

AGREEMENT FOR PROFESSIONAL DESIGN SERVICES – WATER TREATMENT PLANT #2

THIS AGREEMENT FOR PROFESSIONAL DESIGN SERVICES – WATER TREATMENT PLANT #2 ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a foreign for-profit corporation duly organized in the state of North Carolina and authorized to do business in the state of Florida (EIN# 56-0885615) ("Kimley-Horn") or ("Consultant").

RECITALS:

WHEREAS, on November 9, 2021, City issued a Request for Proposals ("RFP") from qualified engineering firms for the provision of professional design and other related services associated with the design of a 30 million gallon per day membrane water treatment plant at 3744 South Pine Avenue, Ocala, Florida, RFP No.: WRS/211026 (the "Solicitation"); and

WHEREAS, one (1) firm responded to the Solicitation and, after consideration of the evaluation factors set forth in the Solicitation, the proposal submitted by Kimley-Horn and Associates, Inc., was found to be the highest ranked proposal; and

WHEREAS, Kimley-Horn and Associates, Inc., was selected as finalist and awardee to provide professional design and other related services associated with the design of a 30 million gallon per day membrane water treatment plant at 3744 South Pine Avenue, Ocala, Florida; and

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Consultant agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Consultant hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Consultant shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; (c) the City's Solicitation for the Project and the proposal submitted by Consultant in response to same (the "Solicitation Documents"); and (d) those documents identified in the Project Specifications section of this Agreement, if any. Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement.** The Exhibits to this Agreement are as follows:

- Exhibit A: Scope of Services (A-1 through A-2)
- Exhibit B: Loaded Hourly Rates (B-1)
- Exhibit C: Site Plan (C-1)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A; then (2) Exhibit B; then (3) Exhibit C.

3. **SCOPE OF SERVICES/TASKS.** Consultant shall provide professional design and other related services associated with the design of a 30 million gallon per day membrane water treatment plant at 3744 South Pine Avenue, Ocala, Florida as more specifically described in

Exhibit A – Scope of Services and the Contract Documents (the “Project”). City and Consultant acknowledge that the Scope of Work may not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If during the course of performance of the services included in this Agreement Consultant determines that work should be performed to complete the Project which is in the Consultant’s opinion outside of the level of effort originally anticipated, Consultant shall notify the City Project Manager and obtain written approval by the City Project Manager in a timely manner before proceeding with the work. If Consultant proceeds with said work without notifying the City Project Manager and obtaining written approval, said work shall be deemed to have been performed within the original level of effort. Notice to the City Project Manager does not constitute authorization or approval by City to perform the work. Performance of work by Consultant outside of the originally anticipated level of effort without prior written approval of City is done at Consultant’s sole risk.

4. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement and the Contract Documents.
 - A. Consultant shall mobilize and commence work no later than **TEN (10)** working days from the date of issuance of a Notice to Proceed for the Project by City. At no time will Consultant be allowed to lag behind.
 - B. All work shall be substantially completed by Consultant in a manner satisfactory to the City Project Manager within **FOUR HUNDRED (400)** calendar days of the start date indicated on the Notice to Proceed.
 - C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension of the Time for Performance must be submitted in a writing delivered to the City Project Manager, along with all supporting data, within **SEVEN (7)** calendar days of the occurrence of the event giving rise to the need for adjustment unless City allows an additional period of time.
5. **COMPENSATION.** City shall pay Consultant a maximum limiting amount not to exceed **FOUR MILLION NINE HUNDRED NINETY-NINE THOUSAND, FOUR HUNDRED EIGHTY-THREE AND 79/100 DOLLARS (\$4,999,483.79)** (the “Contract Sum”) as full and complete compensation for the timely and satisfactory completion of work in compliance with the Contract Documents and in accordance with the Fee schedule set forth in **Exhibit B – Loaded Hourly Rates**. Subcontractor fees will be negotiated at the time a Task Work Order is initiated for each project segment using current published rates. The City reserves the right not to use any subcontractor on the Project. Payments will be made based on a percentage of project completion by task and Consultant shall submit invoices on a monthly basis. Completed tasks must be approved and agreed upon by the designated City of Ocala Project Manager before payment will be made. The final reports and deliverables must be approved and agreed upon by the designated City of Ocala Project Manager before final payment will be made.
 - A. **Prompt Payment.** Monthly actual payment reporting requirements for prime contractors and consultants are based on prompt payment rules and laws. The same holds true for return of retainage after the subcontractor has completed its work, not when the overall project is finished. Florida law requires timely payment for both construction and non-construction services. Generally, invoices for construction

