


MEMORANDUM

DATE: September 19, 2022

TO: ****ORIGINAL****
City Clerk

FROM: Robyn Holder, CPPB 
Procurement Management Department

SUBJECT: Record Retention

CONTRACT: #20220036
CONTRACT TITLE: Design & Permitting Services for the New Regional Park Facility
on Torino Parkway

CONTRACTOR NAME: Kimley-Horn & Associates
ADDRESS: 10521 SW Village Green Center, Suite 103
CITY & STATE: Port St. Lucie, Florida 34987

COUNCIL APPROVED: 8/8/2022

AWARD CONTRACT #20220036 FOR THE DESIGN & PERMITTING SERVICES FOR THE
NEW REGIONAL PARK AT TORINO PARKWAY IN THE AMOUNT OF 257,920.00,
PARKS & RECREATION DEPARTMENT, PROCUREMENT MANAGEMENT

CONTRACT AMOUNT - \$257,920.00

CONTRACT TERM: 10/3/2022 through 6/30/2023, with no option to renew.



**CITY OF PORT ST. LUCIE
CONTRACT # 20220036**

This Contract is for Design Services for a New Regional Park Facility on Torino Parkway, executed this 20th day of September 2022, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City", and KIMLEY-HORN AND ASSOCIATES, INC., 1920 Wekiva Way, Suite 200, West Palm Beach, Florida 33411. Telephone (561) 845-0665 Fax (561) 863-8175, hereinafter called "Consultant" or "Proposer".

**SECTION I
RECITALS**

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

WHEREAS, Consultant is licensed in the State of Florida; and

WHEREAS, the City wishes to contract with a Consultant to provide the Design Services for a New Regional Park on Torino Parkway based on the terms and subject to the conditions contained herein; and

WHEREAS, Consultant is qualified, willing, and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Consultant to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon 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 II
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 or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

Consultant: Jonathan D. Haigh, Project Manager
Kimley-Horn and Associates, Inc.
1920 Wekiva Way, Suite 200
West Palm Beach, Florida 33411
Telephone: 561-845-0665 Fax: 561-863-8175
Email: Jonathan.haigh@kimley-horn.com

City Contract Administrator: Robyn Holder, CPPB
City of Port St. Lucie
Procurement Manager - Procurement Management Department
121 SW Port St. Lucie Boulevard, Port St. Lucie, FL 34984
Telephone: 772-344-4293 Fax: 772-871-7337
E-mail: RHolder@cityofpsl.com

City Project Manager: Kelly Boatwright, Senior Project Manager
City of Port St. Lucie – Parks & Recreation Department
2195 SE Airoso Blvd. Port ST. Lucie FL 34984
Telephone: 772-871-5099
Email: kboatwright@cityofpsl.com

SECTION III

DESCRIPTION OF SERVICES TO BE PROVIDED

The specific work that the Consultant has agreed to perform pursuant to the Request for Proposal (RFP) #20220036, Design Services for a New Regional Park Facility on Torino Parkway Project including all Attachments, Addenda, Specifications, and all other restrictions and requirements are incorporated by this reference.

The Consultant shall provide master planning, survey, environmental, and public involvement services for developing a master plan for Torino Regional Park. The project understanding, scope of services, schedule, and fee are outlined below.

Project Understanding

The purpose of this project is the preparation of a master plan for Torino Regional Park, a new regional park consisting of several City-owned parcels on the northwest side of Port St Lucie. The master planning process will consist of public and stakeholder engagement, site investigation services, presentations of master plan materials, and project cost estimating and phasing. A master plan document will be prepared with a rendered plan document, architectural floor plans and elevations, vignettes, programming narrative, an opinion of probable construction cost (OPCC), and proposed phasing for implementation. It is anticipated that the master plan will guide the first phase implementation and that the Client will require the Consultant to prepare plans and/or bidding specifications or criteria for use in soliciting bids from qualified contractors. As of the preparation of this proposal, the Client had not determined the method for implementation and construction.

Project Area

The parcels generally diagrammed below, consisting of several parcels owned by the City of Port St Lucie. The total area for all parcels is approximately 195.17 AC



