

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Tracy Telle, Assistant City Engineer

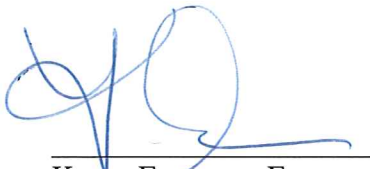
FROM: Karen Emerson, Esq., Assistant City Attorney

THROUGH: Robert V. Schwerer, Esq., City Attorney

**SUBJECT: KIMLEY-HORN ENGINEERING SERVICES CONTRACT
INDIAN HILLS STORMWATER IMPROVEMENTS - PHASE II
RFQ 2013-005**

DATE: December 15, 2014

Attached are the two (2) originals of the engineering services contract with Kimley-Horn & Associates, Inc. for work related to Phase II of the Indian Hills Stormwater Improvements in an amount not to exceed \$75,370. It has been approved as to form.



Karen Emerson, Esq.
Assistant City Attorney

attachments

RECEIVED
DEC 16 2014
CITY OF FORT PIERCE
ENGINEERING DEPARTMENT

PROFESSIONAL SERVICES CONTRACT

For the

INDIAN HILLS RECREATION AREA STORMWATER IMPROVEMENTS PHASE II

RFQ NO. 2013-005



BETWEEN THE CITY OF FORT PIERCE
FORT PIERCE, FLORIDA
AND
KIMLEY-HORN & ASSOCIATES, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

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AGREEMENT FOR PROFESSIONAL SERVICES

This is an **AGREEMENT** for **PROFESSIONAL ARCHITECTURAL AND/OR ENGINEERING SERVICES** between the City of Ft. Pierce, Ft. Pierce, Florida, hereinafter designated as “**CITY**” and **KIMLEY-HORN & ASSOCIATES, INC.**, A North Carolina Corporation, with its principal address at Post Office Box 33068, Raleigh, North Carolina 27636-3068, hereinafter designated as “**ENGINEER**”, the parties agree to professional engineering services and conditions hereinafter stated.

The CITY requires ENGINEER to perform professional engineering services, to serve as CITY’s representative and to provide professional advice for the following PROJECT:

INDIAN HILLS RECREATION AREA STORMWATER IMPROVEMENTS PHASE II PROJECT, RFQ NO. 2013-005

1. DESCRIPTION OF PROJECT

This Project, known as, Indian Hills Recreation Area Stormwater Improvements Phase II, which includes the preparation of construction plans, associated with the conceptual Phase II improvements consisting of wetland restoration plans, parking facilities, pedestrian and vehicular timber bridges, canoe launch facilities, and picnic pavilion improvements along with bid and specification preparation. The project is located off Savannah Road in Fort Pierce, Florida and was formerly known as Heathcote Botanical Park and Gardens Stormwater Project. The Project is more particularly described in Exhibit “A”, attached hereto and incorporated by reference herein.

2. SCOPE OF WORK

ENGINEER shall timely and professionally complete and furnish the following services, and to furnish all labor and supplies and material and everything reasonably necessary to complete the same unless specifically provided otherwise in this AGREEMENT.

ENGINEER shall provide for the CITY Engineering Services in connection with the PROJECT to which this AGREEMENT applies as hereinafter provided. The services will include serving as CITY’s Professional Representative for the Project, providing professional architectural and engineering consultation and advice, and furnishing professional architectural and engineering services in accordance with Basic Services of ENGINEER provided herein, and as provided in the attached Exhibits “A” and “B” incorporated by reference. Said services are customarily rendered in phases as set forth in this Section:

2.1.1 BASIC SERVICES OF ENGINEER

- **Services Description:** A description of the services to be performed is listed in “Exhibit A”
- **The Project Schedule is listed in Exhibit “A”**
- **The services marked below with a check**

2.1.2 SCHEMATIC PHASE

- i. Prepare and deliver field surveys**
- ii Prepare and deliver Environmental Site Assessment or other due diligence reports**

2.1.3 DESIGN PHASE

- i Prepare and deliver Construction Drawings and Specifications**
- ii Prepare and deliver bid specifications**

2.1.4 CONSTRUCTION PHASE

N/A

2.1.5 SUBSTANTIAL COMPETITION AND WRAP UP

8 Months from NTP

2.1.6 DELIVERABLES

ENGINEER shall provide the following deliverables to CITY:

Description of Deliverables	months/date
1. Bid and Specification Packages	2 months
2. Construction Documents	8 months

3. COMPENSATION

ENGINEER shall be compensated with a fee not to exceed **\$75,370.00** (Seventy-Five Thousand Three Hundred Seventy Dollars and No Cents) for the Basic Services of ENGINEER described herein, in accordance with this AGREEMENT and in accordance with payment schedule as provided for herein.