contracts must be paid within **TWENTY-FIVE (25) DAYS** of receipt. Invoices for consultant contracts are payable per the terms of this Agreement, but shall not exceed federal regulations as set forth in [49 CFR 26.29](#) requiring payment of all subcontractors for satisfactory performance within **THIRTY (30) DAYS** of payment to the Prime.

- B. **Invoice Submission.** Consultant shall invoice City for all work completed. Invoices must be reviewed and agreed upon by the City of Ocala Project Manager. Review and approval shall not be unreasonably withheld, conditioned, or delayed. All invoices, reports, and other documentation submitted by Consultant shall include the City Contract Number, date, and an assigned Invoice Number. Invoices, reports, and other documentation shall be submitted to the City Project Manager at: **City of Ocala Water Resources Department, Attn: Rusella Bowes-Johnson, Address: 1805 NE 30th Avenue, Bldg. 600, Ocala, Florida 34470, E-Mail: rjohnson@ocalafl.org.**
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Consultant performance shall be extended for a number of days equal to the duration of the force majeure. Consultant shall be entitled to an extension of time only and, in no event, shall Consultant be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
 7. **TERMINATION.** This Agreement may be terminated by either party for cause upon City or Consultant providing written notice to the defaulting party not less than **THIRTY (30) DAYS** prior to the date of termination in the manner specified for the giving of Notices herein. Any such termination shall not affect the rights or obligations accruing to either party under any previously issued and approved Task Work Order.
 - A. **City's Remedies Upon Consultant Default.** In the event of Consultant default under this Agreement City shall have the right, at City's option, to pursue any and all remedies available at law or equity, including, without limitation, the right to:
 - (1) terminate this Agreement without further notice;
 - (2) hire another consultant to complete the required work in accordance with the needs of City;
 - (3) recover from Consultant all damages, costs, and attorneys' fees arising from Consultant's default prior to termination; and
 - (4) recover from Consultant any actual excess costs by: (i) deduction from any unpaid balances owed to Consultant; or (ii) any other remedy as provided by law.

8. **STANDARD OF CARE.** Consultant represents and warrants that it has the personnel and experience necessary to perform the Services in a professional and workmanlike manner. Consultant shall render Services consistent with the same degree of care, skill, and diligence ordinarily exercised by consultants performing the same or similar services in the same locality at the time of the services provided. Consultant shall re-perform services which fail to satisfy the foregoing standard of care or at no additional cost to City. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of the Agreement.
9. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Consultant's performance. Any such evaluation will become public record.
10. **CONTRACT FULFILLMENT.** Consultants who enter into any agreement with the City of Ocala and fail to complete the contract term, for any reason, may be subject to future bidding suspension for one (1) year, and up to a possible three (3) year bid debarment for serious contract failures.
11. **COMMERCIAL AUTO LIABILITY INSURANCE.** Consultant shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Consultant with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Consultant's commercial automobile liability insurance policy must name, as additional insureds, the City of Ocala, a political subdivision of the State of Florida, and its officials, employees, and volunteers.
12. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Consultant shall procure and maintain, for the life of this Agreement, commercial general liability insurance with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence. The only aggregate limit acceptable is "project aggregate" and the Certificate must show an appropriate endorsement (ISO CG2501 or equal).
 - A. If the Commercial General Liability form is used:
 - (1) Coverage A- shall include premises, operations, products and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
 - (2) Coverage B - shall include personal injury.
 - (3) Coverage C - medical payments, is not required
 - B. If the Comprehensive General Liability form is used, it shall include at least:
 - (1) Bodily Injury and Property Damage liability for premises, operations, products and completed operations, independent contractors, and property damage resulting from explosion, collapse or underground (XCU) exposures.
13. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** Consultant shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance for in amounts required by Florida law and employer's liability insurance with limits of at least \$1,000,000 each accident and \$1,000,000 policy limit for disease, and shall be responsible for ensuring that any subcontractor has statutory coverage. City need not be named as an Additional Insured, but a subrogation waiver endorsement is required.
14. **PROFESSIONAL LIABILITY INSURANCE/ERRORS AND OMISSIONS COVERAGE.** Consultant shall procure and maintain professional liability insurance with an occurrence limit of not less than \$1,000,000, exclusive of defense costs. Consultant shall be required to

provide continuing professional liability insurance to cover each project for a period of **FIVE (5) YEARS** after project completion. It is recognized that this type of insurance is only available on a claims-made basis and Additional Insured endorsements are not available.

15. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Consultant. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Consultant's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Consultant. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Consultant is responsible for paying any and all deductibles or self-insured retention. Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the City. Approval will not be unreasonably withheld.
- C. Certificates of Insurance. Consultant shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala, 110 SE Watula Avenue, Ocala, FL 34471" as an additional insured and certificate holder for General Liability and Commercial Automobile Liability insurance. Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: vendors@ocalafl.org** prior to the policy expiration.
- D. Failure to Maintain Coverage. In the event Consultant fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Consultant under this Agreement, Consultant shall be considered to be in default of this Agreement.
- E. Severability of Interests. Consultant shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

16. **PUBLIC RECORDS.** The Consultant shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Consultant shall:

- A. Keep and maintain public records required by the public agency to perform the service.
- B. 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Consultant or keep and maintain public records required

by the public agency to perform the service. If the Consultant transfers all public records to the public agency 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 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.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

17. **AUDIT.** Consultant agrees to maintain such financial and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. Consultant shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
18. **PUBLICITY.** Consultant shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
19. **PUBLIC ENTITY CRIMES.** As provided in Section 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.
20. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** The City of Ocala adopts FDOT's goal of 10.65% as a race-neutral DBE goal. This means the City's goal is to spend at least 10.65% of expenditures with certified DBE's as prime firms, or as subcontractors/subconsultants. Race-neutrality means the City hopes the overall goal can be achieved through the normal competitive procurement process without using DBE required goals. FDOT funded projects have an overall DBE goal of 10.65%. For projects specifically for the Ocala International Airport, the DBE goal is 12%. Although not a requirement, the City believes this DBE percentage can realistically be achieved on projects through use of DBE prime and DBE

subcontractors performing services anticipated on projects. Prime contractors or consultants may be requested to submit a DBE Utilization form indicating their firm's proposed use of DBE subcontractors. Prime construction contractors for FDOT-funded projects are required to visit <http://www.fdot.gov/equalopportunity/eoc.shtm> to register and submit their DBE commitments online.

21. **DRUG FREE WORKPLACE REQUIREMENT.** Consultant submitted a drug free workplace certification with their proposal, and agrees to provide a drug free workplace.
 - A. The Consultant, if other than an individual, shall-within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration:
 - (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Consultant's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- B. Consultant, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- C. In addition to other remedies available to the Government, the Consultant's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR [23.506](#), render the Consultant subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.
22. **E-VERIFY.** Pursuant to section 448.095, Consultant shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Consultant shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Consultant certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Consultant understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Consultant may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Consultant shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
23. **INDEPENDENT CONTRACTOR STATUS.** City expressly acknowledges Consultant is an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Consultant performs hereunder.
24. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
25. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
26. **INDEMNITY.** Consultant shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant, its agents, and employees utilized by the Consultant in the performance of the contract.

27. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
28. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Consultant:

Kimley-Horn and Associates, Inc.
Lance Littrell, P.E., MBA
101 E. Silver Springs Boulevard, Ste. 400
Ocala, Florida 34470
Phone: 407-412-7544
Email: lance.littrell@kimley-horn.com

If to City of Ocala:

Daphne M. Robinson - Contracting Officer
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343
Fax: 352-690-2025
Email: notices@ocalafl.org

Copy to:

William E. Sexton, Esq. - City Attorney
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-401-3972
Email: cityattorney@ocalafl.org

29. **ATTORNEYS FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
30. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR

RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

31. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
32. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
33. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
34. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
35. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
36. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
37. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
38. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

39. **ELECTRONIC SIGNATURE(S).** Consultant, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this agreement. Further, a duplicate or copy of the agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original agreement for all purposes.
40. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
41. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on 12 / 27 / 2022.

