System as required by Section 448.095, Fla. Stat., Employment Eligibility, including but not limited to, verifying the work authorization status of all newly hired employees, and requiring all subcontractors/subconsultants to provide an affidavit attesting that the subcontractor/subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The Consultant must maintain a copy of such affidavit for the duration of the contract.

17. SCRUTINIZED COMPANIES

- A. As required by section 287.135(5), Florida Statutes, for contracts of \$1,000,000.00 or less, when submitting a bid or proposal, and prior to entering into a contract with the City, every person or entity must certify on a form provide by the City, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and that it is not engaged in a boycott of Israel.
- B. As required by section 287.135(5), Florida Statutes, for contracts of \$1,000,000.00 or more, when submitting a bid or proposal, and prior to entering into a contract with the City, every person or entity must certify on a form provided by the City, that all of the following are true:
- (1) It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and that it is not engaged in a boycott of Israel; and
 - (2) It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to section 215.473, Florida Statutes; and
 - (3) It is not engaged in business operations in Cuba or Syria.

C. PENALTY:

- (1) If a false certification is submitted or the person or entity has been placed on one of the above-noted Lists of Scrutinized Companies or has engaged in business operations in Cuba or Syria, the person or entity will be in breach of this Agreement terms and the City may terminate the Agreement.
- (2) A person or entity that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of the Contract, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and

- (3) A person or entity that has been found to have provided a false certification must be ineligible to bid on any contract with the City for three (3) years after the date the City determined that a false certification has been submitted.

18. FORCE MAJEURE

- A. Should performance of any obligation created under this Agreement become illegal or impossible by reason of:

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

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

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

a period exceeding two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term.

- D. The term of this Agreement will be extended by a period equal to that during which the non-performing party's performance is suspended under this section.

19. MISCELLANEOUS

- A. Authority to Execute Contract. The signature by any person to this Agreement must be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and must inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained in this Agreement must be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that any provision contained in this Agreement, or any acts of the Parties must not be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. If any court holds that any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions must be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant must not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- G. Complete Contract. This Agreement incorporates and includes all prior negotiations, correspondence, contracts, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other contracts between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. Any amendments changing City's financial obligations under this Agreement must require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's

authorized designee to approve and execute all contract amendments on behalf of City that do not change City's financial obligations under this Agreement.

- I. Assignment. The Consultant must not assign this Agreement or any right or responsibility herein unless with the written consent of the City.
- J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The Consultant must not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES, INC.

By: B. Kelley Klepper
B. KELLEY KLEPPER, AICP
VICE PRESIDENT

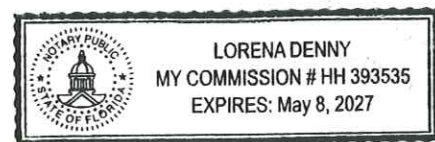
SWORN ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF SARASOTA

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of APRIL 2025, by B. KELLEY KLEPPER (name), as VICE PRESIDENT (title) for KIMLEY-HORN AND ASSOCIATES, INC. (entity).

Lorena Denny
Notary Public

✓ Personally Known OR Produced Identification
Type of Identification Produced



Approved by the City Commission of the City of North Port, Florida on _____, 20__.

CITY OF NORTH PORT, FLORIDA

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

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

MICHAEL GOLEN, CPM
INTERIM CITY ATTORNEY

EXHIBIT A – SCOPE OF SERVICES

SECTION 1.

GENERAL SCOPE STATEMENT

Kimley-Horn and Associates, Inc. ("CONSULTANT") shall provide and perform the following services, which include the general Scope of the Basic Services under the covenants, terms, and provisions of this SERVICE PROVIDER AGREEMENT.

The City of North Port needs to replace Fixed Weir (FW) Nos. 157 and 158 as they approach the end of their service life. The structures are both Fixed Weir structures constructed of sheet piles. FW No. 157 is located in the Snover Waterway near the end of Wenona Drive, west of Interstate 75 (I-74). FW 158 is located in the Snover Waterway, east of I-75, and approximately 2,500 feet east of FW 157 along the Snover Waterway.