3.1.1 Compensation shall be billed to the CITY on a percentage basis upon completion of the tasks as scheduled in this AGREEMENT its Exhibits. Payment will be made on the basis of progress reports and deliverables. Work schedule updates shall be included in the progress payment requests.

3.1.2 Application and certification for payment must be provided by ENGINEER. Such application shall provide a clear detailed invoice reflecting all items billed for. The summary work shall show percentage of work completed to date, previous payment invoiced/received and current fee requested.

3.1.3 Application shall also include back up documentation (receipts, invoices, logs, etc) supporting either consultants fees or any reimbursable expenses.

3.1.4 All work shall be subject to the approval by the CITY and each phase of the work shall be submitted to the CITY in accordance with the schedule provided herein and in the format prescribed by the CITY. Upon determination by the CITY that the work is substantiated and satisfactory, payment will be made in thirty (30) days.

3.1.5 DESCRIPTION OF DELIVERABLES

ENGINEER shall provide deliverables in accordance with Exhibits "A" and "B" and apply a percentage of the total fee. To the tasks/deliverables below:

Task 1 -	Bid and Specification Package	20.8%
Task 2 -	Wetland Restoration Plans	20.3%
Task 3 -	Recreational Facility Plans	29.4%
Task 4 -	Post Design Construction Services	26.5%
<hr/>		
TOTAL		\$75,370.00 or 100%

4. PERIOD OF SERVICE

A. DESIGN

Following issuance of "Notice to Proceed" ENGINEER shall complete services required under this contract within **240** calendar days from the date specified on the Notice to Proceed

B. CONSTRUCTION ADMINISTRATION

The bid and award period will be approximately 60 days. Following the General Contractors Notice to Proceed with construction of the Project, ENGINEER shall perform the construction administration portion of this AGREEMENT.

C. ENGINEER shall complete all services specified herein in accordance with the Production Scheduled in Exhibit "A" attached hereto.

5. SUPPLEMENTAL SERVICES OF ENGINEER

5.1. GENERAL

5.1.1 Expenses not covered under the Scope of Services in this Agreement and authorized in writing by the CITY may be billed separately.

5.1.2 If requested by CITY and agreed to in a Specific Authorization ENGINEER will furnish or obtain from others Supplemental or Additional Services at a mutually agreeable rate.

5.1.3 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project.

5.1.4 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawing or other information furnished by the CITY.

5.1.5 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, CITY's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

5.1.6 Providing renderings or models for CITY's use.

5.1.7 Preparing documents for alternate bids requested by the CITY, Contractor(s) work which is not executed, or documents for out-of sequence work.

5.1.8 Investigation and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value ENGINEERING during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project: evaluating processes available for licensing and assisting the CITY in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the CITY.

5.1.9 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, sanitary, environmental, structural, mechanical and electrical ENGINEERING and customary

architectural design incidental thereto); and providing data or services of the types described herein when the CITY employs ENGINEER to provide such data or services in lieu of furnishing the same in accordance with this AGREEMENT.

5.1.9 Assistance in connection with bid protests, re-bidding or re-negotiating contracts for construction, materials, equipment or services.

5.1.10 Providing any type of property surveys or related ENGINEERING services needed for the transfer of interests in real property and field surveys for design purposes and ENGINEERING surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

5.1.11 Preparing to serve or serving as a consultant or witness for the CITY in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultation which is included as part of Basic Services under paragraphs 1.2.3. and 1.4.2.).

6. SPECIFIC AUTHORIZATION

Each Specific Authorization for Supplemental or Additional Services not covered under this AGREEMENT shall specify the specific Period of Service for the Supplemental or Additional Services to be completed, ENGINEER'S Compensation, Scope of Services Deliverables and Schedule and shall be agreed to by the CITY and ENGINEER for additional services to be rendered. Unless otherwise noted, ENGINEER shall not start the work until said Specific Authorization is fully executed by both parties and a Notice to Proceed is issued by the CITY.