Assumptions

- City staff will coordinate and schedule all meetings with adjacent property owners and stakeholders. City will provide space(s) to host meetings or will otherwise schedule the meeting locations. City will coordinate and schedule individual meetings with individual City Council members.
- Notifications or advertisements for public meetings and/or the preparation of direct mailings and postage to advertise public meetings will be paid for by the Client.
- Publicly available GIS data will be utilized for initial base plan development before survey services are completed.
- Grant consulting services for grant application and/or administration are not included but may be initiated by the Client as Optional Service.
- City of Port St Lucie will host, design, and manage a project web page to provide a public-facing destination for project updates, project links, and other project information. Kimley-Horn will assist the City in providing items for the posting on the City's web page.
- Part 1 services require limited architectural services provided by a subconsultant to Kimley-Horn, providing planning-level services to diagram floor plans and elevations and for preparation of an OPCC related to buildings. Construction/ permit/ bid documents are not included in this scope of services.
- Part 1 services require limited landscape architectural and engineering design services, providing planning-level services to prepare concept designs and for the preparation of an OPCC. Construction/ permit/ bid documents are not included in this scope of services.
- Survey services for Part 1 will be limited to a boundary survey and title commitment services to identify recorded easements. A topographic survey will be required to complete Part 2 services. Tree survey may also be required, dependent on City of Port St Lucie permitting requirements.
- It is anticipated that Part 2 services, for the preparation of construction, permit, and/or bid documents as well as bid specifications and/or design criteria will be provided under a separate agreement.

SCOPE OF SERVICES – PART 1, MASTER PLAN SERVICES

Kimley-Horn will provide the services specifically set forth below.

Task 1 - Project Kickoff & Data Collection

1.1 Kick-off Meeting. Kimley-Horn will prepare a kick-off meeting with the City's Project Manager and staff. During the call, City staff and key members of the Kimley-Horn team will collaborate to initiate the Master Plan and discuss scheduling and logistics. This call will occur within two (2) weeks of Notice to Proceed. A suggested agenda for the call is as follows:

- Scope of Services
- Responsibilities
- Project objectives and desired outcomes
- Communications and public involvement objectives and strategies
- Schedule and key dates
- Identifying stakeholder groups and focus groups participants
- Final master plan deliverable and approval

1.2 Monthly Project Status Calls. Kimley-Horn will facilitate bi-weekly coordination calls (up to eighteen (18) calls) with the Client's Project Manager and staff to discuss project progress, issues, upcoming events and activities. Kimley-Horn will host the call via MS Teams, prepare an agenda with input from City staff prior to the call, and prepare a meeting summary memorandum after each call.

1.3 Physical Site Assessment and Utilities Coordination. Consultant will utilize publicly available data for reference in the park master planning process. Data may include any previous studies, GIS maps, title research & easement information, previous environmental studies, utilities GIS data, and/or other available data.

Once data has been collected, the Consultant will prepare a base map for use prior to completion of the project survey. The Consultant will conduct a site visit to review and confirm base features and potential physical, regulatory or resource-based limitations that may impact development or use of the future park site. While on-site, Kimley-Horn staff may utilize handheld GPS units to confirm locations of field elements and incorporate into base mapping.

1.4 Opportunities and Constraints Diagram. Based upon the site investigation results, Kimley-Horn will synthesize key findings and prepare a diagram and summary of opportunities and constraints for the proposed development site. The diagram will identify vehicular and pedestrian ingress and egress for the site, environmental constraints, opportunity areas, potential program limitations, steep slopes, identifiable wetlands, buffer, screening or setback requirements, vegetation types and recommendations for preservation, and connectivity throughout the parcels and to the community.

the Consultant will also review guiding documents and identify relevant goals, objectives or actions that may have impacts on the planning of Torino Regional Park. Documents may include:

- City of Port St. Lucie Parks and Recreation 10-Year Master Plan: Tomorrow Begins Today

- City of Port St. Lucie Comprehensive Plan (with amendments)

Kimley-Horn will submit the draft Opportunities and Constraints Diagram to the City for review prior to commencing the public engagement phase. City staff will provide one (1) consolidated set of comments to Kimley-Horn which will be incorporated into a final set of notes and diagram.

1.5 Professional Survey Services. A subconsultant to Kimley-Horn will perform the following professional survey services:

Preparation of a Boundary Survey for the approximately 190 acres, adhering to the Minimum Technical Standards as set forth by the Board of Surveyors and Mappers pursuant to Rule 5J-17 of the Florida Administrative Code.

The Boundary Survey will depict the following:

- Horizontal datum will be based on the East Zone of the Florida State Plane Coordinate System.
- Have 5 vertical control points for future construction. Vertical datum will be dependent on nearest vertical control to project.
- Locate above ground improvements to the centerline of the adjacent Right-of-Ways.
- Rim, invert and pipe sizes of assessable storm and sanitary lines.
- Title commitment services for all tracts.
- Depict all easements and Right-of-Ways
- Tree location (tree survey) services is not included.
- Topographic survey services are not included.

1.6 Environmental Assessment. Consultant will perform the following professional environmental services:

- Up to three days of field assessment by Consultant's environmental professional staff to:
 - Map habitats and review potential for listed species usage.
 - Map habitat and conduct general listed species survey, or identification of suitable habitat to support listed species.
 - Delineate onsite wetlands and surface waters.
 - Perform 15% gopher tortoise survey in accordance with FWC's Gopher Tortoise Permitting Guidelines
- Prepare environmental memo of our survey results and findings. The report will also identify potential permitting requirements: scope of gopher tortoise relocation plan if this species is found onsite and a listing of potential State and Federal permits required.