It is anticipated that the replacements for these FWs will also be Fixed Weir structures, without gates or electrical service. It is understood that each structure may require separate plans, permits, bidding, and construction phase services assistance, however, for the purposes of this agreement, it is assumed these services will occur concurrently for each structure. It is also assumed that the construction will occur under a single contract / contractor. If the CITY desires to construct these structures on separate timelines and/or construction contracts, those services may be provided under the contingency amount included in this agreement.

It is anticipated that these FW replacements will be exempt from permitting through the Southwest Florida Water Management District ("SWFWMD") and will qualify for Nationwide Permit #3 through the United States Army Corps of Engineers ("USACE").

CONSULTANT will provide the City of North Port with Professional Engineering, Environmental Consulting, Surveying, and Geotechnical Engineering Services as part of the scope of services for the removal and replacement of FWs Nos. 157 and 158. The following scope of services shall be provided as part of this agreement:

TASK 1: DATA COLLECTION

A. Existing Data

CONSULTANT will coordinate research with the CITY to obtain existing, publicly available data for this project. This information will generally consist of watershed studies, floodplain maps, aerial maps, water quality reports, monitoring data, stream and groundwater gauge data, rainfall data, FEMA floodway modeling and mapping, as-built plans, ground elevation data, and other relevant information to the project.

CONSULTANT and appropriate sub-consultants will attend a site visit to gather photographs and information to prepare the Concept Plan in Task 2.

Deliverables:

1. Digital file containing all collected data in pdf format.
2. Table depicting all collected files in pdf format;

B. Environmental

CONSULTANT will conduct background research and fieldwork to provide the following site-specific environmental information to be considered on the project:

1. Review applicable boundary and topographic surveys, relevant reports, studies and permits of similar work, provided by the Client. Reasonable attempts will also be made to collect similar readily available data from the public record such as from USACE and SWFWMD.
2. Research and review applicable state, federal and local development codes and ordinances, relevant to the replacement of the Fixed Weir structure.
3. Conduct a site visit to identify and characterize the existing resources at the site, (wetlands, surface water, benthic communities, and uplands) within the project area. The habitat types, including wetlands, will be mapped on an aerial photograph in the field. This information will be used to prepare a land cover map using the Florida Land Use, Cover, and Forms Classification System (FLUCFCS – FDOT, 1999) that will be submitted during the permitting process. The approximate acreage of upland other surface water and wetland habitats will be included on the FLUCFCS map.
4. Assess potential protected species habitat within the project area and conduct a survey for protected species.
5. Conduct a gopher tortoise survey within the project area to submit with all permit applications. Gopher tortoise will be re-surveyed within 90 days of start of construction. This task does not include state permit submittal, gopher tortoise relocation, and recipient site fees.

CONSULTANT will prepare a brief memorandum which summarizes the findings in Task 1.B. This includes any requirements or constraints revealed that impact the Client's objectives.

Deliverables:

1. One digital copy in pdf format of the Environmental report with FLUCFCS mapping exhibit;
2. One digital copy in pdf format of the Species Survey Report with exhibits.

C. Survey

CONSULTANT will subcontract with Britt Surveying, Inc. to prepare a Specific Purpose bathymetric and Topographic Survey of the specific areas for each FW replacement. Survey shall meet the Standards of Practice as established by Chapter 5J-17.05 of the Florida Administrative Code. CONSULTANT will direct the surveyor in gathering of information required to perform the Tasks outlined below. The horizontal control will be based on the State Plane Coordinate System, Florida West Zone, NAD 83 ("NSRS"). The vertical control will be based on NAVD 88. This task will include the following:

- A. Field surveys locating all pertinent physical features based on Exhibit D attached.
- B. Detailed measurements and elevations of the existing Fixed Weirs.
- C. Establish 2 Benchmarks in NAVD88 for use during construction.

