STANDARD AGREEMENT
BETWEEN
CITY OF STUART AND CONSULTANT
FOR PROFESSIONAL SERVICES

PROJECT: RFQL #2019-301: PROFESSIONAL ENGINEERING SERVICES FOR 1.0 MGD REVERSE OSMOSIS WATER TREATMENT PLANT

CONSULTANT: KIMLEY-HORN
1920 Wekiva Way Suite 200
West Palm Beach, Florida 33411

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, hereinafter "Contract," made and entered into the ____ day of _____, 2019 by and between **Kimley-Horn**, hereinafter referred to as "CONSULTANT" and the City of Stuart, Florida, a municipal corporation, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter referred to as "CITY", for and in consideration of the following terms, conditions and covenants.

I. PURPOSE OF AGREEMENT

CITY intends to enter into a contract with CONSULTANT to provide engineering design and construction engineering and inspection (CEI) services for a 1.0 MGD Reverse Osmosis Water Treatment Plant on an "as needed" basis, ordered through the issuance of work authorizations; and the payment for those services by CITY as set forth below.

II. SCOPE OF SERVICES

CITY enters into this contract with CONSULTANT for provision of Professional Services associated with the project described above. The CONSULTANT agrees it will perform those professional services for the fees stipulated below. The detailed scopes of services to be performed are as follows:

1. Attendance at project meetings
2. Public presentations to the Commission, Staff, and Public
3. Review of existing water supply and treatment processes

4. Boundary and topographic survey
5. Geotechnical evaluation
6. Site plan development
7. Engineering
8. Preparation of construction documents (plans, notes, details, and technical specifications)
9. Preparation of cost estimates
10. Regulatory permitting
11. Preparation of grant applications
12. Value engineering
13. Preparation of bid solicitation packages
14. Attendance at pre-bid meetings and bid openings
15. Construction inspections
16. Preparation of project close-out documents
17. And other tasks as identified

III. AGREEMENT PROVISIONS

Section 1. Agreement

1.1 Term of Agreement

The effective date of this Agreement shall be as approved/adopted by City Commission Plant on an "as needed" basis, ordered through the issuance of work authorizations until completion of the project.

1.2 Continuing Services Agreement

At the option of the City, and upon the agreement of the Professional, this Contract may be converted to or replaced at any time with a "Continuing Services Contract" as that term is used in Section 287.055, et seq, Florida Statutes (CCNA).

Section 2. Work Authorization

Each "Work Authorization" shall specify the Period of Service agreed to by the City and the Professional for services to be rendered under said "Work Authorization".

CITY will compensate Professional for services under each Work Authorization. The fee due to the Professional shall be set forth in each Work Authorization and shall be in accordance with Professional's personnel hourly rate schedule formalized in "**Exhibit C**" to this Agreement. Professional's personnel hourly rate schedule will be valid for the term of this agreement.

Section 3. Compensation and Method of Payment

3.1 Fee Schedule/Reimbursable Expenses

Professional's personnel hourly rate schedule formalized in "**Exhibit C**" shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out of pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long distance telephone, etc.

3.2 Invoices

CONSULTANT shall submit an invoice to the CITY upon completion of the Scope of Service as defined by the work authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the work authorization, date worked and all ancillary expenses incurred and by whom.

3.3 Payment

Payment for services rendered is due within thirty days of receipt and approval of invoice by City. Payment is delinquent 30 days following receipt and approval of invoice by CITY, unless Contractor accepts the Visa Pcard.

If Contractor acknowledges acceptance of purchasing VISA card, all payments for services rendered shall be compensated within 10 days of invoice approval by the City. City shall not pay any service charges or fees for Pcard transactions.

Section 4. Additional Services

4.1 Requests for Additional Services

The undertaking by the CONSULTANT to perform additional professional services will be defined by an individual work authorization or by amendment to the existing work authorization. If upon the request of the CITY, the CONSULTANT agrees to perform additional services hereunder, the CITY shall pay the CONSULTANT for the performance of such additional services an amount based on the hourly fee in accordance with CONSULTANT's current professional fee schedule, Exhibit C.

