



THE SUNRISE CITY
FORT PIERCE
PURCHASING
DEPARTMENT

Florida



July 30, 2020

Kimley-Horn and Associates, Inc.

445 24th Street, Suite 200

Vero Beach, FL 32960

Attn: Brian Good, P.E., Project Manager/Senior Vice President

RE: RFQ.NO. 2019-027 ~ Professional Engineering Services

Dear Mr. Good:

We are herewith enclosing one completely executed copy of subject agreements for your files, for **Professional Engineering Services**. Purchase Orders will be issued for each of the services on a project by project basis.

Please refer all correspondence pertaining to this project to Jack Andrews, City Engineer, as he will be in charge of this job.

Sincerely,

CITY OF FORT PIERCE

Latonya Hubbard

Latonya Hubbard
Purchasing Agent

/lh

Distribution: Jack Andrews, City Engineer (Memo Letter Only)
Julie Bye, Executive Assistant
File



NOTICE TO AWARD

Date: June 23, 2020

To: Kimley-Horn and Associates, Inc.
445 24th Street, Suite 200
Vero Beach, FL 32960
Attn: Brian Good, P.E., Project Manager/Senior Vice President

Re: Professional Engineering Services, RFQ No. 2019-027

Date of Bid Opening: 3:00PM, Tuesday, November 5, 2019

Commission Approval: Monday, February 18, 2020

You are hereby notified that The Fort Pierce City Commission awarded the subject proposal noted above to your firm. Upon compliance with the conditions precedent to be fulfilled by you within the time specified, the Agreement will be executed and delivered to you. Enclosed are the following:

<u>Copies</u>	<u>Item</u>
2	Notice of Award
2	Agreement between City and Contractor
2	Non-Collusion Affidavit for Prime Bidder
2	Certification of Non-Segregated Facilities
2	Drug Free Workplace Form

Please take the following actions:

1. Execute Agreement and Notice of Award.
2. Have your insurance company complete Certificates of Insurance and Endorsements, as stated in Section 12 of the agreement,
4. Form CG 20 10: Please provide a copy of the actual endorsement issued to the policy, Form CG 20 10, which affords the required additional insured coverage.
5. Return two (2) sets of the documents enclosed within ten (10) days after receipt to:

Mailing Address:
CITY OF FORT PIERCE
Purchasing Division, Room 101
Post Office Box 1480
Fort Pierce, FL 34954-1480

Delivery Address:
CITY OF FORT PIERCE
Purchasing Division, Room 101
100 North U.S. #1
Fort Pierce, FL 34950

The contract documents must be signed by one of the officers registered with the State of Florida on the attached list; if not on list, provide a letter or copy of corporate resolution authorizing the individual to sign contract documents on behalf of the corporation.

We will return a fully executed copy of the Contract Documents and the Notice to Proceed at the Pre-Construction Conference or mail to your attention.

OWNER:


CITY OF FORT PIERCE
P.O. Box 1480
Fort Pierce, Florida 34954-1480

BY: 
Gelencia Carter, M.P.A.
Purchasing Manager

Date: 6-23-20

ACKNOWLEDGE RECEIPT OF NOTICE:

CONTRACTOR:
KIMLEY-HORN AND ASSOCIATES, INC.

BY: 

Senior Vice President
Title

7/7/20
Date

END OF SECTION

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

THIS CONTRACT is made as of the 23rd day of July, 2020 by and between the City of Fort Pierce, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "City", and **KIMLEY-HORN AND ASSOCIATES, INC.**, hereinafter referred to as "Consultant".

WHEREAS, pursuant to Section 287.055, Florida Statutes, the City solicited proposals for non-exclusive contracts to perform professional engineering services with qualified firms for the performance of these services; and,

WHEREAS, at the regularly scheduled meeting on **February 18, 2020**, the Fort Pierce City Commission approved the negotiations of a continuing contract and authorized the execution of an agreement for Continuing Professional Services between City and Consultant hereinafter referred to as "Contract" or "Agreement"; and,

WHEREAS, the Consultant is willing and able to render professional services for various projects on an as-needed basis and for the compensation and on the terms hereinafter set forth; and,

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

1. SERVICES

The Consultant's responsibility under this Contract is to provide professional/consultation services in the area of professional engineering services.

2. TERM

The term of the Contract shall be for a period of five (5) years beginning on the date first written above.

3. TECHNICAL AND PROFESSIONAL SERVICES

It shall be the responsibility of the Consultant to work with the City to provide professional engineering services related projects for City. Each project will require a separate work authorization using a form agreed to by both parties. The work authorization shall set out the scope of work, time of performance and compensation schedule for each project.