7. CITY'S RESPONSIBILITIES

The CITY shall do the following in a timely manner so as not to delay the services of ENGINEER:

Provide all criteria and full information as to the CITY's requirements for the Project.

Assist ENGINEER by placing at ENGINEER'S disposal available information pertinent to the Project.

8. CITY'S DESIGNATED REPRESENTATIVE

8.1 It is understood and agreed that the CITY designates the City's Engineer or his assigned representative to represent the CITY in all technical and administrative matters pertaining to and arising from the work and performance of this contract.

8.2 The authority of the representative shall include, but not be limited to, the following:

8.2.1 Examination of all reports sketches, drawings, estimates, proposals, and other documents presented by the ENGINEER and rendering, in writing, decisions

pertaining thereto within a reasonable time so as not to materially delay the work of the ENGINEER and approval of Contractor's applications for payment.

8.2.2 Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this contract.

8.2.3 Give prompt written notice to the ENGINEER whenever the CITY observes or otherwise becomes aware of any defects or changes necessary in the project.

9. STANDARDS OF PERFORMANCE

9.1 ENGINEER represents to the CITY that the services to be performed under this AGREEMENT shall be in accordance with the standards accepted and established practices and procedures recognized as such in ENGINEERS' trade in general and that ENGINEER shall conform to this AGREEMENT.

9.2 ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. ENGINEER shall correct any such deficiencies without additional compensation or cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.

9.3 ENGINEER shall be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. ENGINEER shall insure there are no conflicts among the Contract Documents including, but not limited to, the CITY's General and Supplementary Conditions for Construction Contracts, the plans and specifications prepared by ENGINEER, any standard details or specifications incorporated therein by reference, and the Construction Contract.

9.4 Correction of Mistakes. ENGINEER shall be responsible for the completeness and accuracy of the work prepared or compiled under ENGINEER'S obligation for this project and shall correct, at ENGINEER'S expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by ENGINEER. The cost of the design necessary to correct those errors attributable to ENGINEER and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to ENGINEER and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved ENGINEER'S work shall in no way relieve ENGINEER of any of its responsibilities.

10. INSURANCE

10.1 ENGINEER shall be responsible for all damage to person and or property resulting from its negligent acts, intentional wrongful acts, reckless acts, errors or omissions or those of their subcontractors, agents or employees in connection with such services and shall be

responsible for all parts of its work, both temporary and permanent.

10.1.2 ENGINEER shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein. Until such insurance is no longer required by this Contract, ENGINEER shall provide the CITY with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

As evidence of compliance with the insurance required herein, ENGINEER shall furnish CITY with one of the following forms of acceptable evidence of insurance:

- (a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required. Also:
 - a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of CITY and CITY's members, officials, officers and employees as additional insureds in the Commercial General Liability coverage; and
 - A copy of the actual endorsement for each required policy which provides that the CITY will be given no less than thirty (30) days advanced written notice of any cancellation of the policy(ies), signed by an authorized representative of the insurer(s);
- (b) the original of the policy(ies); or
- (c) other evidence satisfactory to the CITY.

All policies providing the insurance required herein shall be endorsed to provide that the insurer will provide the CITY with no less than thirty (30) days advance written notice for any change, cancellation or non-renewal of the policy.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to the CITY, if requested to do so by the CITY, ENGINEER shall, within thirty (30) days after receipt of a written request from the CITY, provide the CITY with a certified, complete copy of the policies of insurance providing the coverage required herein.

10.1.3 Workers' Compensation/Employer's Liability Insurance

Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements, endorsements other than those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e. mandatory endorsements). The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One: "Statutory"

Part Two:	\$ 1,000,000	Each Accident
	\$1,000,000	Disease - Policy Limit
	\$1,000,000	Disease - Each Employee

The Workers' Compensation Policy must be endorsed to waive the insurer's right to subrogate against the CITY, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver of Our Right to Recover from Others Endorsement (Advisory Form WC 00 03 13) with the CITY, and its members, officials, officers and employees scheduled thereon.

10.1.4 General Liability Insurance

Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements. The CITY and its members, official, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Silica, asbestos, or lead
- Sexual molestation

10.1.5 Automobile Liability Insurance

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, other than those which are required by the State of Florida, or those which under an ISO filing, must be attached to the policy (i.e. mandatory endorsements). The policy shall include coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	Each Occurrence - Bodily Injury and Property Damage Combined
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10.1.6 Professional Liability Insurance

Such insurance shall be on a form acceptable to the CITY and shall cover ENGINEER for those sources of liability arising out of the rendering or failure to render the services required in the Agreement including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Each Claim/Annual Aggregate

If ENGINEER subcontracts any of the work, ENGINEER shall either include the Subcontractors in ENGINEER's coverage or require the Subcontractors to maintain Professional Liability coverage as described herein.

