

## **MEMORANDUM**

DATE: May 7, 2020

TO: \*\*\*\*ORIGINAL\*\*\*\*  
CITY CLERK

FROM: Michelle Fentress  
Procurement Management Department

SUBJECT: Record Retention

CONTRACT: #20200051  
CONTRACT TITLE: Design Services for Glades Cutoff Road 24" Force  
Main

VENDOR NAME: Kimley-Horn & Associates, Inc.  
VENDOR ADDRESS: 189 S. Orange Avenue, Suite 1000  
CITY & STATE: Orlando, FL 32801

APPROVED BY COUNCIL: N/A

CONTRACT TERM: 04/27/20 THROUGH 11/18/2020 (205) calendar days.

Please see the attached for (1) original contract for your records

**CITY OF PORT SAINT LUCIE  
CONTRACT #20200051**

This is a Lump Sum CONTRACT, executed this 7<sup>th</sup> day of May, 2020 by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipality, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and KIMLEY-HORN & ASSOCIATES, INC., 189 S. Orange Avenue, Suite 1000, Orlando, FL 32801, Telephone (407) 898-1511 and Fax (561) 863-8175, hereinafter called "Engineer" "Consultant", party of the second part.

**RECITALS**

In consideration of the below agreements and covenants set forth herein, the parties agree as follows:

**WHEREAS**, the Engineer is a Florida Corporation and is licensed in the State of Florida; and

**WHEREAS**, the City wishes to contract for Design Services for Glades Cutoff Road 24" Force Main; and

**WHEREAS**, Engineer is qualified, willing and able to provide the Work on the terms and conditions set forth herein; and

**WHEREAS**, the City desires to enter into this Contract with Engineer to perform the Work specified and in an amount agreed to below.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein name, the Parties agree as follows:

The Recitals set forth above are hereby incorporated into this Contract and made a part of hereof for reference.

**SECTION I  
NOTICES**

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person, sent by certified mail with return receipt request, email (with receipt confirmed), or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

City Contract Administrator: Michelle Fentress, CPPP, CPCM, Procurement Agent I  
Procurement Management Department  
City of Port St. Lucie  
121 SW Port St. Lucie, Blvd.  
Port St. Lucie, FL. 34984  
Telephone 772-871-5222 Fax 772-871-7337  
Email: [mfentress@cityofpsl.com](mailto:mfentress@cityofpsl.com)



## Design Services for Glades Cutoff Road 24" Force Main

City Project Manager: David Garland, P.E.  
City of Port St. Lucie Utility Systems Department  
Utility Engineering Division  
900 SE Ogden Lane  
Port St. Lucie, Florida 34983  
Telephone: 772-807-4414  
Email: [dgarland@cityofpsl.com](mailto:dgarland@cityofpsl.com)

Engineer: Kimley-Horn & Associates, Inc.  
Attn: Lance Littrell, P.E.  
189 S. Orange Avenue, Suite 1000  
Orlando, FL 32801  
Telephone 407-898-1511 Fax 561-863-8175  
Email: [lance.littrell@kimley-horn.com](mailto:lance.littrell@kimley-horn.com)

### **SECTION II DESCRIPTION OF SERVICES TO BE PROVIDED**

The terms and conditions of Continuing Contract #20180148 for Continuing Contracts for Utility Projects shall apply for the Design Services for Glades Cutoff Road 24" Force Main Project including all attachments, addenda and requirements are incorporated herein by this reference.

The following reflects the Scope of Services to provide the Professional Engineering Services necessary for design services relative to the Glades Cutoff Road 24" Force Main Project. This work will be consistent with the adopted goals, objectives and programs of the City of Port St. Lucie City Council (CPSLCC).

