

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

CITY OF FORT PIERCE COMPREHENSIVE SAFETY ACTION PLAN (SS4A)

RFQ NO. 2023-059



Prepared by:

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AGREEMENT FOR PROFESSIONAL SERVICES

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This is an AGREEMENT for PROFESSIONAL SERVICES made and entered into between The City of Ft. Pierce, Florida hereinafter designated as "CITY" and **Kimley-Horn and Associates, Inc.** hereinafter designated as "ENGINEER", with an office located at 445 24th Street, Suite 200 Vero Beach FL 32960, the parties agree to professional engineering services and conditions hereinafter stated.

WHEREAS, pursuant to Chapter 287.055 Florida Statutes, and the applicable procurement policies and procedures of the OWNER, the owner has qualified the ENGINEER to provide professional engineering services for the **City of Fort Pierce Comprehensive Safety Action Plan**; and

WHEREAS, the City advertised **Request for Proposals 2023-059 City of Fort Pierce Comprehensive Safety Action Plan** on August 31, 2023 and September 7, 2023 and responses were evaluated by a Selection Committee; and,

WHEREAS, pursuant to the recommendation of the Selection Committee, at the regularly scheduled meeting on January 16, 2024, the Fort Pierce City Commission approved the negotiations of a contract between CITY and ENGINEER, hereinafter referred to as "Contract" or "Agreement"; and WHEREAS, the ENGINEER, is willing and able to perform such professional engineering services for the OWNER within the basic terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of their mutual covenants as set forth herein, OWNER and ENGINEER agree to the following Terms and Conditions as set forth in Sections 1 through 24 hereof.

SECTION 1

1 BASIC SERVICES OF ENGINEER

ENGINEER shall provide Services and Deliverables to CITY as described in the following:

- Attachment A – Scope of Services
- Attachment B – Fee Proposal
- Attachment C - SS4A Terms and Conditions
- Attachment D – SS4A – FY22 – FHWA Exhibits
- Attachment E – RFP 2023-059 Response

2. CITY'S RESPONSIBILITIES

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

- a. Provide all criteria and full information as to CITY's requirements for the Project,
- b. Assist ENGINEER by placing at ENGINEER's disposal available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- c. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this AGREEMENT.
- d. Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services.
- e. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in Section 2 of the AGREEMENT or other services as required.

3. CITY'S DESIGNATED REPRESENTATIVE

It is understood and agreed that the CITY designates the City 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.

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

- a. 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 applications for payment.
- b. 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.
- c. Give prompt written notice to the ENGINEER whenever the CITY observes or otherwise becomes aware of any defects or changes necessary in the project.

4. STANDARDS OF PERFORMANCE

ENGINEER represents to the CITY that the services to be performed under this AGREEMENT shall be in accordance with the highest standards accepted and

established practices and procedures recognized as such in ENGINEERS' trade in general and that ENGINEER shall conform to this AGREEMENT.

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.

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. 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 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.

5 COMPENSATION

Compensation due to ENGINEER shall be due and payable monthly using hourly rates and task durations as specified in the Attachment B – Fee Proposal. The maximum limiting amount of the Agreement shall not exceed \$300,000.00. Payment shall be governed by the Florida Local Government Prompt Payment Act, section 218.70, et seq., Florida Statutes, and those sections therein specifically applicable to nonconstruction contracts.

6 INSURANCE

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-Attorney 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

7 INDEMNITY

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.

8. 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

John R. Andrews, PE
City Engineer
P.O. Box 1480
Fort Pierce, Florida 34954-1480

9. NEGOTIATION DATA

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 Attachment B – Fee Proposal 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 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.

10. OWNERSHIP OF DOCUMENTS

Except as otherwise provided herein, engineering documents, drawings, databases and specifications prepared by ENGINEER as part of the services shall become the property of the CITY, provided, that ENGINEER shall have the right to their use with approval of the CITY. ENGINEER shall retain its rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the service shall remain the property of the ENGINEER.