4. PERIOD OF SERVICE; WORK AUTHORIZATIONS

A. The Consultant will be available to begin work promptly after receipt of a fully executed copy of this Agreement. It is agreed that this Agreement shall be considered as a continuing contract and work will be initiated on an assignment-by-

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assignment basis. The City reserves the right to select the respective consultant who the City believes is in its best interest to perform the specified work.

B. If the Consultant's services called for under this Agreement are delayed for reasons beyond the Consultant's control, the time of performance shall be adjusted appropriately.

C. Specific work assignments shall be set forth in individual Work Authorizations, which will be issued to the Consultant. All Work Authorizations shall be executed on behalf of the City in accordance with the City Purchasing Policy. The Work Assignments shall describe the scope of the work to be performed and shall set forth the schedule for completion of the work.

The City shall provide all criteria and full information as to City's requirements for the assignment and designate in writing a person with authority to act on City's behalf on all matters concerning this assignment.

5. TIME OF PERFORMANCE

Each project performed pursuant to this Agreement shall be performed in a timely manner without unreasonable delay within the time period identified in the work authorization.

If the work is not fully completed according to the terms of the Contract and within the time limits stipulated in the individual work authorization, it is hereby acknowledged that the City will suffer damages which are not capable of ascertainment or calculation, and therefore the Consultant shall pay the City liquidated damages, a sum of which will be outlined in each individual work authorization, per day for each day following the required completion date, until the date upon which actual completion occurs.

6. COMPENSATION

The Consultant shall be compensated for all services satisfactorily completed in accordance with the terms and conditions of this Agreement and each work order. All invoices presented to the City for payment shall be on a Request for Payment form approved by the City.

7. GENERAL CONDITIONS

A. It is understood and agreed that the Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a supplemental agreement may be negotiated between the City and the Consultant describing the services desired and providing a basis for compensation to the Consultant.

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B. Upon the Consultant's written request, the City will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and City mutually deem necessary; and the Consultant may rely upon same in performing the services required under this Agreement.

8. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by Consultant shall act as the execution of as truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete and current at the time of execution of the Agreement. The original Agreement rates and any additions thereto shall be adjusted to exclude any significant sums by which City determines the Agreement rate(s) was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such rate adjustments shall be made within one year following the end of this Agreement.

9. DEFAULT/TERMINATION

A. FOR CAUSE

If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the seven (7) calendar day time period.

With regard to the Consultant, the following items shall be considered a default under this Agreement:

1) If the Consultant should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.

2) If the Consultant should persistently or repeatedly refuse or fail, except in cases for which an extension of time is provided, to provide the services contemplated by this Agreement.

3) If the Consultant disregards laws, ordinances, or the instructions of the Project Manager or otherwise is guilty of a substantial violation of the provisions of the Agreement.

In the event of termination, the Consultant shall only be entitled to receive payment for work satisfactorily completed prior to the termination date.

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B. WITHOUT CAUSE

Either party may terminate the Agreement without cause at any time upon thirty (30) calendar days prior written notice to the other party. In the event of termination, the City shall compensate the Consultant for all authorized work satisfactorily performed through the termination date.

10. SUBCONSULTANTS AND SUBCONTRACTORS

In the event the Consultant requires the services of any subconsultant, subcontractor or professional associate in connection with the services to be provided under this Agreement, Consultant shall secure the written approval of City Project Manager before engaging such subconsultant, subcontractor or professional associate.

If a subconsultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the subconsultant to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new subconsultant by the City. The substitution of a subcontractor shall not be adequate cause to excuse a delay in the performance any portion of this Contract as set forth in the Scope of Work.

The Consultant, its subconsultants, agents, servants, or employees agree to be bound by the Terms and Conditions of this Contract and its agreement with the subconsultant for work to be performed for the City the Consultant must incorporate the terms of this Contract.

11. FEDERAL AND STATE TAX

The City is exempt from payment of Florida State Sales and Use Taxes.

The City will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

12. INSURANCE

CONSULTANT shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein.

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A. EVIDENCE OF INSURANCE

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. The CITY at all times reserves the right to request such additional documentation and evidence of insurance as in its sole discretion it may require and the CONSULTANT hereby agrees to provide same.

With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability and Business Auto Liability Insurance, an appropriate Certificate of Insurance (which identifies the project), and a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies), signed by an authorized representative of the insurer(s) shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance (which identifies the project) signed by an authorized representative of the insurer, and copies of the actual additional insured and notice of cancellation endorsements as issued on the policy(ies), shall be satisfactory evidence of such insurance.