ATTEST

Angel B. Jacobs

Angel B. Jacobs
City Clerk

CITY OF OCALA

James P. Hilty SR

James P. Hilty
City Council President

Approved as to form and legality

William E. Sexton

William E. Sexton
City Attorney

KIMLEY-HORN AND ASSOCIATES, INC.

JONATHAN MARTIN

Jonathan Martin, P.E.
(Name of Authorized Signatory)

JONATHAN MARTIN
(Title of Authorized Signatory)

PROJECT DESCRIPTION

1. Consultant will perform services related to the design of a 30 million gallon per day (MGD) membrane Water Treatment Plant (WTP) to be located at 3744 South Pine Avenue, Ocala, Florida within Marion County.
2. The City of Ocala has decided the new plant treatment process shall be nanofiltration with the finished water quality mirroring the existing WTP No. 1 (WTP #1) finished water. The City has determined the Lower Floridan Aquifer (LFA) is characterized as brackish groundwater at WTP No. 2 (WTP #2) and is a suitable alternative water supply (AWS) and with minimal treatment, can become the primary potable water source for its customers based on the Lower Floridan Aquifer Performance Test conducted in 2017, available at: <https://spaces.hightail.com/space/vme0e0a3fB>. The blending would consist of raw water from the Upper Floridan Aquifer (UFA) with the LFA. This ensures that the City's customers receive a uniformed quality drinking water and maintain customer satisfaction. The water demand projection based on a 20-year plan will be a 30 MGD plant.
3. Currently, the City has one main Water Treatment Plant, WTP #1 that utilizes lime softening treatment and an emergency site located at WTP #2 that serves roughly 59,000 customers. WTP #2 site is approximately 38 acres and consists of one (1) UFA well (Well #6) with chlorination system connected to the water network. It also has four (4) LFA wells (Well #7, #8, #9 and #10) that are not connected to the water network. The proposed plan for the expansion of WTP #2 will include a second UFA well on site (Well #11) which is scheduled to be drilled in 2022 for a total of five production wells. Additionally, one (1) 2-million-gallon storage tank is scheduled to start construction in 2022.
4. After City Engineer's Office and Water Resources department evaluation of every solution, considering the advantages, disadvantages and the engineer's opinion of probable costs, the decision is to design a 30-MGD membrane WTP. This project will be divided in phases and will include the blending of UFA and LFA wells to serve the 20-year project demand. The plant design shall utilize the existing infrastructure as shown on site plan.

PROPOSED WORK

1. Design of 30-MGD membrane Water Treatment Plant including but not limited to the following:
 - Meetings (kick-off and progress)
 - Data collection (GIS, as-builts, studies, etc.)
 - Survey
 - Geotechnical study/assessment
 - Environmental study/assessment

- Structural/architectural design
 - Electrical/controls design
 - Mechanical design
 - Specifications
 - Permitting
 - Bid assistance (scope of work, design plans, cost estimates)
 - Construction services (submittal review, change order review)
2. The consultant must provide **30%**, **60%**, and **90%** construction drawings for the City's review and approval.



Staff Classification	Unit	Loaded Rates
Project Manager/Senior Engineer	HOUR	\$ 265.36
Chief Engineer	HOUR	\$ 307.11
Project Engineer 1	HOUR	\$ 170.39
Engineering Intern	HOUR	\$ 140.50
Chief Designer	HOUR	\$ 199.25
Secretary/Clerical	HOUR	\$ 117.57

**The Site Plan for WTP #2 Layout is available for copying at:
1805 NE 30th Avenue, Building 600, Ocala, Florida 34470**

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IP: 216.255.240.104



12 / 21 / 2022
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Viewed by William E. Sexton (wssexton@ocalafl.org)
IP: 216.255.240.104



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Signed by William E. Sexton (wssexton@ocalafl.org)
IP: 216.255.240.104



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(jonathan.martin@kimley-horn.com)
IP: 134.238.172.9



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Signed by Jonathan Martin, P.E.
(jonathan.martin@kimley-horn.com)
IP: 134.238.205.72



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Viewed by James P. Hilty, Sr. (jhilty@ocalafl.org)
IP: 24.250.245.57



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IP: 24.250.245.57

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IP: 98.180.28.209



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