The insurance may be subject to a deductible not to exceed \$10,000 per claim.

10.2 The insurance provided by ENGINEER shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Council shall be excess of, and shall not contribute with, the insurance provided by ENGINEER.

10.2.1 DEDUCTIBLE OR SELF-INSURED RETENTION PROVISIONS:

Except as otherwise specifically authorized by this Agreement or where prior written approval has been obtained from the CITY hereunder, no deductible or self-insured retention for any required insurance provided by the ENGINEER, pursuant to this Agreement, will be allowed. To the extent there is any deductible or self-insured retention applicable to any required insurance, ENGINEER shall be solely responsible for paying such deductible or self-insured retention, including any amounts owed under such deductible or self-insured retention on behalf of the CITY, or its members, officials, officers and employees.

10.3 Compliance with these insurance requirements shall not limit the liability of ENGINEER or any Subcontractor of the ENGINEER to the CITY or its members, officials, officers or employees. Any remedy provided to the CITY or its members, officials, officers or employees by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of ENGINEER) available to the CITY or its members, officials, officers or employees under this Agreement or otherwise.

10.4 Neither approval by the CITY nor failure to disapprove insurance furnished by ENGINEER shall relieve ENGINEER from responsibility to provide insurance as required by this Agreement.

10.5 ENGINEER shall deliver to the CITY the required certificate(s) of insurance and endorsement(s) before the CITY signs this Agreement.

10.6 ENGINEER'S failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another consultant or consultants, without the CITY incurring any liability to ENGINEER.

10.7 At its sole discretion, the CITY may obtain or renew ENGINEER'S insurance, and the CITY may pay all or part of the premiums. Upon demand, CONSULTANT shall repay CITY all monies paid to obtain or renew the insurance. The CITY may offset the cost of the premium against any monies due ENGINEER from the CITY.

11. INDEMNITY

11.1 ARCHITECT/ ENGINEER shall indemnify, and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, losses, damages, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including reasonable attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part arise out of or are connected with, or which are alleged to have arisen out of or to have been connected with, ENGINEER'S negligent acts, errors or omissions in performance of this Agreement (including performance by its agents, employees, subcontractors or by anyone ENGINEER directly or indirectly employed).

11.2 ENGINEER's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon ENGINEER whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

11.3 ENGINEER'S failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

12. STATUS OF CLAIM

The ENGINEER shall be responsible for keeping the CITY currently advised as to the status of any claims made for damages against the ENGINEER resulting from services performed under this AGREEMENT. The ENGINEER shall send notice of claims related to work under this AGREEMENT to the CITY. Copies of the notices shall be sent to:

Ft. Pierce Risk Manager
P.O. Box 1480
Fort Pierce, Florida 34954-1480

Ft. Pierce City Engineer
P.O. Box 1480
Fort Pierce, Florida 34954-1480

13. NEGOTIATION DATA

13.1 The ENGINEER hereby certifies that wage rates and other factual unit costs supporting the compensation provided are accurate, complete and current as of the date of

negotiation. It is also agreed that said unit costs provided in each hereof shall be adjusted to exclude any significant sums where the CITY shall determine the contract price was increased due to inaccurate, incomplete and non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the date of final billing or acceptance of the work by the CITY, in writing, whichever is later. Records of costs incurred under terms of this contract and each it shall be maintained by the ENGINEER and made available to the CITY during the period of this AGREEMENT and for one (1) year after final payment is made. Copies of documents and records shall be furnished to the CITY.

14. OWNERSHIP OF DOCUMENTS

14.1 Each and every document, drawings, original mylars, databases and specifications report, draft, field note, work product, map, record, estimates, and other document reproduced, prepared, or caused to be prepared by ENGINEER as part of the services shall become the exclusive property of the CITY, provided, that ENGINEER shall have the right to their use with approval of the CITY. ENGINEER shall furnish the CITY, upon its request, originals or reproducible copies of technical specifications and copies of all other documents listed above. ENGINEER shall endorse, by its professional seal, all plans and engineering data furnished by it. Rights to intellectual property developed, utilized, or modified in the performance of the service shall remain the property of the ENGINEER.