If the insurance policies expire or terminate during the term of this Agreement CONSULTANT shall provide CITY with renewal or replacement evidence of the insurance, including endorsements, no less than fifteen (15) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to CITY, if requested by CITY, CONSULTANT shall, within thirty (30) days after receipt of a written request from CITY, provide CITY with a certified copy or certified copies of the policy or policies providing the coverage required. CONSULTANT may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required.

B. DESCRIPTION OF REQUIRED INSURANCE

CONSULTANT shall be responsible for all damage to person and/or property resulting from its negligent acts, reckless or intentional misconduct, errors or omissions or those of its subcontractors, agents or employees in connection with such services and shall be responsible for all parts of its work, both temporary and permanent.

1) Workers' Compensation/Employer's Liability Insurance.

Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate,

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coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law.

The policy must be endorsed to waive the insurer's right to subrogate against CITY, and its 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 CITY, and its officials, officers and employees scheduled thereon.

The policy must be endorsed to provide CITY with 30 days prior written notice of cancellation.

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

2) 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 any endorsements specifically required by ISO or the State of Florida.

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

CITY and its officials, 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 Consultant).

The policy must be endorsed to provide CITY with 30 days prior written notice of cancellation.

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

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

3) 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 any restrictive endorsements, including 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 policy must be endorsed to provide CITY with 30 days prior written notice of cancellation.

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:

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000
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4) Professional Liability

Such insurance shall be on a form acceptable to CITY and shall cover errors and omissions arising out of the provision of the services required by this RFQ. 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 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 provided by CONSULTANT shall be endorsed to provide CITY with 30 days prior written notice of cancellation. A maximum deductible or self-insured retention of \$10,000 per claim/occurrence shall be permitted for this coverage.

The minimum amount of coverage (inclusive of any amounts provided by an umbrella or excess policy) shall be no less than:

\$3,000,000 Each Claim/Annual Aggregate

5) Miscellaneous Provisions

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

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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, CITY may permit the application of a deductible or permit CONSULTANT to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. In such instances, CONSULTANT shall pay on behalf of CITY or CITY's officials, officers and employees any deductible or self-insured retention applicable to a claim against CITY or CITY's officials, officers and employees.

Compliance with these insurance requirements shall not limit the liability of CONSULTANT. Any remedy provided to CITY by the insurance provided by CONSULTANT 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 CITY under this Agreement or otherwise.

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
Attn: Purchasing Department
P.O. Box 1480
Fort Pierce FL 34954-1480**

Additional Insured on the Commercial General Liability

City of Fort Pierce and its officials, officers and employees.

13. INDEMNIFICATION

The Consultant covenants and agrees at all times to save, hold, and keep harmless the City, its Officials, Employees, and Agents, and indemnify the City, its Officials, Employees, and Agents, against any and all claims, demands, penalties, judgments, court costs, reasonable attorney's fees for personal injury and loss of property to the extent arising out of or in any way connected or arising out of the Consultant's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement.

The Consultant hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification herein provided.

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It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725).

The Consultant, without exemption, shall indemnify and hold harmless, the City, its employees, representatives and elected officials from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or item manufactured by the Consultant. Further, if such a claim is made, or is pending, the Consultant may, at its option and expense, procure for the City the right to use, replace, or modify the item to render it non-infringing. If none of the alternatives are reasonably available, the City agrees to return the article on request to the Consultant and receive reimbursement. If the Consultant used any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the Contract prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.

14. ASSIGNMENT

The City and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and permitted assigns of such other party, in respect to all covenants of this Agreement; and, neither the City nor the Consultant will assign or transfer its rights and obligations in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

The Consultant agrees that the persons named in the scope of work shall provide services as described therein. The services of the person(s) so named are a substantial inducement and material consideration for this Agreement. In the event such persons can no longer provide the services required by this Agreement, the Consultant shall immediately notify the City in writing and the City may elect to terminate this Agreement without any liability to the Consultant for unfinished work product. The City may elect to compensate the Consultant for unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

15. PUBLIC RECORDS

A. City strictly adheres to all statutes, court decisions and the opinions of the Florida Attorney General with respect to disclosure of public information under Chapter 119, Florida Statutes. In accordance with Chapter 119, Florida Statutes, Consultant shall comply with all public records laws, specifically to:

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

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C. Upon request from City's custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

D. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if Consultant does not transfer the records to City.