Kimley-Horn and Associates (CONSULTANT) will perform design services to the City of Port St. Lucie Utility Systems Department (CITY) for the project referred to as the Glades Cutoff Road 24-inch Force Main Extension. The proposed improvement is required to assist in the overall system hydraulics of the CITY's force main transmission system. The proposed project area is generally located along the east side of Glades Cutoff Road (CR709) between Commerce Centre Drive and Canal No. 105 (approx. 2,400 LF northeast of I-95). The force main extension is approximately 9,200 LF in total length. The proposed force main will connect to an existing 24-inch force main at Commerce Centre Drive and will connect to an existing 16-inch concentrate main at Canal No. 105. The CITY is converting the existing concentrate main to a force main.

The CONSULTANT will be tasked with the design and permitting of the force main extension noted above, along with the development of Technical Specifications, permitting and assistance during the bidding of the project. Engineering services during construction is anticipated and will be completed under a separate scope of work to be developed upon completion of this design project.

#### **SCOPE OF SERVICES**

##### **1. Preliminary Design Services (30%)**

The CONSULTANT will conduct a "kick-off" meeting with the CITY and their representatives to discuss the overall project. Prior to this meeting, the CONSULTANT will "walk" the proposed route to confirm constructability issues to be discussed at the kick-off meeting. The topographic services (Task 2 below) will be authorized after the kick-off meeting. The preliminary design (30%) shall address the requirements of the project



## Design Services for Glades Cutoff Road 24" Force Main

and shall include the base survey in the background. The intent of the preliminary design (30%) is for the CONSULTANT to acquire CITY acceptance of the new force main alignment that will be noted on the base sheets (without any profiles), connections and valve locations. Existing utilities will be identified along with possible conflicts. The intended locations of geotechnical bores and soft dig locations will be noted.

The CONSULTANT will submit the preliminary design (30%) plans to the CITY for review and will meet to discuss prior to commencing with the design services noted in Task 5 below.

### Deliverables:

- Preliminary Design (30%) plans in a PDF format

## 2. Topographic Survey Services

The CONSULTANT will have their subconsultant, William B. Zentz & Associates, Inc., perform a Topographical Survey within the project corridor. The survey will include the easterly side of Glades Cutoff Road from the roadway centerline within the project limits noted above. The survey shall include locations of existing improvements within the right of way, topographic data at 100 ft. intervals, locations of surface markings of underground utilities and locations/depths of up to 12 softdigs performed under Task D below.

### Deliverables:

- Topographic Survey (AutoCAD/PDF format)

## 3. Geotechnical Services

The CONSULTANT will have their subconsultant, Terracon, perform Geotechnical Services within the project limits. The subconsultant will perform four (4) 15 ft. Standard Penetration Test (SPT) bores and three (3) 30 ft. SPT bores. The subconsultant shall provide a geotechnical engineering report of their findings for use by KHA in their design.

### Deliverables:

- Geotechnical Engineering Report

## 4. Soft Dig Services

The CONSULTANT will have their subconsultant, Infra Map Corp., perform up to 12 softdig utility test holes, at locations determined by the CONSULTANT. The utility test holes will be coordinated with the survey services to capture locations and depths of the existing utility identified.

### Deliverables:

- Soft Dig Report

## 5. Design Services (60%, 90% and Final)

Upon acceptance of the preliminary design (30%), the CONSULTANT shall prepare and submit 60%, 90% and Final design plans and technical specifications depicting the construction of the new force main in accordance with the project schedule.



The 60% design shall include pipe profiles without call outs, identify utility conflicts, utility test hole data, connection details for CITY review and discussion at the 60% review meeting. The CONSULTANT will also provide an opinion of probable construction cost and draft technical specifications with this submittal.

Upon acceptance of the 60% design by the CITY, the CONSULTANT will commence with the 90% design incorporating CITY comments from the 60% review and developing the plans to a level that if no comments are made, that the plans would be sufficient for signing and sealing for issuance into the permitting agencies noted in Task 6 below. The CONSULTANT will provide an updated opinion of probable construction cost and technical specifications with the 90% submittal.