Task 1 Project Kickoff & Data Collection Deliverables:

- Kickoff Meeting Notes
- Base Map with Aerial Photography

- Part 1 project survey as noted above
- Environmental Mapping and Report
- Opportunities and Constraints Diagram (Draft & Final Versions)

Task 2 - Public Engagement and Program Definition

2.1 Public Engagement Website. Kimley-Horn will provide content for a City hosted and designed project web page. It is our understanding that the website will feature project schedule information, public event information, and digital postings of interim and final work products for public access. Should the City choose to post a link to a project survey, Kimley-Horn will provide the content/questions for the survey or can send the City a SurveyMonkey (or similar) link for use in posting to the project web page.

2.2 Stakeholder Interviews. Kimley-Horn will facilitate a series of up to nine (9) stakeholder interviews over a period of three days. Participants will be identified by City staff and may include:

- City of Port St. Lucie Mayor
- City of Port St. Lucie Vice Mayor
- City of Port St. Lucie; District 1 Councilperson
- City of Port St. Lucie; District 2 Councilperson
- City of Port St. Lucie; District 3 Councilperson
- City of Port St. Lucie, City Manager
- City of Port St. Lucie Parks and Recreation Director
- City of Port St. Lucie Public Works Director
- Treasure Coast Sports Commission; Executive Director

2.3 Public Workshop. Kimley-Horn will facilitate a Town-Hall style meeting. Kimley-Horn will prepare a meeting agenda with input from City staff, prior to the meeting. Kimley-Horn will submit draft agenda and other display materials to City staff prior to the meeting for review. Kimley-Horn will finalize materials based on comments from the City and produce presentation materials. The City will be responsible for all meeting logistics, including participant invitations and advertisements. Kimley-Horn will document the meeting with notes and submit to the City for review. The City will be responsible for providing American Disability Act (ADA) notices for meeting advertisements.

2.4 Focus Groups. In coordination with the Public Workshop, Kimley-Horn will conduct a series of up to six (6) online focus group meetings with approximately 8-12 participation each. Participants and group topics will be identified in coordination with City staff. The City will be responsible for determining participants, scheduling meeting venue, and sending invites for each meeting. Kimley-Horn will document each meeting with notes and submit to the City for review.

2.5 Recommendation of Program. As an outcome of the development and review of the Opportunities and Constraints of the site and public engagement input, Kimley-Horn will prepare a Programmatic Plan. The plan will identify the relationships between program needs, demands, and site constraints. The plan will include a 'bubble' diagram that identifies form and function of the program, circulation, and sustainable park design. Information will be provided to City staff for a review period and staff will provide a consolidated set of

comments for revisions needed for the diagram(s). Kimley-Horn will provide one (1) round of revisions to the diagram(s) based upon written comments and authorization from the City.

Task 2 Public Engagement and Program Definition Deliverables:

- Project Public Engagement Website
- Stakeholder Interview Notes
- Public Workshop Meeting Notes
- Focus Group Meeting Notes
- Programmatic Plan (Draft & Final Versions)

Task 3 - Conceptual Plan Development

3.1 Conceptual Master Plan Development. As a derivative of the planning process to-date, Kimley-Horn will prepare up to two (2) initial conceptual master plan packages, each highlighting an alternative development based upon site analysis, public input and program definition. The packages will consist of the following items:

- An illustrative concept plan
- Preliminary phasing diagram
- Summary of benefits and constraints for each concept

Kimley-Horn will submit the package(s) to the City for review. City staff will provide a consolidated set of comments for review by Kimley-Horn prior to Task 3.2.

3.2 Review with City Staff and City Council. Kimley-Horn will facilitate a conference call (via MS Teams) with City staff to review and discuss consolidated comments provided as part of the Conceptual Master Plan Development. Kimley-Horn will incorporate comments into a round of revisions for materials to be used for the virtual public workshop. Kimley-Horn will also present the concepts to the City Council, at individual meetings, for concept input:

- City of Port St. Lucie Mayor
- City of Port St. Lucie Vice Mayor
- City of Port St. Lucie; District 1 Councilperson
- City of Port St. Lucie; District 2 Councilperson
- City of Port St. Lucie; District 3 Councilperson

3.3, Public Workshop. Kimley-Horn will conduct an online Town-Hall style meeting to review conceptual plans and gather feedback from the community. The project website will be updated prior to the Public Workshop including the Conceptual Master Plans. Kimley-Horn will prepare a meeting agenda with input from City staff, prior to the meeting and submit materials to the City prior to the meeting for review. Kimley-Horn will finalize materials based on comments from the City and produce presentation materials. The City will be responsible for all participant invitations and advertisement. Kimley-Horn will document the meeting with notes and submit to the City for review. The City will be responsible for providing American Disability Act (ADA) notices for meeting advertisements.