- D. Conduct a subsurface survey within the Snover Waterway based on the limits included in Exhibit D to determine the nature of the canal bottom, including the side slopes, and the depth and extent of rubble/concrete.
- E. Measure canal bottom muck layer thickness to determine variations from design canal cross-section.

Deliverables:

- 1. Digitally signed and sealed pdf of the Specific Purpose Bathymetric and Topographic Survey.
- 2. Digital ACAD drawing file (ACAD 2019).
- 3. Benchmark Descriptions and Details.

D. Geotechnical Engineering

CONSULTANT will subcontract with Ardaman and Associates, Inc. for geotechnical exploration. That scope of work will include geotechnical explorations and engineering analyses for each of the proposed Fixed Weir. Geotechnical stability analyses will be performed, and recommendations prepared for a suitable foundation and related earthwork/site preparation. Seepage analyses will also be performed to determine stability under the anticipated range of hydrostatic pressures. If necessary, recommendations for seepage cutoff walls or similar measures to maintain stability will be provided.

It is assumed that temporary sheet pile walls (coffer dams) may be required during replacement of the existing control structure. Recommended soil parameters (unit weights, friction angles, lateral earth pressure coefficients) for use by others in the structural design of these will also be presented in the geotechnical report. Design of the temporary sheet pile walls is not included within the scope of this work.

Field Exploration

Consists of four (4) Standard Penetration Test (SPT) borings to a depth of 50 feet. Two (2) borings are proposed at each structure and on each side of the subject waterway, respectively. The location of the soil borings will be coordinated with the CITY prior to exploration. Samples of the soil and water adjacent to the structures will be collected for testing. The purpose of this sampling is to help determine if corrosive subsurface conditions exist that would impact the durability of the structure.

Laboratory Testing

The laboratory testing program will include visual examination and routine classification testing of the samples obtained from the borings. Laboratory permeability tests may also be performed on selected samples. The soil and water samples collected will be tested for corrosive characteristics.

Engineering Evaluation and Report Preparation

Based upon the results of field explorations, foundation design recommendations for the proposed structure, including related earthwork and seepage cutoff recommendations, as necessary will be documented.

Upon conclusion of the analysis, an engineering report will be prepared. This report will include all field and laboratory data for the site, a discussion of evaluations and conclusions, as well as recommendations regarding need for canal dredging, axial capacity of the sheet piles, and type of weir structures to provide optimum life expectancy based on existing environmental conditions.

Deliverable:

1. Geotechnical Report, one electronic copy in pdf format will be provided.

TASK 2: PERMITTING REQUIREMENTS AND AGENCY MEETINGS

CONSULTANT will identify permit and design requirements within SWFWMD, United States Army Corps of Engineers (USACE), Florida Fish and Wildlife Conservation Commission (FFWCC), and US Fish and Wildlife Service (USFWS), to identify permitting requirements that could affect design decisions. This task is not intended to identify all rules and guidelines, but to generally recognize those items that might produce opportunities or constraints that could be considered.

- A. CONSULTANT will meet with SWFWMD staff to review the design concept to discuss any potential concerns or permitting challenges. CONSULTANT will prepare meeting minutes with a summary of the main discussion points and any other relevant information that is provided by the SWFWMD staff during that meeting.
- B. CONSULTANT will meet with USACE, and other listed agency or stakeholder staff, if deemed necessary, to review the design concept to discuss any potential concerns or permitting challenges. CONSULTANT will prepare meeting minutes with a summary of the main discussion points and any other relevant information that is provided by the USACE during that meeting.

Deliverables:

1. Digital pdf file of memorandum summarizing the identified permit requirements.
2. Digital pdf file of meeting minutes with the SWFWMD and USACE.