Upon acceptance of the 90% design by the CITY, the CONSULTANT will finalize the plans and technical specifications (including insertion of CITY provided upfront documents) for a complete set of documents to be used for bidding and construction.

The drawings will be based on the AutoCad Civil 3D base files developed by the CONSULTANT. The drawings will depict the proposed force main extension work in plan and profile view at a 1" = 30' scale, depicted in a single plan/profile view per sheet. Technical specifications will be developed based on CITY Design Standards. It is estimated that the plan set to be developed by CONSULTANT will consist of approximately eighteen (18) plan sheets to include the following:

- G-1 Cover Sheet
- G-2 General Notes Sheet
- G-3 Abbreviations and Legend
- G-4 Key Sheet
- C-1 – C12 Single Plan and Profile Sheets
- D-1 Special Construction Details
- D-2 Standard Wastewater Details

#### **Deliverables:**

- Design plans (60%, 90% and Final) in PDF format, with Final plans in PDF and AutoCAD Version 2020 will be submitted
- Technical specifications at 60%, 90% and Final, with CITY upfront documents at 90% and Final
- Cost estimates with the 60%, 90% and Final Design documents

## **6. Permitting Services**

The CONSULTANT shall prepare applications for permits to construct the force main extension improvements for submittal to the following agencies:

- Florida Department of Transportation (FDOT) Utility Right-of-Way Permit for the work performed within the I-95 right-of-way. The permit and supporting documentation will be submitted via the FDOT's electronic "One Stop Permitting" process that will require the CITY Project Manager to acknowledge the project within the FDOT "One Stop Permitting" site.



- Florida Department of Environmental Protection (FDEP) "Notification/Application for Constructing a Domestic Wastewater Collection/Transmission System", DEP Form 62-604.300(8)(a).
- City of Port St. Lucie Public Works Department Right-of-Way and Easement (Excavation) Permit for work within City owned right of way. The permit and supporting documentation will be submitted electronically.
- St. Lucie County Engineering Division Right of Way Permit for work within Glades Cutoff Road (CR709). The permit and supporting documentation will be submitted electronically.

The CONSULTANT shall respond up to two (2) Requests for Additional Information (RAIs) from each of the permitting agencies noted above. Permit fees will be paid by the CITY.

The CONSULTANT shall provide signed-and-sealed drawings to the selected contractor as required to be submitted to obtain Contractor obligated permits.

It is assumed that all improvements will be constructed in public rights-of-way or existing utility easements, and no wetland or environmental permitting will be required.

**Deliverables:**

- Copies of Permit Applications and RAI responses, along with the actual approved permits

## **7. Bidding Services**

Copies of the plans and specifications will be provided to the CITY for bidding purposes. The CITY will be responsible for publicly advertising the project and administrating the bid on DemandStar. The CONSULTANT will attend the pre-bid meeting at the CITY, respond to potential bidder's requests for information and prepare addenda as needed, which will be distributed to all bid document holders by the CITY. The CONSULTANT will review the bids and provide a letter to the CITY recommending award.

**Deliverables:**

- Copies of addendums
- Letter recommending award

## **ASSUMPTIONS**

The CONSULTANT has made the following assumptions in the development of this scope of services:

1. The CITY will pay for all permit related fees. These can be incorporated into the CONSULTANT's scope of services if desired by the CITY.
2. The future 24-inch force main, north of Commerce Centre Drive, will not cross Glades Cutoff Road.
3. The connection to the existing 16-inch concentrate main in the Canal No. 105 vicinity, will be made within the right of way of Glades Cutoff Road.
4. The future 16-inch stub-out to be provided adjacent to the Canal No. 105 vicinity, will remain within the Glades Cutoff Road right of way, and will not cross the railroad right of way.
5. The work will not cross Glades Cutoff Road or will encroach within the railroad right of way.