15. WORK COMMENCEMENT/PROGRESS/DELAYS

15.1. The services to be rendered by the ENGINEER shall be commenced subsequent to the execution of the AGREEMENT and upon written Notice to Proceed from the City Engineer. Services will be completed and submitted to the City Engineer as specified by the AGREEMENT, Basic Services of ENGINEER and a Schedule of Performance attached hereto.

15.2 The ENGINEER agrees to provide a schedule for performance of the contracted services, with milestones for significant elements as agreed by the CITY and the ENGINEER, upon receipt of Notice to Proceed and, thereafter to provide monthly Project Schedule Progress reports. The CITY will be entitled at all times to be advised, in writing, at its request, as to the status of work being done by the ENGINEER and of the details thereof.

15.3 In the event there are delays on the part of the CITY or regulatory agencies as to the approval of any of the plans, permits, and drafts of special provisions submitted by the ENGINEER which delay the Project Schedule completion date, the CITY shall grant to the ENGINEER, in writing, an extension of the contract time equal to the aforementioned delays. If the ENGINEER claims an extension pursuant to this provision, same must claim within ten days of the alleged delay and ENGINEER must furnish appropriate documentation.

15.4 The ENGINEER shall maintain an adequate and competent staff of professional engineers, planners, technicians and support staff personnel within the State of Florida and may associate with other qualified firms for the purpose of rendering services

hereunder without cost to the CITY and upon approval by the CITY. The ENGINEER, however, shall not sublet, assign or transfer any work under this Agreement without the prior written consent of the CITY.

16. TIME IS OF THE ESSENCE

16.1 Time is of the essence in the completion of tasks and services as specified herein. ENGINEER and the CITY agree that the completion of all tasks and services specified in this agreement are of vital importance to the CITY and the CITY will suffer irreparable harm and injury of a nature not capable of being calculated with reasonable certainty if they are not timely completed.

16.2 ENGINEER agrees, as liquidated damages, and not penalty, that CITY shall have the right to deduct or retain sums for such liquidated damages from the ENGINEER's invoice for services, if ENGINEER is behind schedule and the tasks and services are not completed within the deadline for transmittal to FDOT under this agreement. ENGINEER and the CITY agree that liquidated damages to the CITY shall be in the amount of Two-Hundred Fifty dollars (\$250.00) per day for each and every calendar day the tasks and services are delayed beyond the time provided for herein.

16.3 In addition to such liquidated damages payable to the CITY, the CITY may also recover from the ENGINEER any amounts paid by the CITY for damages suffered to third parties as a result of ENGINEER's failure to complete the tasks and services by the agreed upon completion date.

16.4 Liquidated damages are cumulative and additive and represent a reasonable estimate of the CITY's expenses for extended delays and administrative costs associated with such delay. In addition to the liquidated damage amounts, there will be additional amounts charged for all delay damages incurred by the CITY as a result of avoidable delays by ENGINEER. These actual delay damages will include, but not be limited to, inspection, engineering services, delay damage settlements or awards, penalties, additional financial costs, and professional fees incurred in connection with such settlements, awards or penalties and fines imposed by regulatory agencies, contract damages and loss of use.

17. STANDARD OF CONDUCT

17.1 The ENGINEER warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the ENGINEER any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this contract.

17.2 Standard of Conduct-Conflict of Interest - The ENGINEER covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Section 112.313, Florida Statutes (1977, as amended from time to time), as it relates to work performed

under the contract, which standards will by reference be made a part of this contract as though set forth in full. The ENGINEER agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

17.3 The CITY reserves the right to cancel and terminate this contract, without penalty, in the event that the ENGINEER or any employee, servant or agent of the ENGINEER is indicted for any crime arising out of or in conjunction with any work being performed by the ENGINEER for or on behalf of the CITY. It is understood and agreed that in the event of such termination all tracings, plans, specifications, maps and data prepared or obtained under this Agreement shall immediately be turned over to the CITY in conformity with the provisions of this Agreement. The ENGINEER shall be compensated for its services rendered up to the time of any such termination in accordance with the terms of this Agreement. The CITY also reserves the right to terminate and cancel this contract in the event the ENGINEER shall be placed in either voluntary or involuntary bankruptcy or should an assignment be made for the benefit of creditors.