TASK 3: 60% CONSTRUCTION PLAN DEVELOPMENT

The CONSULTANT will prepare a 60% complete plan for each FW replacement that illustrates the anticipated improvements. These plans will be developed to the extent of improvements for the structures as well as required construction easements as may be required. The 60% plans will be used to evaluate potential siting implications. The plan will address utility conflicts, if any, proposed weir materials, canal dredging, construction phasing as it relates to dewatering during construction, and requirements for temporary and permanent easements to accommodate construction. The CONSULTANT will prepare a preliminary opinion of probable cost of construction (OPC) based on the 60% plan set. The CITY shall approve the 60% plans prior to commencing with subsequent design efforts and preparation of any temporary and permanent easements which CITY shall be responsible to obtain. The CONSULTANT shall incorporate comments from the CITY into the construction documents.

Deliverables:

1. 60% plans in ACAD drawing file (Civil 3D 2019) and pdf formats;
2. OPC for 60% plans in pdf format.

TASK 4: CONSTRUCTION DOCUMENTS

The CONSULTANT will prepare Construction Documents for each structure consisting of 90% plans and bid plans (100%). The CONSULTANT will use the approved 60% plans to develop 90% plan sets of Construction Documents for the CITY to review. Sheet piling will be designed as cantilevers with no anchors (tie-back system), unless otherwise directed by the CITY, and will accommodate the loads from

the anticipated water pressure. Depending on the results of soil and water testing conducted on the structures, the option of using a concrete weir wall or other similar corrosion-resistant material shall be evaluated for recommendation to the CITY.

The CONSULTANT will assist the CITY in providing information as part of their negotiations with required temporary construction easements, if any.

After receipt and incorporation of the CITY review comments, the CONSULTANT will use the plans for submittal to permit agencies.

The CONSULTANT will incorporate CITY review of the 90% plans to develop the bid plans of Construction Documents for review by the CITY. The CONSULTANT will incorporate any final comments to prepare the Final Construction Documents for the CITY to use in bidding the project to qualified contractors. The Final Construction Plan set will include:

- A. Cover Sheet
- B. General Notes
- C. Existing Conditions
- D. Summary of Quantities
- E. Erosion Control (Best Management Practices) Plans
- F. Demolition Plans
- G. Dredging Plans (if dredging is needed to restore canal section to design parameters)
- H. Proposed Structures Plans
- I. Dewatering Plans
- J. Cross-Sections and Structural Details

An OPC will be prepared at the 90% and bid plan stages of plan development.

Deliverables:

- 1. 90% plans and 100% bid plans in ACAD drawing file (Civil3D 2019) and pdf formats;
- 2. Signed and Sealed structural calculations;
- 3. OPC for 100% and bid plans in pdf format.
- 4. Explanations for differences in cost from previous OPC deliverable.
- 5. Re-evaluation of Construction timeline.

TASK 5: AGENCY PERMIT SUBMITTALS

For the purposes of this agreement, CONSULTANT anticipates the preparation of separate permit applications for each of the FW replacements. The permitting submittals associated with this scope of services includes the following:

- A. CONSULTANT will prepare and submit one (1) Verification of Exemption application for each structure to the SWFWMD. In addition, CONSULTANT will prepare and submit (1) Nationwide Permit application to the USACE. CONSULTANT will provide or request necessary supporting documents from the CITY as part of each permit submission. These agency permit submittals include the following assumptions:
 - 1. That the project will qualify for an ERP exemption from the SWFWMD.

