

**FIRST AMENDMENT  
TO CONTINUING CONTRACT FOR RFQ NO. 2019-027  
PROFESSIONAL ENGINEERING SERVICES**

This **FIRST AMENDMENT** to Continuing Contract for RFQ No. 2019-027 Professional Engineering Services is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between **the City of Fort Pierce**, Florida, a municipal corporation (the “City”) and **Kimly Horn and Associates, Inc.** (“Consultant”), collectively the “Parties”.

**WHEREAS**, the Parties entered into the Continuing Contract for RFQ No. 2019-027 Professional Engineering Services on July 23, 2020; and

**WHEREAS**, review of the terms of the Continuing Contract for RFQ No. 2019-027 Professional Engineering Services on July 23, 2020 resulted in the need to update terms for compliance with legal requirements and insurance requirements; and

**WHEREAS**, the Parties have agreed to modifications of the Continuing Contract for RFQ No. 2019-027 Professional Engineering Services.

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual covenants, agreements, terms, and condition herein, do agree as follows:

**SECTION 1.** The recitals set forth above are acknowledged by the parties to be true and correct are in incorporation herein by reference.

**SECTION 2.** Paragraph 12. INSURANCE is hereby amended and replaced to read and require as follows:

The CONSULTANT shall, at its own expense, procure and maintain, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein. The CONSULTANT shall not commence work until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to and approved by the CITY. As evidence of compliance with the insurance required herein, CONSULTANT shall furnish the CITY with:

- (a) A fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies) and 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 the Fort Pierce Redevelopment Agency and the CITY of Fort Pierce and their respective members, officials, officers and employees as additional insureds in the Commercial General Liability coverage;
- (b) The original of the policy(ies); or

(c) Other evidence satisfactory to the CITY.

Until such insurance is no longer required by this Contract, CONSULTANT 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.

To the extent CONSULTANT is permitted to and elects to sub-contract any of the work performed under this Contract, CONSULTANT will require all subcontractors to provide insurance coverage complying with the requirements set forth herein and will provide the CITY with evidence of such coverage prior to the commencement of the subcontractor's work.

**Workers' Compensation Insurance/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 of Compensation Insurance (NCCI), without restrictive endorsements, other than any endorsement required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. 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 policy must be endorsed to waive the insurer's right to subrogation against the CITY, and their respective officials, officers and employees in the manner which would result from the attachment of NCCI's Waiver of Our Right to Recover From Others Endorsement (Advisory Form WC 00 03 13) with the CITY, and their respective officials, officers and employees scheduled thereon.

**Commercial General Liability Insurance**

Such insurance shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), 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 CITY, and their respective officials, officers and employees shall be included as an "Additional Insureds" on a form no more restrictive than ISO Form (CG 20

10, Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement) and ISO Form CG 20 37 (Additional Insured – Owners, Lessees or Contractors-Completed Operations). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury  
\$1,000,000 Each Occurrence

CONSULTANT shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work. The insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would be covered by Coverage A of the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without any restrictive endorsements other than those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements).

#### **Automobile Liability Insurance**

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without restrictive endorsements other than those required by the State of Florida or those under which 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. Such insurance shall not be subject to any aggregate limit and 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

#### **Design Professional Liability**

Any entity hired to perform professional design services as a part of this Contract shall maintain professional liability coverage. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this Contract and such claims-made coverage must respond to all claims reported within three (3) 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 amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Per Claim  
\$1,000,000 Per Aggregate

**Pollution Legal Liability**

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain CONSULTANT'S Pollution Liability coverage. Such insurance shall cover CONSULTANT for liability resulting from pollution of other environmental impairment arising out of, or in connection with, work performed under this Contract, or which arises out of, or in connection with this Contract, including coverage for clean-up of pollution conditions and third party bodily injury and property damage claims arising from pollution conditions. Such insurance shall also include transportation coverage and non-owned disposal site coverage.

Coverage must either be on an occurrence basis; or if on a claims-made basis, the coverage must respond to all claims reported with 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 insurance shall include the CITY, and their respective officials, officers and employees as additional insureds.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Per Loss  
\$2,000,000 Annual Aggregate

**Property Insurance (Builders Risk / Installation Floater)**

100% Contract Value. Such insurance shall be on a form acceptable to the CITY's Risk Management Department. The Property policy shall include SPECIAL FORM/ALL RISK COVERAGES. The Property policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. The CITY shall be included as Insureds and as Loss Payees.

**Payment Bond and Performance Bond**

CONSULTANT shall execute, deliver to the CITY, in accordance with the performance and payment bond requirement, and record in the public records of

the county where the improvement is located, a statutory payment bond and a common law performance bond in the amount of this Agreement. CONSULTANT shall provide the CITY with a true copy of the recorded bond(s) as evidence of such recording. The payment and performance bonds shall be issued using the Statutory Payment Bond form and the Common Law Performance Bond form provided by the CITY.