17.4 ENGINEER shall consider all information provided by the CITY and all drawings, reports, studies, design calculations, specifications, and other documents resulting from the Landscape Architect's performance of the services to be proprietary unless such information is available from public sources. ENGINEER shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of the CITY or in response to legal process.

18. CONFIDENTIALITY

18.1 ENGINEER shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to ENGINEER by the CITY or other information to which ENGINEER has had access during the term of this Agreement without the prior written approval of the CITY during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

18.2 ENGINEER shall consider all information provided by the CITY and all drawings, reports, studies, design calculations, specifications, and other documents resulting from the ENGINEER's performance of the services to be proprietary unless such information is available from public sources. ENGINEER shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of the CITY or in response to legal process.

19. SEVERABILITY

Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

20. DEFAULTS, TERMINATION OF AGREEMENT

20.1 If the City Engineer deems that ENGINEER is in default for failure to supply an adequate working force, or service of proper quality, or has failed in any other respect to satisfactorily perform on the services specified in this Agreement, City Engineer may give written notice to ENGINEER specifying defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures.

A. If ENGINEER does not remedy defaults within thirty (30) days or commence steps to remedy default to the reasonable satisfaction of the City Engineer, the CITY may provide for such service from another ENGINEER and the CITY may withhold any money due or which may become due to ENGINEER for such task related to the claimed default; or

B. If after thirty (30) days ENGINEER has not remedied defaults or commenced steps to remedy defaults to the satisfaction of the City Engineer, the CITY may elect to terminate this Agreement

20.2 Notwithstanding, CITY reserves the right and may elect to terminate this Agreement at any time. At such time, ENGINEER would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, takedown, disengagement wind-down or other costs incurred due to termination of this Agreement.

20.3 Neither CITY nor ENGINEER shall be considered to be in default of this AGREEMENT if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid.

20.4 The term “uncontrollable forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this AGREEMENT and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lighting, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses or services required to be provided by either CITY or ENGINEER under this AGREEMENT, strikes, work slowdowns or other labor disturbances, and judicial restraint. Neither party shall, however, be excused from performance if nonperformance is due to uncontrollable forces which are removal or remediable and which the non-performing party could have, with the exercise of reasonable diligence, removed or remedied with reasonable dispatch.

20.5 The provisions of this Article shall not be interpreted or construed to require ENGINEER or CITY to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this AGREEMENT.

21. TERMINATION WITHOUT CAUSE

CITY may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to ENGINEER specifying the termination date. Immediately after receiving such notice, ENGINEER shall discontinue advancing the work under this Agreement and shall deliver to CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY.

22. NOTICES

All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a party at the facsimile number set forth below or to such other or further facsimile number provided in a notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should CITY or ENGINEER have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from ENGINEER to CITY shall be given to CITY addressed as follows:

CITY

City of Fort Pierce
Post Office Box 1480
Fort Pierce, FL 34954-1480

ENGINEER

Kimley-Horn & Associates, Inc.
445 24th Street, Suite 200
Vero Beach, FL 32960

23. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

23.1 The ENGINEER shall comply with all Federal, State and Local Laws, Ordinances, Rules and Regulations applicable to the work or payment for work thereof, and shall not discriminate on the ground of race, color, religion, sex, or national origin in the performance of work under this contract.

23.2 ENGINEER shall procure the permits, certificates, and licenses necessary to allow ENGINEER to perform the services. ENGINEER shall not be responsible for procuring permits, certificates, and licenses required any construction unless such responsibilities are specifically assigned to ENGINEER.

24. ASSIGNMENT

24.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than CITY and ENGINEER. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of CITY and ENGINEER, and not for the benefit of any other party. ENGINEER shall not assign any right or interest in this Agreement, and shall not delegate any duty owed, without CITY's prior written consent. Any attempted

assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which CITY may immediately terminate or suspend this Agreement.

24.2 In the event the CITY consents to an assignment or delegation, the assignee, delegatee, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

25. **XXII. GOVERNING LAW**

25.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in St. Lucie County, Florida.

26. **ENTIRE AGREEMENT**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CITY and ENGINEER.

This AGREEMENT (consisting of Pages 1 to 20, inclusive), together with the Exhibit "A" and Exhibit "B", constitute the entire AGREEMENT between CITY and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT as to the day and year first above written.


This Agreement shall be effective on _____ 2015.