2. Project will qualify for a Nationwide Permit #3 through the USACE, which includes the replacement / minor works associated with previously authorized activities.
3. The project will not involve state sovereign submerged lands.
4. Protected species consideration will be limited to standard construction conditions published by the USACE and accepted by the USFWS and FFWCC

In addition to the application, the CONSULTANT, if required, will prepare a series of narratives as support documentation to the proposed ERP permit applications:

1. Project Purpose and Need – In consultation with the CITY, this will describe the necessity for the proposed activities.
 2. Project Description and Construction Methodology – This will describe the project elements and anticipated sequence of major pieces of the construction activities to demonstrate the limits of construction impacts.
 3. Alternatives Analysis and Environmental Impacts Assessment – A section 404(b)(1) Alternatives Analysis, consistent with what is typically accepted by the USACE, will be prepared which describes the alternatives which were considered to avoid and minimize the environmental impacts of the project.
 4. Secondary and Cumulative Environmental Impacts Assessment – This assessment will be prepared based upon the minimal documentation required to show compliance. If a more details assessment is requested, this will be provided as an additional service.
 5. Public Interest Assessment – The CONSULTANT will prepare a Public Interest Statement consistent with what is typically accepted by the FDEP and the SWFWMD.
 6. State of Florida Unified Mitigation Assessment Method (UMAM) Assessment and Compensatory Mitigation Plan – The CONSULTANT will conduct a general assessment of the ecological functions and values of the site's natural resources and the proposed habitat restoration activities. Based upon the developed condition of the site, a formal functional analysis using UMAM will be performed. It is anticipated that the project will not result in impacts requiring mitigation.
 7. SHPO Coordination – The CONSULTANT will request a clearance letter from the State Historic Preservation Officer (SHPO) regarding the likely presence of archaeological or historical sites on the site.
- B. Under this Task, CONSULTANT will prepare and respond to three (3) requests for additional information that are reasonable and relevant to the current agency rules.

Deliverables:

1. Copy of agency application submittals;
2. Copies of responses to requests for additional information from SWFWMD and USACE.

3. Permit approvals received from SWFWMD and USACE.

TASK 6: BID DOCUMENTATION PREPARATION AND BID ASSISTANCE

The CONSULTANT will assist CITY in preparation of Bidding Documents and issue addenda during the bidding process for each FW replacement. This task will include preparation of bid documents and specifications for the project based on the approved Final Construction Documents, and attendance at one pre-bid meeting organized by the CITY. The CITY will provide the Front-End Specifications to be included in the Bidding Documents.

Deliverable:

1. Technical Specifications in Word and pdf formats;
2. 100% OPC with explanations for differences in cost from previous OPC deliverable in xlsx and pdf formats;
3. Bid item schedule in xlsx and pdf formats;
4. Written Addenda in Word format.

TASK 7: LIMITED CONSTRUCTION PHASE SERVICES

- A. Construction Progress Meetings: Attend one (1) pre-construction meeting and up to six (6) construction progress meetings. Attendance will be at the request of the CITY and it is anticipated that the requests will be to review a specific issue.
- B. Limited Construction Observation: Provide on-site, limited construction observation services during the construction phase of the project during periods of active construction not to exceed a total of thirty (30) hours. Observations will vary depending on the type of work being performed by the contractors, the location, and the contractors' schedules. Should additional observation be required, the service will be considered an additional service.

Such visits and observations by CONSULTANT are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on CONSULTANT's exercise of professional judgment. Based on information obtained during such visits and such observations, CONSULTANT will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and CONSULTANT will inform the CITY of the specific observations made during the visit.

The purpose of CONSULTANT's visits to the site will be to enable CONSULTANT to better carry out the duties and responsibilities assigned in this Agreement to CONSULTANT during the construction phase by the CITY, and, in addition, by the exercise of CONSULTANT's efforts, to provide the CITY a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. CONSULTANT will not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's

work, nor will CONSULTANT have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- C. Shop Drawings and Samples. CONSULTANT will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- D. Recommendations with Respect to Defective Work: Recommend to the CITY that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, CONSULTANT believes that such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. CONSULTANT to provide a copy of the recommendations to the CITY.
- E. Clarifications and Interpretations: Respond to reasonable and appropriate contractor requests for information. Issue necessary clarifications and interpretations of the Contract Documents to the Contractor and the CITY as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Change Orders: Recommend Change Orders to the CITY, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- F. Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- G. Disagreements between CITY and Contractor: As necessary, render written decision on all claims of the CITY and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, CONSULTANT will be fair and not show partiality to the CITY or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- H. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with the CITY and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of the CITY, CONSULTANT considers the Work

substantially complete; CONSULTANT shall notify CITY in writing. CITY will be responsible to make final determination of substantial completion and notify the Contractor in writing.