Each bond shall be signed on behalf of the CONSULTANT by an individual who is duly authorized to execute the bond on behalf of the CONSULTANT. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties, and (b) the Power-of-Authority for the Attorney-in-Fact who has executed the bond.

All bonds required under this Agreement shall be written with a surety holding a certificate of authority authorizing it to write surety bonds in Florida and the surety bond shall be countersigned by a licensed Florida agent appointed by the surety. The surety shall have a minimum Best's Rating of "A-" according to A.M. Best Company and shall also maintain a current certificate of authority as an acceptable surety on Federal Bonds in accordance with U.S. Department of Treasury Circular 570, current revision.

### **General Conditions**

The insurance provided by CONSULTANT shall apply on a primary basis to any insurance or self insurance maintained by the CITY. Any insurance or self-insurance maintained by the CITY shall be excess of, and shall not contribute with, the insurance provided by CONSULTANT.

Except as otherwise specifically authorized in this Agreement, or for which prior written approval has been obtained hereunder, the insurance maintained by CONSULTANT shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, the CITY may permit CONSULTANT to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. All applicable deductibles and self-insured retentions must be disclosed to and approved by the CITY prior to being used to satisfy any of the insurance requirements contained herein. CONSULTANT shall pay on behalf of the CITY, or their respective officials, officers, and employees any deductible or self-insured retention applicable to a claim against the CITY, or their respective officials, officers, and employees.

All policies of insurance provided by the CONSULTANT shall be endorsed to provide that the Insurer waives its rights against the CITY of Fort Pierce and their members, officials, officers, and employees.

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

All insurance policies provided by the CONSULTANT shall be endorsed to provide the CITY with thirty (30) days' prior written notice of cancellation.

Neither approval nor failure to disapprove insurance furnished by CONSULTANT shall relieve CONSULTANT from responsibility to provide insurance as required by this Agreement.

**Certificates of Insurance must be completed as follows:**

**Certificate Holder**

**City of Fort Pierce  
Attention: Risk Manager  
100 N. U.S. Hwy 1  
Fort Pierce, FL 34954-1480**

**Additional Insured for General Liability**

**City of Fort Pierce and their respective officials, officers, and employees**

**SECTION 3.** Paragraph 13. INDEMNIFICATION is hereby amended and replaced to read and require as follows:

Except for expenses or liabilities arising from the negligence of the CITY, the CONSULTANT hereby expressly agrees to indemnify and hold the CITY harmless against any and all expenses and liabilities arising out of the performance or default of this Contract as follows:

CONSULTANT shall indemnify and hold harmless, to the maximum extent permitted by law, the CITY and their officials, officers and employees from and against any and all liability, damages, losses, (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), and costs (including reasonable attorney fees, litigation, arbitration, mediation, appeal expenses) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONSULTANT and persons employed by or utilized by the CONSULTANT in CONSULTANT'S performance of this Contract.

CONSULTANT'S obligation to indemnify and hold harmless shall remain in effect and shall be binding upon CONSULTANT whether such injury or damage shall accrue, or may be discovered, before or after termination of this Contract.

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

**SECTION 4.** Paragraph 39. E-VERIFY is hereby created and requires as follows:

All requirements of Section 448.095, Florida Statutes, shall be complied with by CONSULTANT. In accordance with, Section 448.095, Florida Statutes, CONSULTANT shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract. If CONSULTANT enters into a contract with a subcontractor performing work or providing services on its behalf, CONSULTANT shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify> CONSULTANT shall, upon request, provide evidence of compliance with this provision to the CITY. A contract terminated pursuant to Section 448.095 is not a breach of contract and may not be considered as such. If the CITY terminates this contract with a contractor, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. CONSULTANT is liable for any additional costs incurred by the CITY as a result of the termination of this contract under Section 448.095, Florida Statutes.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties hereto have accepted, made and executed this First Amendment as of the date first written above and in counterparts, each of which shall be treated as an original upon the terms and conditions above stated.

**CONSULTANT:  
KIMLEY-HORN AND ASSOCIATES, INC.**

By:  \_\_\_\_\_

Print: Brian Good, P.E.

Title: Senior Vice President

Date: 02/19/2024

**ATTEST:**

**CITY OF FORT PIERCE:**

\_\_\_\_\_  
Linda Cox, City Clerk

\_\_\_\_\_  
Linda Hudson, Mayor

**APPROVED AS TO FORM AND  
CORRECTNESS:**

\_\_\_\_\_  
Sara Hedges, City Attorney