3.4 Master Plan Development. Based upon input from the public workshop and City staff, Kimley-Horn will consolidate materials into a single, preferred conceptual plan which will be used to prepare a Master Plan. Kimley-Horn will submit a single plan (in PDF format), The City will provide a consolidated set of comments for review and discussion via phone call.

Task 3 Conceptual Plan Development Deliverables:

- Draft Conceptual Master Plan(s)
- Revised Draft Conceptual Master Plan(s)
- Public Online Workshop Notes
- Draft Master Plan

Task 4 - Master Plan and Approval

4.1 Draft Master Plan Document. Kimley-Horn will complete revisions to the preferred master plan as identified and agreed upon during the coordination call with City Staff. The Draft Master Plan will include a phasing plan for the preferred master plan. The phasing plan will identify the number of phases of construction, timeframe for each phase, ballpark design fees for construction documents, draft OPCC, and implementation recommendations.

A revised Master Plan will be submitted in digital (Adobe PDF) format along with a draft PowerPoint presentation for use in presentations to the public and City Council.

4.2 City Staff Review. Kimley-Horn will facilitate one (1) conference call (via MS Teams) with City staff to review and discuss consolidated comments provided as part of the Draft Master Plan.

4.3 Revisions and Final Master Plan Document. Kimley-Horn will complete revisions as identified and agreed upon during the City Staff Review. A revised Final Master Plan document will be submitted in digital (Adobe PDF) format along with a revised PowerPoint presentation for use in presentations to the public and City Council.

4.4 Public Presentation. Kimley-Horn will facilitate a public presentation open to residents and the public. At the determination of the City, an online Town-Hall style meeting may be substituted for an in-person public presentation. The project website will be updated prior to the Public Workshop. Kimley-Horn will submit draft agenda and other display materials to City staff prior to the meeting for review. Kimley-Horn will produce presentation materials and sign-in sheets, as well as post the Final Master Plan material to the project's public engagement website for review and comment. The City will be responsible for all meeting logistics, including meeting room reservation, participant invitations, and audio-visual equipment. Kimley-Horn will document the meeting with notes and submit to the City for review. The City will be responsible for providing American Disability Act (ADA) notices for meeting advertisements.

4.5 City Council Presentation and Approval. Kimley-Horn will provide one (1) presentation to the City Council to review key elements of the Master Plan for approval or adoption. Submittals will include a MS PowerPoint presentation. City staff will be responsible for all meeting logistics and coordination of agenda items.

Task 4 Master Plan and Approval Deliverables:

- Revised Final Master Plan document in digital format (Adobe PDF)
- Draft Phasing and OPCC
- Master Plan Presentation in digital format (MS PowerPoint & Adobe PDF)
- Public Presentation Meeting Notes
- Project Files on Thumb Drive

Task 5 - Architectural Subconsultant services

A subconsultant to Kimley-Horn will perform the following professional architectural services related to the scope noted above:

- Participation in the project kick-off meeting
- Participation in up to two public workshops to be held in person in Port St Lucie
- Participation in up to five Client meetings (conference calls)
- Participation in up to four in-person meetings with the Client and/or stakeholders
- Meeting with Client for field review of existing City Park facilities
- Assistance in conceptual programming and floor plan layouts for up to four buildings – assumed to be potential restrooms, storage, maintenance, small community center (flex meeting spaces, offices, indoor athletics, teen rooms, etc), custom shelters, or similar recreation-related facilities.
- Preparation of proposed floorplans for incorporation into a masterplan document with conceptual elevations prepared as 2-D black and white drawings.
- Preparation of opinion of Probable Construction Cost for architectural elements.

OPTIONAL SERVICE – GRANT WRITING ASSISTANCE

Upon authorization by the Client, the Consultant can provide the Grant Writing Assistance Services described below.

OPT 1.1 - Identify Funding Opportunities (\$5,000 Lump Sum) : Consultant will schedule a virtual meeting with the City to determine project funding priorities and associated timelines. With this information, Consultant will conduct a grant and loan funding search of Federal, State, Municipal, or other non-governmental sources that suit the City's profile. Consultant will prepare a memorandum presenting our findings, associated specifics, deadlines, and suggested actions. Consultant will present findings at a virtual meeting with the Client to present the memorandum and discuss next steps.

Scope and fees for the following Optional Services tasks will be proposed by the Consultant after completion of OPT 1.1 and the number and complexity of the grants are determined.