4.2 Changes in Scope/Conditions

The undertaking by the CONSULTANT to perform professional services defined within this Contract extends only to those services specifically described in each work authorization that alters or changes the existing scope; a change order reflecting such services will be based on an hourly fee in accordance with CONSULTANT's current professional fee schedule, plus reimbursable expenses so incurred by the CONSULTANT.

Section 5. Use of Documents

5.1 Ownership of Original Documents

All deliverable analysis, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the CONSULTANT'S services or have been created during the course of the CONSULTANT'S performance under this Contract shall become the property of and shall be delivered to the CITY after final payment is made to the CONSULTANT.

5.2 Photographs

Photographs of any completed project embodying the services of the CONSULTANT provided hereunder may be made by the CONSULTANT and shall be considered as its property, and may be used by it for publication.

Section 6. Termination

6.1 Termination for Convenience

Either party upon a thirty (30) day written notice to the other party may terminate this Contract. In the event of any termination, CONSULTANT shall be paid for all services rendered to the date of termination including all reimbursable expenses.

6.2 Termination for Cause

The performance of the Agreement may be terminated by the CITY of Stuart in accordance with this clause, in whole or in part, in writing, whenever the CITY shall determine that the CONSULTANT has failed to meet performance requirement(s) of the Agreement. If the successful CONSULTANT should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should fail to provide properly skilled personnel or proper service in the sole discretion of the CITY, then the CITY can, after giving the CONSULTANT seven (7) days written notice, and without prejudice to any other right or remedy, terminate this agreement.

Section 7. CITY Obligations

7.1 Data to be Furnished

CITY shall provide the following information or services as required by CONSULTANT to complete the terms of the Agreement:

7.2 Designated Representative

The Designated Representative of the CITY to act with authority on the ClTY's behalf with respect to all aspects of the Project is Tim Voelker, P.E., Assistant Public Works Director. This designation may be delegated by the Public Works Director to another person provided such delegation is done in writing provided to the CONSULTANT.

Section 8. Persons Bound by Agreement

8.1 Parties to the Agreement

The persons bound by this Contract are the CONSULTANT and the CITY and their respective partners, successors, heirs, executors, administrators, assigns and other legal representatives.

8.2 Assignment of Interest in Agreement

This Contract and any interest associated with this Contract may not be assigned, sublet or transferred by either party without the prior written consent of the other party. The city may grant consent based upon the following factors: The qualifications of the assignee, the financial stability of the assignee, the likelihood of time to complete the contract, And other applicable factors as they relate to the service. Nothing contained herein shall be construed to prevent CONSULTANT from employing such independent consultants, associates and subcontractors as CONSULTANT may deem appropriate to assist in the performance of the services hereunder.

8.3 Rights and Benefits

Nothing herein shall be construed to give any rights or benefits arising from this Contract to anyone other than CONSULTANT and the CITY.

Section 9. Indemnification of CITY

The CONSULTANT and any of its agents, employees, subcontractors, sub-consultants, or anyone for whose act or acts any of them may be liable in the performance of the services under this Contract shall indemnify and hold harmless CITY, its agents, employees, elected officers and representatives from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the indemnifying party in the performance of this Contract.

The CONSULTANT agrees to hold the CITY harmless from loss, damage, injury or liability arising directly from the negligent acts or omission of the CONSULTANT, its employees, agents, subcontractors and their employees and agents.