The ENGINEER shall not be liable for any use by the CITY of said documents or data if modified in any manner without written approval of the ENGINEER. The CITY shall not use the ENGINEER's drawings on any project other than the PROJECT unless the CITY notifies the ENGINEER of its intended use, provides insurance protection for the ENGINEER for all claims which might arise out of the

CITY's use of the documents, and obtains written consent to the use by the ENGINEER.

11. WORK COMMENCEMENT/PROGRESS/DELAYS

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 as specified by the AGREEMENT, Basic Services of Engineer and a Schedule of Performance required hereto.

The ENGINEER agrees to provide a schedule for performance of the contracted services, with milestones for significant elements as agreed by the City 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.

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.

The ENGINEER shall maintain an adequate and competent staff of professional engineers, 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.

12. TIME IS OF THE ESSENCE

Time is of the essence in the completion of tasks and services as specified herein. ENGINEER and 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.

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 ENGINEERS invoice for services, if ENGINEER is behind schedule and the tasks and services are not completed within the deadline for transmittal to Federal and State Granting agencies under this agreement. ENGINEER and CITY agree that liquidated

damages to the CITY shall be in the amount of \$50.00 for each and every calendar day the tasks and services are delayed beyond the time provided for herein.

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.

Liquidated damages are cumulative and additive and represent a reasonable estimate of 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 to for all delay damages incurred by 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.

13. STANDARD OF CONTRACT

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.

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.

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 Section 9 hereof. The ENGINEER shall be compensated for its services rendered up to the time of any such termination in accordance with Section 6 hereof. 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.

ENGINEER shall consider all information provided by 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 CITY or in response to legal process.

14. CONFIDENTIALITY

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 CITY or other information to which A 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.

ENGINEER shall consider all information provided by 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.

15. 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.

16. DEFAULTS, TERMINATION OF AGREEMENT

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 REPRESENTATIVE 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.

If ENGINEER does not remedy defaults within thirty (30) days or commence steps to remedy default to the reasonable satisfaction of the CITY ENGINEER, CITY may

provide for such service from another ENGINEER and may withhold any money due or which may become due to ENGINEER for such task related to the claimed default; or

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

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.

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.

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.

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.

17. 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.

18. 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

John R. Andrews, P.E., City Engineer
City of Fort Pierce
100 North US Highway 1
Fort Pierce, FL 34954-1480

19. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

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.

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.

20. ASSIGNABILITY

The ENGINEER shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written approval of the CITY, provided that claims for the money due or to become due to the ENGINEER from the CITY under this contract may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

21. GOVERNING LAW

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.

22. E-VERIFY

All requirements of Section 448.095, Florida Statutes, shall be complied with by ENGINEER. In accordance with, Section 448.095, Florida Statutes, ENGINEER 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 ENGINEER enters into a contract with a subcontractor performing work or providing services on its behalf, ENGINEER 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> ENGINEER 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. ENGINEER 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.

23. SOVEREIGN IMMUNITY

Nothing contained in this AGREEMENT shall be deemed or otherwise interpreted as waiving the CITY'S sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

24. 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 19, inclusive) together with the Exhibits attached, constitute the entire AGREEMENT between CITY and ENGINEER.

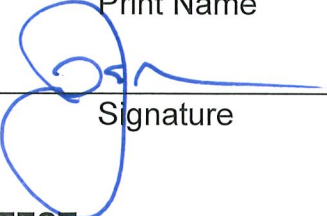
(Continues on next page)

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

ENGINEER:

Kimley-Horn and Associates, Inc.
Company

Joseph P. Mecca, PE - S.V.P.
Print Name


Signature

ATTEST:

CITY OF FORT PIERCE

Linda Cox , City Clerk

Linda D. Hudson, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Sara Hedges, City Attorney

(END OF SECTION)