OPT 1.2 - Grant Kick-Off and Ongoing Coordination: We will prepare for and facilitate a kick-off meeting with City Staff to review application requirements and details. Related to tasks OPT 1.3 and OPT 1.4, Consultant will assist the City in the scheduling of meetings, the development of timetables, proposal language and the development of the grant and/or loan application. The following are expected to be covered during project coordination meetings:

- Consultant will provide the City with a list of necessary materials that may be in the possession of the City or another City consultant. Consultant will review with the City the timeliness of the receipt of materials requested. It is understood that if materials are required, and not provided by the City in a timely manner, the Consultant may not be able to prepare and submit the grant to the relevant agency, or organization.
- Consultant will review the application timelines which may include, but not limited to, question and answer periods, application submittal deadline, application review and evaluation period, award date, and project completion date.
- Consultant and City will identify mutually beneficial partnerships that may supplement the application, as applicable. This supplemental information has typically consisted of letters of support from other stakeholders such as adjacent municipalities, not-for profits, community organizations, hospitals, economic development organizations, elected officials and Congressional Delegates.

OPT 1.3: Preparation and Writing of Tailored Applications: Upon identifying the grant opportunity(ies), Consultant will assemble a technical writing and grant and/or loan preparation team tasked to conduct a specific review of each grant and/or loan requirements, including timeframe for submittal. The Consultant may perform the following services under this task:

- Provide consultation, planning, and strategizing with City throughout the process.
- Understand the compliance guidelines provided for the grant and/or loan applications and advise the City of such requirements.
- Prepare and ask questions for clarity during available question and answer periods.
- Develop timelines and the strategy to ensure timely submission of the application.
- Develop a budget level opinion of project costs as requested by the application
- Structure workflow and execute plan for the grant and/or loan applications application.
- Collaborate with appropriate stakeholders to obtain signatures, data, forms, etc.
- Locate, identify, research, collect, and analyze data as set forth in the grant and/or loan application guidelines.
- Provide research assistance, if necessary.
- Develop language for both the grant and/or loan application narratives and data including, if necessary, charts, tables, and diagrams to illustrate data.
- Prepare supplemental documents required for grant and/or loan application completion.
- Prepare grant and/or loan application with required documents.

OPT 1.4: Grant Application Submittal, Evaluation, and Monitoring: Consultant will collaborate with the City for submittal the grant and/or loan application to the agency and/or organization in the method required under the grant and/or loan. Consultant will monitor the evaluation process of the agency or organization and apprise the City of status of award notifications. Consultant will review the draft application with City and make one round of revisions prior to submitting the grant application.

Additional Services

Any services not specifically provided for in the above scope will be considered additional services and performed under a project amendment to be approved by the Client. Additional services we can provide include, but are not limited to, the following:

- Individual Permit applications
- Phase I or Phase II archaeological investigations
- Investigations regarding hazardous materials, waste, or contamination
- Groundwater studies or analysis
- Geotechnical investigation
- Ground Penetrating Radar (GPR) and/or Subsurface Utility Exploration (SUE) services
- Traffic studies or engineering
- Any meetings not specifically identified above requested by the Client or on the Client's behalf by a third party to this Agreement
- Preparation of Design Criteria information for Design/Build contractor bidding
- Bidding or Construction Documents, including but not limited to drawings or specifications
- Construction Phase Services, including but not limited to a Pre-Construction Conference

Information provided by City

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Available ATLA / NSPS Survey or other location survey from land closing
- Available Title Policy including all referenced documents from land closing
- Available existing as-built information in the vicinity of the project area, including utilities.

Schedule

Consultant will propose a project schedule to be reviewed with the Client at the Project Kick-Off Meeting. The Consultant will develop a final project schedule following the Project Kick-Off Meeting with mutually agreed upon timelines during that meeting, identifying public meeting dates and other key milestones.

The Consultant shall not be held responsible for any delays in time of completion resulting from the following:

- Client's failure to carry out any of their responsibilities in a timely manner.
- Additional Services requested by the Client.
- Any other circumstances beyond the control of the Consultant.

SECTION IV **TIME OF PERFORMANCE**

Contract period shall begin on October 3, 2022 and terminate two hundred seventy (270) calendar days thereafter on June 30, 2023. 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 Project Manager until all work specified in the proposal specifications has been rendered and approved by the City.

Unless indicated otherwise, the Consultant shall commence work within ten (10) days after receiving the fully executed contract.

SECTION V **RENEWAL OPTION**

Not applicable to this contract.

SECTION VI **COMPENSATION**

This is a Lump Sum Contract per the Fee Schedule Table below, with a Contract total of **\$257,920.00**. The City will send an Authorization to the Consultant to provide the City with the Optional Services it specifies on the Authorization. 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.