Section 10. Insurance

10.1. General

CONSULTANT assumes the entire responsibility and liability for all damages or injury to all persons, and to all property, arising out of or in any manner connected with the execution of the work under this Contract by CONSULTANT, and to the fullest extent permitted by law, CONSULTANT shall defend and indemnify the CITY from all such claims including without limitation claims for which the CITY may be, or may be claimed to be, liable in whole or in part and legal fees and disbursements paid or incurred to defend any such claims, as well as legal fees paid or incurred in connection with enforcing the provisions of this paragraph. CONSULTANT

assumes the entire responsibility and liability for all damages and injury to all persons, whether their employees or otherwise, and to all property arising out of or in any manner connected with the execution of the work by CONSULTANT under this Contract. CONSULTANT shall obtain, maintain and pay for general liability insurance coverage as will insure the provisions of this paragraph and any other contractual indemnities assumed by CONSULTANT in this specific consideration for this indemnity is $10.00, the receipt and sufficiency of which are hereby acknowledged by CONSULTANT.

10.2 Workers' Compensation

The CONSULTANT shall procure and maintain, during the life of this Contract, Worker's Compensation insurance as required by Florida Statutes for all of employees of the CONSULTANT engaged in work on the Project under this Contract.

10.3 Insurance Policy Limits

CONSULTANT shall procure and maintain insurance policies as specified in Attachment A of the solicitation, (RFQL# 2019-301).

10.4 Insurance Cancellation

The CONSULTANT shall furnish to the CITY Certificates of Insurance stating the Insurer will grant the City the same notification rights that it provides to the first named insured as respects cancellation and nonrenewal. If the insurance policies expire during the terms of the Contract, a renewal certificate or binder shall be filed with the CITY fifteen (15) days prior to the renewal date.

10.5 CITY to be Named Additional Insured

The amounts of insurance shall be determined by the CITY. The CITY shall be named as "additional insured" with regard to the coverage of General Liability and Automobile Liability policies.

10.6 Status of Claim.

The CONSULTANT shall be responsible for keeping the CITY currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Contract. The CONSULTANT shall send notice of claims related to work under this Contract to the City. Copies of the notices shall be sent by fax, hand delivery or regular mail to:

Public Works Director
City of Stuart
121 S.W. Flagler Avenue
Stuart, Florida 34994

FAX: (772) 288-5381

Section 11. Professional Standards

11.1 Other Agreements

CONSULTANT is entering into this Contract with the understanding that the CITY has no agreements, either written or oral, for professional services relating to this specific Project which include any of those services within the Scope of Services defined herein.

11.2 Approvals Not Guaranteed

All work performed by CONSULTANT will be in accordance with the highest professional standards and in accordance with all applicable governmental regulations. However, CONSULTANT does not warrant or represent that any governmental approval will be obtained, only that the CONSULTANT will exercise its best efforts to obtain all such approvals contemplated under this Contract.

11.3 Governmental Regulations Affecting Land Use

Unless the Scope of Services of this Contract includes an investigation into the applicable land use, zoning and platting requirements for the Project, CONSULTANT shall proceed on the assumption that the Project as presented by the CITY, is in accordance with all applicable governmental regulations.

Section 12. Opinions of Cost

Since the CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding, or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified CONSULTANT, familiar with the construction industry. The CONSULTANT cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of probable cost. If at any time the CITY wishes greater assurance as to the amount of any cost, the CITY shall employ an independent cost estimator to make such determination. Consulting services required to bring cost within any limitation established by the CITY will be paid for as additional services hereunder by the CITY.

Section 13. General Conditions

13.1 Venue in Martin County

Venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in the County Court or the Circuit Court in and for Martin County, Florida.

13.2 Laws of Florida

The validity, interpretation, construction, and effect of this Contract shall be in accordance with and governed by the laws of the State of Florida.

13.3 Attorney's Fees and Costs

In the event the CONSULTANT defaults in the performance of any of the terms, covenants and conditions of this Contract, the CONSULTANT agrees to pay all damages and costs incurred by the CITY in the enforcement of this Contract, including reasonable attorney's fees, court costs and all expenses, even if not taxable as court costs, including, without limitation, all such fees, costs and expenses incident to appeals incurred in such action or proceeding.

13.4 Mediation as Condition Precedent to Litigation

Prior to the initiation of any litigation by the parties concerning this Contract, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediation.