### SECTION III TIME OF PERFORMANCE

Contract period shall start April 27, 2020 and terminate two hundred five (205) calendar days thereafter on November 18, 2020 for design services Tasks 1-6. Contract period will continue for Task 7 through the end of construction that is estimated on November 18, 2021. In the event all work required in the proposal specifications has not been completed by the specified date, the Engineer agrees to provide work, at no additional cost to the City as authorized by the Contract Supervisor until all work specified in the proposal specifications has been rendered and approved by the City.

#### SCHEDULE FOR PROFESSIONAL SERVICES

Task Name	Duration
Task 1 – Preliminary Design Services (30%)	50 Days
Task 2 – Topographic Survey Services <sup>(3)</sup>	40 Days
Task 3 – Geotechnical Services <sup>(3)</sup>	30 Days
Task 4 – Soft Dig Services <sup>(4)</sup>	20 Days
Task 5 – Final Design Services	
60% Design Submittal	60 Days
90% Design Submittal	50 Days
Final Design Submittal	45 Days
Task 6 – Permitting Services	60 Days
Task 7 – Bidding Services	Commensurate with the City's process

**Notes:**

- 1) This schedule assumes a 10-day review time by CITY of all deliverables.
- 2) Tasks 1 through 5 will be completed within 205 days.
- 3) Task 3 and 4 would occur right after the kickoff meeting and run concurrently with Task 1.
- 4) Task 4 would occur right after the 30% design meeting and run concurrently with Task 5.
- 5) Tasks 6 and 7 will be dependent and completed upon City bidding and regulatory agency schedules.

### SECTION IV RENEWAL OPTION

There are no renewals to this contract.

### SECTION V COMPENSATION

This is a Lump Sum Contract per the Fee Schedule Table below, with a Not to Exceed Contract total of One hundred eighty two thousand three hundred dollars (\$182,300.00). The City will not pay for out-of-pocket expenses including, but not limited to, office & utilities, sub-consultants fees or any reimbursable expense. There will be no additional amount paid for reimbursable expenses. All Lump Sum Amounts are "Not to



Exceed" amounts. Engineer shall invoice the City for the amount of the indemnification payment and said invoice shall accompany the signed Contracts.

Progress Payments – The city may make partial payment during the progress of the work upon completion of each task as defined in the Fee Schedule Table, and approved by the Project Manager.

The Engineer shall not be paid additional compensation for any loss or damage, arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the performance of the work, or for any expenses incurred by or in consequence of the suspension or discontinuance of the work.

Compensation shall be in accordance with the Schedule listed below:

<b>TASK</b>	<b>TOTAL COST</b>
Task 1 – Preliminary Design Services (30%)	\$25,520
Task 2 – Topographic Survey Services	\$20,550
Task 3 – Geotechnical Services	\$12,260
Task 4 – Soft Dig Services	\$11,310
Task 5 – Design Services (60%, 90% and Final)	\$79,040
Task 6 – Permitting Services	\$19,930
Task 7 – Bidding Services	\$13,690
<b>TOTAL</b>	<b>\$182,300.00</b>

Hourly Rates for additional services may be utilized, as determined by the City. Hourly Rates, Lump Sum, and Fixed Fee amounts are to include all reimbursable expenditures, including travel, meals, copies and so forth.

Invoices for services shall be submitted by the 10th of the month, and payments shall be made with the City's PCard, which guarantees payment within several days. Payments shall be made provided the submitted invoice is accompanied by adequate supporting documentation and is approved by the Project Manager.

### **Engineer VISA Payment Procedures**

1. An account with Bank of America (BOA) will be established for the project. The account dollar limit will be established by the City's estimate of monthly expenses. The account will also have limits as per the Merchant Category Code (MCC). Reasonable total invoice amounts will also be established. The account will be entered with the proper expense codes. The Engineer will be provided this account number to process payments.
2. A purchase order to the Engineer for this project may not be issued.
3. The Engineer will send the Project Manager by the 1<sup>st</sup> of each month a detailed pay request listing employee title, hours of work, hourly rate or percentage (%) for all tasks that have been completed. Partial release of liens will be provided if subcontractors were used by Engineer.