Payments will be disbursed in the following manner:

Task 1, Data Collection and Review	\$ 40,560
Task 1.5 Survey Subconsultant	\$ 80,800
Task 2, Public Engagement and Program Definition	\$ 34,425
Task 3, Concept Plan Development	\$ 25,180
Task 4, Master Plan and Approval	\$ 23,500
Task 5, Architectural Subconsultant Services	\$ 48,455
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Total Fee	\$ 252,920
Optional Task OPT 1.1, Identify Grant Funding Opportunities	\$ 5,000
Total Fee with Optional Task OPT 1.1	\$ 257,920

Invoices for services shall be submitted once a month, by the 10th of the month, and payments shall be made net thirty (30) days unless Consultant has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Payments shall be made provided the submitted invoice is accompanied by adequate supporting documentation and approved by Project Manager as provided in Section XV.

The Consultant 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.

No payment for projects involving improvements to real property shall be due until the Consultant delivers to City a complete release of all claims arising out of the Contract or receipts in full in lieu thereof, and an affidavit on his personal knowledge that the releases and receipts include labor and materials for which a lien could be filed. Consultant shall use the lien waiver template provided in the Florida Statutes.

All invoices and correspondence relative to this Contract must contain the City's Contract number and Purchase Order number, detail of services with prices that correspond to the Contract, and a unique invoice number.

In the event the City deems it expedient to perform work which has not been done by the Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, at the City's option, will be invoiced to the Consultant and/or deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

All invoices are to be sent to: City Project Manager's email address and APNOTIFICATIONS@CITYOFPSL.COM.

All payments not made within the time specified by this section shall bear interest from 30 calendar days after the due date at the rate of one (1) percent per month on the unpaid balance.

Taxes. Consultant is responsible for all federal, state, and local taxes and other charges related to the performance of this contracts.

SECTION VII **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. Any and all changes must be authorized by a written change order signed by the City's Purchasing Agent or his designee as representing the City. 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 determined by mutual agreement of the parties before starting the work involved in the change. 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 VIII **CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Consultant pursuant to the Solicitation and Specifications on file in the Procurement Management

Department of the City. All documents submitted by the Consultant 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 in full.

SECTION IX **INDEMNIFICATION/HOLD HARMLESS**

Consultant 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, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant, its agents, laborers, subconsultants or other personnel acting under Consultant in connection with the Consultant's performance of services under this Contract. This indemnification shall survive the termination of this Contract.

SECTION X **SOVEREIGN 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 XI **INSURANCE**

The Consultant 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 Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant 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 sovereign 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.

1. Workers' Compensation Insurance & Employer's Liability: The Consultant 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 Consultant 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.

2. Commercial General Liability Insurance: The Consultant shall agree to maintain 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

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage shall apply as primary and non-contributory. A waiver of subrogation shall be provided in favor of the City. Coverage shall extend to independent Consultants 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.

Except as to Workers' Compensation, Employers' Liability, and Professional 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 and shall include Contract # 20220036 – Design Services for a New Regional Park Facility on Torino Parkway Project shall be listed as additionally insured.**". The Policies 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 Consultant 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 shall be attached to the Certificate of Insurance.

4. Automobile Liability Insurance: The Consultant 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 Consultant does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Consultant 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 and non-contributory basis.

5. Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 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 Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Consultant 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, Consultant shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.
6. Waiver of Subrogation: The Consultant 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 Consultant 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. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Consultant enter into such a Contract on a pre-loss basis.
7. Deductibles: All deductible amounts shall be paid for and be the responsibility of the Consultant for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of the Consultant to ensure that all Consultants, independent Consultants and/or subconsultants comply with the same insurance requirements referenced herein. It will be the responsibility of the Consultant to obtain Certificates of Insurance from all Consultants, independent Consultants, and sub-Consultants, listing the City as an Additional Insured without the language when required by written contract. If Consultant, independent Consultant or subconsultant maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Consultant/independent Consultant/subconsultant.

The Consultant 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 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.

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

SECTION XII **ACTS OF GOD**

The Consultant shall be responsible for all preparation of the site for Acts of God, including but not limited to; earthquake, flood, tropical storm, hurricane or other cataclysmic phenomenon of nature, rain, wind or other natural phenomenon of normal intensity, including extreme rainfall. No reparation shall be made to the Consultant for damages to the Work resulting from these Acts. The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

Emergencies – In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the Consultant, or his designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. In the event such actions are taken, the Consultant shall promptly give to the City written notice and contact immediately by phone, of any significant changes in work or deviations from the Contract documents caused thereby, and if such action is deemed appropriate by the City a written authorization signed by the City covering the approved changes and deviations will be issued.