13.5 Contract Amendment

No modification, amendment or alteration in the terms or conditions contained in this Contract shall be effective unless contained in a written documents executed with the same formality and of equal dignity herewith. No verbal agreement by the CITY or the CITY's representative identified herein shall be binding or enforceable against the CITY.

13.6 Contractual Authority

By signing this Contract the Contractor swears or affirms, under penalty of perjury, that this is a valid act of the Contractor, and that no later claim shall be made by the CONTRACTOR that the Contract is invalid or an *ultra vires* act, by reason of a failure to have the proper authority to execute the Contract. In the event that a court of competent jurisdiction later determines that the Contract is or would be null and void for failure of the signatory to have proper or complete authority, this Contract shall nonetheless be deemed valid under the theory of "apparent authority," or in the sole alternative of the City, shall be deemed to be the act of the signatory, as an individual, who shall be fully responsible for its complete performance.

13.7 Sovereign Immunity

Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits established under chapter 768.20 Florida Statutes as amended.

13.8 Competitive Negotiation

CONSULTANT shall execute a truth-in-negotiation certificate stating that wage rates and other factual costs supporting the compensation are accurate, complete, and current. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual costs. All such contract adjustments must be made within one (1) year following the end of the contract.

13.9 Prohibition Against Contingent Fees

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 Engineer to solicit or secure this agreement 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 agreement. For the breach or violation of this provision, the City shall have the right to terminate the agreement without liability and, at its discretion to deduct form the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

CONSULTANT or partnership thereof, who offers to pay, or pays any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any City contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in F.S. 775.082 or F.S. 775.083.

Section 14. Public Records

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the office of the City Clerk as the custodian of Public Records for the City of Stuart, and all the respective departments at 772-288-5306 or PublicRecordsRequest@ci.stuart.fl.us, City of Stuart, City Clerk 121 SW Flagler Avenue, Stuart, Fl. 34994 per F.S. 119.12.

Public Records Relating to Compliance, Request for Records; Noncompliance, & Civil Action with F.S. 119.0701 the Contractor shall:

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

Upon request from the public agency'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 contractor does not transfer the records to the public agency.

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

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under F.S. 119.10.

If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

A notice complies with subparagraph 2 above, if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

Section 15. Scrutinized Companies List

Pursuant to Sections 287.135, 215.4725, and 215.473, of the Florida Statutes which prohibits agencies from contracting with any company, principals, or owners on the Scrutinized Companies with Activities in Sudan List, participation in the Boycott of Israel, the Scrutinized

Companies with Activities in the Iran Petroleum Energy List, and is not engaged in business operations in Cuba or Syria are prohibited from contracting for goods or services in any amount at the time of submitting to this ITB through the term of this contract, including renewals or extensions.

By signature of this agreement, Contractor certifies and attests that firm is not on any list, engaged in any business operations, or participates in activities as specified in this section. If firm is found negligent, contract shall be terminated; and submission of a false certification may subject firm to civil penalties, attorney's fees, and/or costs.

Section 16. Exhibits

The following Exhibits are attached to and made a part of this Contract:

"**Exhibit A**" - "Proposal as Submitted by Professional and Accepted by City"

"**Exhibit B**" - "Original Request for Proposal as Issued by City, including all Addenda"

"Exhibit C" - "Professional's Personnel Hourly Rate Schedule."

"Exhibit D" - "Insurance and Indemnification."

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Signatures are on following page

IN WITNESS WHEREOF, the City has hereunto subscribed and the Contractor has signed his, its, or their name, or names the date aforesaid.

CITY OF STUART, FLORIDA

ATTEST:

MARY R. KINDEL **CITY CLERK**	**REBECCA S. BRUNER** **MAYOR**

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL MORTELL
CITY ATTORNEY

WITNESSES:

CONTRACTOR

(Signature)	(Signature)
(Signature)	Printed Name
	Title