- I. Final Notice of Acceptability of the Work: Conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that CONSULTANT may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, CONSULTANT shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of CONSULTANT's knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement and based upon information provided to CONSULTANT upon which it is entitled to rely.
- J. Record Drawings: Review Contractor's Surveyor's record drawings for compliance to the approved Construction Drawings and applicable regulatory agency standards. Provide Contractor with comments on the draft record drawings and one follow up set of comments. Coordinate with Contractor's Surveyor to receive final sets of record drawings consistent to the requirements of the appropriate regulatory agency. This task includes the initial review and coordination with the surveyor and or contractor and a follow-up review. Any additional effort by CONSULTANT to bring the record drawings within the requirements of the regulatory agency's standards will be considered an additional service.
- K. Certification Documents: Based on the results of the final observations of the site, test reports, record drawings, and other documentation pertinent to the project, CONSULTANT will prepare and submit to the appropriate regulatory agencies the certificates of completion of construction. This Agreement is based on one set of certifications of completion of construction for the project. CONSULTANT shall not be required to execute any certifications or other documents that might, in the judgment of the Consultant, violate professional standards, increase the Consultant's risk or affect the availability or cost of its insurance.
- L. Limitation of Responsibilities: CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. CONSULTANT shall not have the authority or responsibility to direct or stop the work of any Contractor.

Deliverable:

- 1. Copy of reviewed shop drawings.
- 2. Written response to contractor RFIs.
- 3. Substantial Completion punch list.
- 4. Certification to Permit Agencies.
- 5. Record drawings received from contractor in ACAD drawing file (Civil3D 2019) and pdf formats.

END OF EXHIBIT A

BILLING SCHEDULE

TASK	ITEM	FEE	% COMP	AMOUNT COMPLETE	LESS AMOUNT PREV. BILLED	AMOUNT REMAINING	AMOUNT DUE THIS PERIOD
1	DATA COLLECTION	\$ 20,830.11	0.00%	\$ -	\$ -	\$ 20,830.11	\$ -
2	PERMIT REQUIREMENTS AGENCY MEETINGS	\$ 1,733.13	0.00%	\$ -	\$ -	\$ 1,733.13	\$ -
3	30% PLAN	\$ 26,483.11	0.00%	\$ -	\$ -	\$ 26,483.11	\$ -
4	CONSTRUCTION DOCUMENTS	\$ 70,052.24	0.00%	\$ -	\$ -	\$ 70,052.24	\$ -
5	AGENCY PERMIT SUBMITTALS	\$ 21,757.80	0.00%	\$ -	\$ -	\$ 21,757.80	\$ -
6	BID PREPARATION AND ASISSTANCE	\$ 8,968.31	0.00%	\$ -	\$ -	\$ 8,968.31	\$ -
7	CONSTRUCTION PHASE SERVICES	\$ 29,343.61	0.00%	\$ -	\$ -	\$ 29,343.61	\$ -
	CONTINGENCY	\$ 26,629.94	0.00%	\$ -	\$ -	\$ 26,629.94	\$ -
SUB	SURVEY	\$ 26,000.00	0.00%	\$ -	\$ -	\$ 26,000.00	\$ -
SUB	GEOTECHNICAL ENGINEERING	\$ 39,000.00	0.00%	\$ -	\$ -	\$ 39,000.00	\$ -
		\$ 270,798.25				\$ 270,798.25	