SECTION XIII **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 Sub-Consultant 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 XIV **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 Sub-Consultant, shall comply with [§ 119.0701, Fla. Stat.](#) The Consultant and Sub-Consultant, 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. \(2013\)](#). 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;

- 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](#).
- 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.
- 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/subconsultant invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.
- The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
- 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

SECTION XV
INSPECTION AND CORRECTION OF DEFECTS

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Project Manager shall make inspection as soon as practicable after receipt from the Consultant of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Project Manager shall approve the invoice when it is received. Thereafter the Consultant shall be entitled to payment, as described in Section VI. If, on such inspection the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Consultant shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Project Manager. Upon failure of the Consultant to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five (5) days written notice to the Consultant, the City may, without prejudice to any other remedy he may have, correct such deficiencies. The Consultant shall be charged all costs incurred to correct deficiencies. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Consultant of his responsibility to remedy any deviation, deficiency, or defect.

Authority - The Consultant is hereby informed that City inspectors are not authorized to alter, revoke, enlarge, or relax the provisions of these specifications. They are not authorized to approve or accept any portion of the completed work, or instructions contrary to the specifications. An inspector is placed on the project (or sent to the location of materials) to inspect materials being used in the work and to observe the manner in which the work is being performed and to report the progress of the work to the City. The inspector shall have the authority to reject defective materials or suspend any work that is being improperly done subject to the final decision of the City.

Notification – The Consultant shall be responsible to give twenty-four (24) hour notification to the City, when field observations are required.

Deductions - In the event the City deems it expedient to perform work which has not been done by the Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, in the City's option, will be invoiced to the Consultant and/or may be deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

SCRUTINIZED COMPANIES

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to Section 215.473, Florida Statutes <https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/GlobalGovernanceMandatesandFlorida%20Statutes20190129.pdf?ver=2019-01-29-130006-790>.

SECTION XXVII CONTRACT ADMINISTRATION

Amendments. The City and the Consultant agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract. The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the City and the Consultant.

Fiscal Year- All reference to Fiscal Year shall mean the City's Fiscal Year. The City's Fiscal Year is from October 1st through September 30th.

Integration of Terms. This Contract represents the entire contract between the parties. The parties shall not rely on any representation that may have been made by either party which is not included in the Contract.

Joint Venture. Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the vested parties. Each party shall be deemed to be an independent Consultant contracting for the services and acting toward the mutual benefits expected to be derived from the mutually agreed upon contract. Neither Consultant nor any of Consultant's agents, employees, subconsultants or Consultants shall become or be deemed to become agents, or employees of the City. Consultant shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subconsultants, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

Notice(s). Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Fed-EX, UPS, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the contract. Each such notice shall be deemed to have been provided:

1. Within one (1) day in the case of overnight hand delivery, courier or Services such as Fed-Ex or UPS with guaranteed next day delivery; or,
2. Within seven (7) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person or their designees and/or address shall be in writing to the other party and as provided herein.

Performance by Industry Standards. The Consultant represents and expressly warrants that all aspects of the Services provided or used by it shall, at a minimum, conform to the Standard of Care in the Consultant's industry, which is the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

Permits, Licenses, and Certifications. The Consultant shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The Consultant shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the City's contract, and return it with the signed contract and insurance documents.

Supersedes Former Contracts or Agreements. Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the City and the Consultant for the Services provided in connection with the Contract.

Use of Name or Intellectual Property. Consultant agrees it will not use the name or any intellectual property, including but not limited to, City trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the City.

Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the City and the Consultant, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach. Each waiver, if mutually agreed upon, shall be published as a contract amendment.

SECTION XVIII **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.

City's Public Relations Image – The Consultant's personnel shall at all times handle complaints and any public contact with due regard to the City's relationship with the public. Any personnel in the employ of the Consultant involved in the execution of work that is deemed to be conducting him/herself in an unacceptable manner shall be removed from the project at the request of the City Manager.

Contractual Relations. - The Consultant(s) are advised that nothing contained in the contract or specifications shall create any contractual relations between the City and Sub-Consultant of the Consultant(s).

Cooperative Purchasing Agreement. - This contract may be expanded to include other governmental agencies provided a cooperative purchasing agreement exists or an inter-local agreement for joint purchasing exists between the City of Port St. Lucie and other public agencies. Consultant(s) may agree to allow other public agencies the same items at the same terms and conditions as this contract, during the period of time that this contract is in effect. Each political entity will be responsible for execution of its own requirements with the Consultant.