CITY OF FORT PEIRCE, FLORIDA

By: Linda Hudson, Mayor

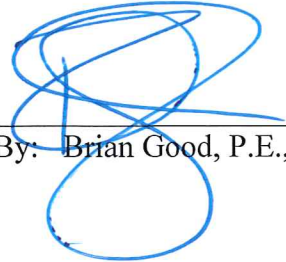
Attest: _____
Linda Cox, City Clerk

APPROVED AS TO CORRECTNESS AND FORM



Robert V. Schwerer, Esquire, City Attorney

KIMLEY-HORN & ASSOCIATES, INC.


By: Brian Good, P.E., Senior Vice President

STATE OF FLORIDA

COUNTY OF ST. LUCIE *Indian River*

The foregoing instrument was acknowledged before me this 9th day of December, 2014, by Brian Good, Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, on behalf of the corporation and has produced the following as identification Known to me

Elizabeth Rebecca Hamilton



Elizabeth Rebecca Hamilton

Print or type name of notary

My commission expires: 10/6/18

EXHIBIT "A"
DETAILED DESCRIPTION OF THE PROJECT
AND
ENGINEER SCOPE OF SERVICES

CITY OF FORT PIERCE HEATHCOTE BOTANICAL PARK AND GARDENS
STORMWATER PROJECT – PHASE II IMPROVEMENTS

OVERVIEW:

The Heathcote Botanical Gardens and Park project is located at the confluence of two drainage basins: the Virginia Avenue Canal drainage system, which drains 1,242 acres of a highly developed urban section of Fort Pierce, and the northernmost reach of the 5,000-acre Savannas wetland prairie. The Sand Mine Lake is located within the project boundary, and through a series of canals, weirs, culverts and gate valves, provides some water quality treatment and stormwater attenuation prior to discharging the runoff from these basins to the Indian River Lagoon, an Outstanding Water of the State. The Sand Mine Lake is more than a stormwater treatment facility, it also serves as a source of water irrigation of the Indian Hills Golf Course, and will become the focal point of the new Park, providing public recreational opportunities and enhanced habitat for plants and wildlife.

Currently, the Sand Mine Lake provides some water quality treatment, however, through modifications of the lake size and the configuration of its inlet and outlet, and the implementation of additional Best Management Practices (BMP), the water quality within the lake that ultimately discharges to the Indian River Lagoon, can be further improved.

PROJECT DESCRIPTION:

Professional consultant services are required for the preparation of bid documents and specification package to support the second phase of the Heathcote Botanical Park and Gardens Project. To support the bid and specification packages, the engineer will prepare construction plans associated with the conceptual Phase II improvements consisting of wetland restoration plans, parking facilities, timber bridges and vehicular timber bridges, canoe launch facilities, picnic pavilion improvements identified within the Florida Communities Trust (FCT) grant application.

DESCRIPTION OF TASK DELIVERABLES:

The ENGINEER agrees to perform professional roadway design and related services in connection with the project as required and set forth in the following:

A. General:

1. The ENGINEER will endeavor not to duplicate any previous work done on the project. After issuance of written authorization to proceed, the ENGINEER shall consult with the CITY to clarify and define the requirements for the project and review available data.
2. The ENGINEER will attend conferences with the CITY and its representatives upon reasonable request.
3. In order to accomplish the work described under this Task Order in the time frames and conditions set forth, the ENGINEER will observe the following requirements:
 - a. The ENGINEER will complete his work on the project within the time allowed by maintaining an adequate staff of registered engineers, draftsmen, and other employees on the work.
 - b. The ENGINEER will design the project in such a manner as to be in reasonable conformance with applicable federal, state and local laws, and shall comply with the Florida Department of Transportation's Plans Preparation Manual Design Criteria, latest edition.
 - c. The ENGINEER will prepare all necessary sketches and completed application forms to accompany the CITY's applications for required federal, state, or local permits.
 - d. The ENGINEER will cooperate with the CITY in order that all phases of the work may be properly scheduled and coordinated.
 - e. The ENGINEER will send a complete preliminary set of construction plans to any city, county, state, regional or federal regulatory agency from which a permit or other approval is required prior to final approval of the design by the City Engineer, and will coordinate the project design with all applicable agencies.
4. Compensation to the ENGINEER for basic services shall be in accordance with Section IV – Compensation, of this Agreement, as mutually agreed upon by the

ENGINEER and CITY.