E. Upon completion of the Contract, transfer, at no cost, to City all public records in possession of Consultant or keep and maintain public records required by City to perform the service. If Consultant transfers all public records to City upon completion of the Contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Contract, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City.

F. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS THROUGH THE CITY CLERK AT 772-467-3065, lcx@cityoffortpierce.com, 100 North U.S. 1, Fort Pierce, FL 34950.

16. CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the City in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance, which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant.

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The City agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notification and the Consultant shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Agreement

17. EXCUSABLE DELAYS (FORCE MAJEURE)

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its reasonable control, (all of which causes herein are called "Force Majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances; fires; unusual climatic conditions; acts of God; acts of a public enemy; or inability to obtain transportation or necessary materials in the open market. Provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally affect the bidding process shall not be considered a Force Majeure. Financial difficulty shall not be considered a Force Majeure. The party unable to perform as a result of force majeure promptly shall notify the other of the beginning and ending of each such period, and City shall compensate Consultant at the rates set forth herein, for the services performed by Consultant hereunder, up to the date of the beginning of such period.

18. PLEDGE OF CREDIT, ARREARS

The Consultant shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

19. DISCLOSURE AND OWNERSHIP OF DOCUMENTS

All original sketches, tracings, drawings, computations, details, design calculations, and other documents and plans that result from the Consultant's services under this Agreement are and remain the property of the City as instruments of service. The Consultant shall furnish copies to the City upon completion of such documents.

The City shall, at no additional expense, be furnished one (1) set of reproducible copies of any maps and/or drawings prepared for it by the Consultant. Consultant shall likewise submit copies of all field notes, calculation sheets and computer discs to the City.

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20. INDEPENDENT CONSULTANT RELATIONSHIP

The relationship of the Consultant to the City will be solely that of a consultant. The Consultant is an independent consultant and is not an employee or agent of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent consultant, between the City and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant will provide the professional and technical services required for the successful completion of this Agreement in accordance with practices generally acceptable within the industry and good ethical standards.

21. ATTORNEYS' FEES AND COSTS

In the event of any dispute concerning the terms and conditions of this Agreement or in the event of any action by any party to this Agreement to judicially interpret or enforce this Agreement or any provision hereof, or in any dispute arising in any manner from this Agreement, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses, whether suit be brought or not, and whether any settlement shall be entered in any declaratory action, at trial or on appeal.

22. VERIFICATION OF EMPLOYMENT STATUS

The Consultant agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control act of 1986, of all persons it employs in the performance of this Agreement.

23. PROHIBITION AGAINST CONTINGENT FEES

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

24. AUDIT

The Consultant agrees that the City or any of its duly authorized representatives shall, until the expiration of three (3) years after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement. The Consultant agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found based on audit

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examination not to constitute allowable costs under this Agreement. The Consultant shall refund by check payable to the City the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three (3) years after completion of the project and issuance of the final certificate, whichever is sooner.

25. NON DISCRIMINATION

The Consultant covenants and agrees that the Consultant shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

26. AUTHORITY TO PRACTICE

The City represents that it is a political subdivision of the State of Florida with the authority to engage the Consultant and to accept the obligation for payment for the services.

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative on an annual basis.

27. SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

28. COMPLETE AGREEMENT

This Agreement states the entire understanding between the parties and supersedes any prior written or oral representations, statements, negotiations, or agreements to the contrary. The Consultant recognizes that any representations, statements or negotiations made by the City staff do not suffice to legally bind the City in a contractual relationship unless they have been reduced to writing, authorized, and

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signed by an authorized City representative. This Agreement shall bind the parties, their assigns, and successors in interest.

29. AMENDMENT

This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto.

30. MODIFICATIONS OF WORK

The City reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing:

- A. Provide a detailed estimate for the increase or decrease in cost due to the contemplated change,
- B. Notify the City of any estimated change in the completion date, and
- C. Advise the City if the contemplated change shall affect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the City shall initiate a Contract Amendment and the Consultant shall not commence work on any such change until the authorized representative for the City signs such written Amendment.

31. NOTICE

All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to

City:
City of Fort Pierce
Attn: Purchasing Department
P.O. Box 1480
Fort Pierce FL 34954-1480

Consultant:
Kimley-Horn and Associates, Inc.
Attn: Brian Good, P.E., Senior Vice President
4452 24th Street, Suite 200
Vero Beach, FL 32960

Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery

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PROFESSIONAL ENGINEERING SERVICES**

is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

32. INTERPRETATION; CAPTIONS AND HEADINGS

This Agreement shall be interpreted as a whole unit. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

33. WAIVER

No waiver by the City of any provision of this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach of the same, or any other provision or the enforcement thereof. City's consent to or approval of any act by Consultant requiring consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Consultant requiring consent or approval, whether or not similar to the act so consented or approved.