Patent Fees, Royalties, and Licenses - If the Consultant requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the Consultant and his surety shall indemnify and hold harmless the City from any and all claims for infringement in connection with the work agreed to be performed. The Consultant shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

Permits - The Consultant shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The Consultant shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the City's contract, and return it with the signed contract and insurance documents

SECTION XIX **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 XX **TERMINATION**

Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the City to declare the Consultant in default of its obligations under the contract:

1. The Consultant fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the contract, including, but without limitation, the express warranties made by the Consultant;
2. The Consultant fails to make substantial and timely progress toward performance of the contract;
3. In the event the Consultant is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect;
4. The Consultant becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Consultant terminates or suspends its business; or the City reasonably believes that the Consultant has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

5. The Consultant has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the contract;
6. If the City determines that the actions, or failure to act, of the Consultant, its agents, employees or subconsultants have caused, or reasonably could cause, life, health or safety to be jeopardized;
7. The Consultant has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
8. The Consultant furnished any statement, representation or certification in connection with the contract, which is materially false, deceptive, incorrect or incomplete.

Notice of Default. If there is a default event caused by the Consultant, the City shall provide written notice to the Consultant requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Consultant. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

1. Immediately terminate the contract without additional written notice(s); and/or
2. Enforce the terms and conditions of the contract and seek any legal or reasonable remedies; and/or
3. Procure substitute services from another source and charge the difference between the contract and the substitute contract to the defaulting Consultant

Termination for Convenience. The City may, at any time, with or without cause, or for its convenience terminate all or a portion of the Contract upon thirty (30) days written notice to successful Consultant Any such termination shall be accomplished by delivery in writing of a notice to Consultant. Following termination without cause, the Consultant shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the contract to the City up to the time of termination, pursuant to Florida law.

Termination for Non-Appropriation. The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under the awarded contract, the City will have the right to terminate the contract, without penalty, on the last day of the fiscal period for which funds were legally available.

SECTION XXI

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 to enforce 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 XXII

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 XXIII **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 XXIV **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 with employees working on Contract # 20220036 (Design Services for a New Regional Park Facility on Torino Parkway) between providing services to the City and/or other clients, the Consultant shall terminate its relationship with the other client 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 clients and related Scope of Work.

SECTION XXV **PUBLIC RECORDS / TRADE SECRETS / COPYRIGHT**

The Proposer's response to the City's proposal request is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, [Florida Statutes Chapter 119.07](#) ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this City's proposal request and the Contract to be executed as subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the Solicitation purporting to require confidentiality of any portion of the Proposer's response to the Solicitation, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the Solicitation constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE SOLICITATION AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE SOLICITATION OR ANY PART THEREOF AS COPYRIGHTED.

SECTION XXVI
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 XXVII
ATTORNEY'S FEES

If this matter is placed in the hands of an attorney for collection, or in the event suit or action is instituted by the City to enforce any of the terms or conditions of the Contract, Consultant shall pay to the City, in such suit or action in both trial court and appellate court, the City's costs, and reasonable attorney's fees for the anticipated cost of collection and judgment enforcement.

SECTION XXVIII
CODE OF ETHICS

Consultant warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in [Chapter 112.311 et seq.](#), Florida Statutes, and Code of Ethics Ordinances in [Section 9.14 of the City of Port St. Lucie Code](#).

SECTION XXIX
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 XXX
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 XXXI **AUDITS**

The Consultant shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the City throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Consultant shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Consultant relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Consultant shall not impose a charge for audit or examination of the Consultant's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Consultant for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

SECTION XXXII **ORDER OF PREFERENCE**

In the case of any inconsistency or conflict among the specific provisions of the this Contract (including any amendments accepted by both the City and the Consultant attached hereto), the eRFP (including any subsequent addenda and written responses to bidders' questions), and the Consultant's Response, any inconsistency or conflict shall be resolved as follows:

- (i) First, by giving preference to the specific provisions of this Contract.
- (ii) Second, by giving preference to the specific provisions of the eRFP.
- (iii) Third, by giving preference to the specific provisions of the Consultant's Response, except that objections or amendments by a Consultant that have not been explicitly accepted by the City in writing shall not be included in this Contract and shall be given no weight or consideration.

SECTION XXXIII **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.

(Balance of page left intentionally blank)

TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT

STATE OF FLORIDA §
COUNTY OF ST. LUCIE §

Before me, the undersigned authority, personally appeared affiant Michael F. Schwartz, P.E., 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 Design Services for a New Regional Park Facility on Torino Parkway, Contract #20220036.

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 include 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

Kimley-Horn and Associates, Inc.
Name of Firm

By: Senior Vice President

The foregoing instrument was acknowledged before me by Michael F. Schwartz who has produced _____ as identification or is personally known to me.

WITNESS my hand and official seal in the State of County last aforesaid this 16th day of August, 2022
(SEAL)



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Contract #20220036

Lisa M. Hill

Signature

Lisa M. Hill

Notary Name (typed or printed)

Notary Public - State of FL

Title or Rank