END OF EXHIBIT B

EXHIBIT C – PROJECT SCHEDULE
END OF EXHIBIT C

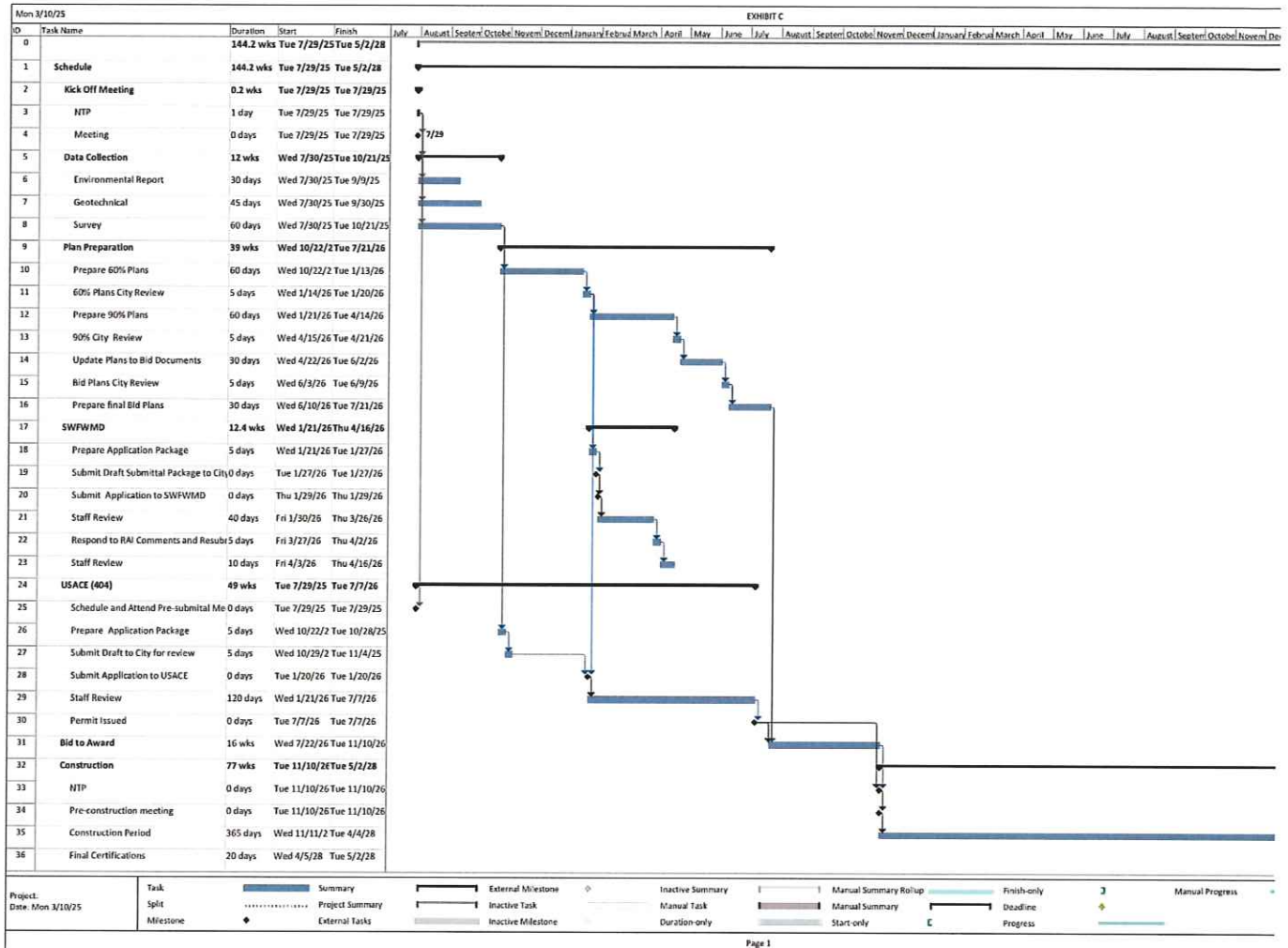


EXHIBIT D – SURVEY LIMITS

FW 157



FW 158



END OF EXHIBIT D