4. The (PM) will audit to determine that work and materials that are being billed have been completed and installed as per contract specifications. The PM will verify the partial release of liens. The PM will sign documents that state the payment is correct and payment by the City is authorized.
5. The PM will email the approved pay request to the Contract Specialist, City's P-Card Administrator and the Engineer to proceed with placing the charge on the BOA specified account.
6. The Engineer may not place the charge on the account until contacted by the City giving approval. Under no circumstances will the account be used between the 1<sup>st</sup> and 5<sup>th</sup> of the month.
7. Invoices that are not approved by the PM will be returned to the Engineer with a detailed explanation.
8. Procurement Management Department will balance statement and issue all dispute items.
9. Procurement Management Department will produce summary sheet and send all documentation to Finance for payment.

All work compensated for under this Contract, including partial payments, shall become the property of the City of Port St. Lucie without restrictions or limitations. Work under this Contract shall include, but not be limited to, sketches, tracings, drawings, computations, details, design calculations, plan, electronic files and other related documents. The Engineer shall not be held liable for any reuse of the work and shall not be held liable for any modifications made to the work by others.

All invoices and correspondence relative to this Contract must contain the last 4 digits of the BOA account and Contract number.

**A Visa Order Form or Purchase Order constitutes as the Notice to Proceed.**

## **SECTION VI WORK CHANGES**

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the contract price and time for completion. All changes will be authorized by a written change order approved by the Procurement Department Director, or her designee. Work shall be changed and the contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the contract price resulting in a credit or a charge to the City shall be at cost. Any dispute concerning work changes which is not resolved by mutual agreement shall be decided by the City Manager who shall reduce the decision to writing. The decision of the City shall be final and conclusive.

## **SECTION VII CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Engineer pursuant to the Request for Proposal and Specifications on file in the Procurement Management Department of the City. All documents submitted by the Engineer in relation to said proposal, and all documents promulgated by the City for inviting proposals are, by reference, made a part hereof as if set forth herein.



## **SECTION VIII SOVERIEGN IMMUNITY**

Nothing contained in this Contract 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.

## **SECTION IX INDEMNIFICATION/ HOLD HARMLESS**

The Engineer agrees to indemnify, and hold harmless the City, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, to the extent caused by the negligence, recklessness, errors, omissions or other wrongful conduct of the Engineer, agents, laborers, subconsultants or other personnel entity acting under the Engineer's control in connection with the Engineer's performance of services under this Contract and to that extent the Engineer shall pay such claims and losses and shall pay all such costs and judgements which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the City in defense of such claims and damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of the Engineer or any agent laborers, subconsultants or employee of the Engineer regardless or whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by Consultant on the Work. Consultant must give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Contract. The Engineer must secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Contract for any reason, the Engineer must transfer such permits, if any, and if allowed by law, to the City. This indemnification must survive the termination of this Contract.

## **SECTION X INSURANCE**

The Engineer shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Engineer are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Engineer under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.



The Engineer shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis. Should scope of work performed by Engineer qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. A per project aggregate limit endorsement should be attached with a CG2026—Designated Person or Organization endorsement, or similar endorsement to its Commercial General Liability Policy. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. Coverage shall extend to independent Engineers and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests' provision as provided under the standard ISO form separation of insurers clause.

The Engineer shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Engineer does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Engineer to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis.

Engineer shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the obligation, to review and request a copy of Engineer's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Engineer warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Engineer shall agree to purchase a SERP with a minimum reporting period not less than three (3) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.



Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall read **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall include Contract #20200051 Design Services for Glades Cutoff Road 24" Force Main Project shall be listed as additionally insured."** The Certificate of Insurance and policy shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Engineer shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance. All independent Engineers and sub-consultants utilized in this project shall furnish a Certificate of Insurance to the City in accordance with the same requirements set forth herein.

The Engineer shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then Engineer shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. If Engineer, independent contractor or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Engineer/independent contractor/subcontractor.

It shall be the responsibility of the Engineer to ensure that all sub-consultants comply with the same insurance requirements referenced above.

All deductible amounts shall be paid for and be the responsibility of the Engineer for any and all claims under this Contract.

The Engineer may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation, to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A: VII or better. When a self-insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement.

A failure on the part of the Engineer to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.





## **SECTION XI PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS**

Subject to the laws of the State of Florida and of the United States, neither Consultant nor any subconsultant supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

## **SECTION XII COMPLIANCE WITH LAWS**

The Consultant shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. Consultant will comply with all requirements of 28 C.F.R. § 35.151. Consultants and subcontractors shall comply with § 119.0701, Fla. Stat. The Consultant and subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this Contract, unless the records are exempt from Art. I, § 24(a), Fla. Const. and § 119.07(1)(a), Fla. Stat. Pursuant to § 119.10(2)(a), Fla. Stat., any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in § 775.082 and § 775.083 Fla. Stat.

### **RECORDS**

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

Consultant agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service;

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
2. During the term of the contract, the Consultant shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Consultant's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.



4. The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
5. A Consultant who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

Upon request from the City's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

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 the consultant does not transfer the records to the City.

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

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**  
**121 SW Port St. Lucie Blvd.**  
Port St. Lucie, FL 34984  
**(772) 871 5157 - [pr@cityofpsl.com](mailto:pr@cityofpsl.com)**

### **SECTION XIII**

#### **ADDITIONAL REQUIREMENTS**

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply.

### **SECTION XIV**

#### **ASSIGNMENT**

Consultant shall not delegate, assign or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City.





## **SECTION XV TERMINATION**

If the Consultant refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in this Contract, or as may be modified in accordance with this Contract, the City by written notice to the Consultant, may terminate Consultant's rights to proceed. On such termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Consultant and his sureties shall be liable, to the City for any additional cost incurred by it in its completion of the work.

The City may terminate this Contract with or without cause by giving the Consultant thirty (30) calendar days' notice in writing. Upon delivery of said notice, the Consultant shall discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all related existing third party contracts. Termination of the Contract by the City pursuant to this paragraph shall terminate all of the City's obligations hereunder and no charges, penalties to other costs shall be due to the Consultant except work timely completed.

## **SECTION XVI LAW, VENUE AND WAIVER OF JURY TRIAL**

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken pursuant to this Contract shall be in St. Lucie County, Florida.

The Parties to this Contract hereby freely, voluntarily and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

## **SECTION XVII APPROPRIATION APPROVAL**

The Consultant acknowledges that the City of Port St Lucie's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. The Consultant agrees that, in the event such appropriation is not forthcoming, this Contract may be terminated by the City and that no charges, penalties or other costs shall be assessed.

## **SECTION XVIII TRUTH-IN-NEGOTIATIONS**

In accordance with the provisions of Section 287.055, Florida Statutes, the Consultant agrees to execute a truth-in-negotiations certificate and agrees that the original Contract price and any additions may be adjusted to exclude any significant sums by which the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

## **SECTION XIX CONFLICT OF INTEREST**

The City hereby acknowledges that the Consultant may be performing professional services for private developers within the Treasure Coast area. Should a conflict of interest arise between providing services to the City and/or



other the Cities, the Consultant shall terminate its relationship with the other the City to resolve the conflict of interest. The City Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal the Consultant shall disclose all of its Treasure Coast the City's and related Scope of Work.