B. Bid & Specification Packages:

The ENGINEER will prepare the City's Standard Unit Price Construction Contract, inclusive of the project specification package and bid blank form (pay items and quantities) necessary to competitively bid the contemplated scope of work.

C. Wetland Restoration Plans:

The ENGINEER will prepare wetland restoration plans to support the creation of approximately 4.5 acres of wetland habitat south of Savannah Road as conceptualized in the FCT grant application. The wetland creation will require grading plans, earthwork calculations, planting plans, and soil classifications.

D. Recreational Facility Plans:

The ENGINEER will prepare construction documents and specifications to support recreational facilities within the Phase II limits consisting of the following:

- Vehicular parking lot
- Timber pedestrian and vehicular bridges
- Recreational and Exercise Trails
- Upland Landscape Improvements
- Picnic Pavilions
- Canoe Launch
- Observation Platforms

E. Post Design Construction Services:

During the Phase II Construction Phase, the ENGINEER will assist the CITY to provide design clarifications and design field changes, as necessary. The scope of services contemplated to be provided within the Construction Phase Services consists of the following:

- a. Pre-Bid Meeting. The ENGINEER will attend the pre-bid meeting to assist the CITY in describing the scope of work contained with the construction documents. The ENGINEER will evaluate and provide a recommendation related to alternative materials or products proposed by the contractor for consistency with the project specifications. The ENGINEER shall provide oral and/or written clarifications to questions presented relative to the scope of work identified within the construction documents. Effort

associated with these activities will be billed as lump sum as they have been provided in advance of this supplemental work authorization.

- b. Bi-Weekly Construction Meetings/ Construction Observation. It is estimated that the construction duration will be 6 months. It is anticipated that the ENGINEER will be available to participate in the construction meetings, as requested by the CITY. The ENGINEER will also be available to make visits at intervals as directed by the CITY in order to observe the progress of the Work. Such visits and observations by the ENGINEER 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 ENGINEER's exercise of professional judgment. Based on information obtained during such visits and such observations, the ENGINEER will evaluate whether the Contractor's work is generally proceeding in accordance with the Contract Documents.
- c. Clarifications and Interpretations. The ENGINEER will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to the CITY as appropriate to the orderly completion of the Contractor's work. Any orders authorizing variations from the Contract Documents will be made by the CITY.
- d. Change Orders. The ENGINEER may recommend Change Orders to the CITY, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- e. Shop Drawings and Samples. The ENGINEER will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which the 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. All submittals will be transmitted through the CITY, unless otherwise directed.
- f. Final Notice of Acceptability of the Work. The ENGINEER will 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 the ENGINEER may recommend, in writing, final payment to the Contractor. Accompanying the recommendation for final payment, the

ENGINEER shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of the ENGINEER's knowledge, information, and belief based on the extent of its services and based upon information provided to the ENGINEER upon which it is entitled to rely. The ENGINEER will review as-built surveys and tests submitted by the contractor and review for conformity with the projects applicable permits. Upon acceptance of the submitted as-built drawings by the ENGINEER and CITY, the ENGINEER will submit the applicable permit certifications.

- g. Limitation of Responsibilities. The ENGINEER 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. The ENGINEER shall not have the authority or responsibility to stop the work of any Contractor.**

TIME OF PERFORMANCE:

Bid and Specification Packages	2 months from NTP
Post Design Services	8 months

EXHIBIT "B"

COMPENSATION

The CITY agrees to pay and the ENGINEER agrees to accept for services rendered pursuant to fees in accordance with the following:

A. Professional Services Fee: The basic compensation mutually agreed upon by the ENGINEER and the CITY follows:

Lump Sum Tasks

<u>Task Description</u>	<u>Fee</u>
Bid & Specification Package	\$ <u>15,650</u>
Wetland Restoration Plans	\$ <u>17,570</u>
Recreational Facility Plans	\$ <u>22,150</u>
Post Design Construction Services	\$ <u>20,000</u>
<u>Grand Total</u>	\$ <u>75,370</u>

Compensation will be computed at the hourly rates of

Project Manager	\$	165.00
Assistant Project Manager	\$	140.00
Senior Engineer	\$	125.00
Engineer	\$	105.00
Engineering Technician	\$	90.00
Draftsperson	\$	85.00
Registered Land Surveyor	\$	120.00
Survey Technician	\$	75.00
Survey Crew	\$	95.00
Secretary	\$	50.00