34. COMPLIANCE WITH LAWS

The Consultant, its employees, subcontractors and assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The City undertakes no duty to ensure such compliance, but will attempt to advise Consultant, upon request, as to any such laws of which it has present knowledge.

35. GOVERNING LAW; VENUE

This Agreement and the rights of the parties shall be governed by and construed or enforced in accordance with the laws of the State of Florida. Venue for any action arising out of this Agreement is in the Circuit Court of St. Lucie County, Florida. Any action shall be tried as a non-jury case.

36. DISPUTE RESOLUTION

Any disputes relating to interpretation of the terms of this Contract or a question of fact or arising under this Contract shall be resolved through good faith efforts upon the part of the Consultant and the City or its Project Manager. At all times, the Consultant shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the City or its representatives, pending resolution of the dispute. A City Administrator shall decide any dispute which is not resolved by mutual agreement. The decision of the City Administrator shall be in writing and shall be final and conclusive unless determined by a court of competent

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jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

37. MEDIATION

Prior to initiating any litigation concerning this Contract, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for City. The parties shall share the fee of the mediator equally. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue. In the event that mediation is unsuccessful, either party may bring an action to enforce its rights in a Florida court of appropriate venue and jurisdiction.

38. ANTITRUST ASSIGNMENT

The Consultant, the City, and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida and local governments. Therefore, the Consultant assigns to the State of Florida and the City any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

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PROFESSIONAL ENGINEERING SERVICES

ATTEST:

CITY OF FORT PIERCE:

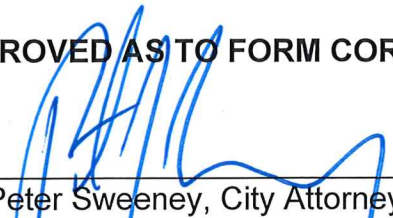


Linda Cox, City Clerk




Linda Hudson, Mayor

APPROVED AS TO FORM CORRECTNESS:


By: _____
Peter Sweeney, City Attorney

CONSULTANT:


By: _____

Print: Brian Good

Title: Senior Vice President

Today's Date: 7/7/20



THE SUNRISE CITY
FORT PIERCE
PURCHASING
DEPARTMENT
Florida

CONTRACT FORMS

Please complete and forward
along with the agreement.



THE SUNRISE CITY
FORT PIERCE
PURCHASING
DEPARTMENT

Florida



**NON-COLLUSION AFFIDAVIT
FOR PRIME BIDDER**

STATE OF Florida

COUNTY OF Indian River

Brian Good, being first duly sworn, deposes
and says:

That he is Senior Vice President
(a partner or officer of the firm, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the City of Fort Pierce, of the County of St. Lucie, or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Kimley-Horn and Associates, Inc.
(Firm Name)

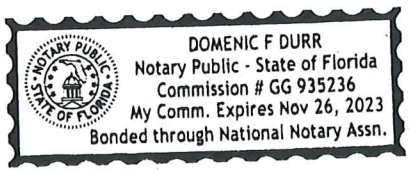
By: [Signature]

Title: Senior Vice President

Subscribed and sworn to before me this 7th
day of, July 2020.

[Signature]
Notary Public

My Commission expires: (Seal)
11/26/2023





THE SUNRISE CITY
FORT PIERCE
 PURCHASING
 DEPARTMENT

Florida



CERTIFICATION OF NONSEGREGATED FACILITIES

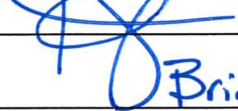
The Bidder certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control where segregated facilities are maintained. The Bidder certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location under his/her control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this Bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants, and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where he/she has obtained identical certification from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors, exempt from the provisions of the Equal Opportunity clause, and that he/she will retain such certification in his/her files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE: July 7th, 2020

Official Address (Including Zip Code):

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

By: 
 Name
Brian Good
 Name (Typed or Printed)
Senior Vice President
 Title



DRUG-FREE WORK PLACE FORM

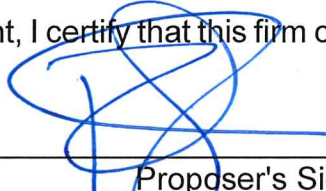
The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that

Kimley-Horn and Associates, Inc. does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are proposed a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace thorough implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.



Proposer's Signature

7/7/20

Date