## **SECTION XX PROHIBITION AGAINST CONTINGENT FEES**

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

## **SECTION XXI POLICY OF NON-DISCRIMINATION**

Consultant shall not discriminate against any person in its operations, activities or delivery of services under this Contract. Consultant shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

## **SECTION XXII SEVERABILITY**

The Parties to this Contract expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Contract is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Contract) and the remainder of this Contract, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Contract to be inequitable under the circumstances.

## **SECTION XXIII ENTIRE AGREEMENT**

The written terms and provisions of this Contract shall supersede any and all prior verbal or written statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or Contract documents.



**TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT**  
**Contract #20200051**

STATE OF FLORIDA       §  
COUNTY OF ST. LUCIE   §  
Palm Beach

Michael F. Schwartz

Before me, the undersigned authority, personally appeared affiant \_\_\_\_\_  
who being first duly sworn, deposes and says:

1. That the undersigned firm is furnishing this Truth in Negotiation Certificate pursuant to Section 287.055(5)(a) of the Florida Statutes for the undersigned firm to receive an agreement for professional services with the City of Port St. Lucie, St. Lucie County, Florida.

2. That the undersigned firm is a corporation which engages in furnishing professional engineering services and is entering into an agreement with the City of Port St. Lucie, St. Lucie County, Florida to provide professional services for a project known as **#20200051 Design Services for Glades Cutoff Road 24" Force Main Project**.

3. That the undersigned firm has furnished the City of Port St. Lucie, St. Lucie County, Florida a detailed analysis of the cost of the professional services required for the project.

4. That the wage rate information and other factual unit cost, which the undersigned firm furnished, were accurate, complete and current at the time the undersigned firm and the City of Port St. Lucie entered into the agreement for professional services on the project.

5. That the agreement which the undersigned firm and the City of Port St. Lucie entered into on this job contained a provision that the original agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the City of Port St. Lucie determines the agreement price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit cost and that all such agreement adjustments shall be made within one (1) year following the end of the agreement.

FURTHER AFFIANT SAYETH NAUGHT

\_\_\_\_\_  
Name of Firm  
\_\_\_\_\_  
Michael F. Schwartz  
Signed on 20200504 08:52:18 -4:00  
By: \_\_\_\_\_  
Authorized Representative

The foregoing instrument was acknowledged before me by Michael F. Schwartz

who has produced \_\_\_\_\_ N/A \_\_\_\_\_ tification or is personally known to me.

WITNESS my hand and official seal in the State of County last aforesaid this 4th \_\_\_\_\_ day of  
May \_\_\_\_\_, 2020.

(SEAL)



\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Lisa M. Hill  
\_\_\_\_\_  
Full Name (typed or printed)  
\_\_\_\_\_  
Title



Design Services for Glades Cutoff Road 24" Force Main

IN WITNESS WHEREOF, the parties have executed this Contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

KIMLEY-HORN & ASSOCIATES, INC.

By:   
City Purchasing Agent

By:   
Michael F. Schwartz  
Authorized Representative

State of: Florida

County of: Palm Beach


Before me personally appeared: Michael F. Schwartz through Remote On-Line Notarization  
(Please print)

Please check one:

Personally known \_\_\_\_\_  
Produced Identification: \_\_\_\_\_  
(Type of identification)

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 4th day of May, 2020.

  
Notary Public-State of Florida at Large.

My Commission Expires 05/18/2023

(Seal)





## Littrell 20200051-05 FINAL.pdf

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### E-Signature Summary

**E-Signature 1: Michael F. Schwartz (MFS)**

May 04, 2020 08:52:16 -8:00 [A39E8115D4FB] [174.48.185.39]  
 mike.schwartz@kimley-horn.com (Principal) (Personally Known)

**E-Signature Notary: Lisa M. Hill (LMH)**

May 04, 2020 08:52:16 -8:00 [A67C89028A80] [174.48.185.39]  
 lisa.hill@kimley-horn.com

I, Lisa M. Hill, did witness the participants named above electronically sign this document.

