

CONTRACT FOR

ST. LUCIE VILLAGE
PRESSURE SEWER SYSTEM JOB

Contract is made between **The Town of St. Lucie Village, Florida, (SLV)** and **Kimley-Horn and Associates, Inc.**, of the City of Raleigh, State of North Carolina, hereinafter referred to as **Contractor**.

The parties to this Contract in consideration of the mutual covenants and stipulations set out herein agree as follows:

Section 1

Contractor shall be defined as an individual, firm, or corporation having a direct contract with SLV or with any other subcontractor in the performance of a part of the work contracted for under the terms of Contractor's direct contract with SLV.

Section 2

Contractor is hereby contracted with to perform the following services: Professional Engineering Services in accordance with Contractor's Continuing Contract for Professional Engineering with Ft. Pierce Utilities Authority dated December 28, 2021, appended hereto, hereinafter referred to as Specifications, and made a part thereof of this Contract. In the event of a conflict between the terms of this Contract and the terms and conditions of any proposal, quote, statement of work, or purchase order provided by Contractor the terms of this Contract shall take precedence and control.

Section 3

The services to be performed by Contractor shall be on the following site(s), hereinafter referred to as Project Site: Public rights-of-way and utility easements in SLV.

Section 4

The job upon which Contractor is to perform the services shall be referred to as the St. Lucie Village Pressure Sewer System job.

Section 5

Contractor shall be paid by SLV based on percent completion of lump sum tasks as delineated in the Specifications and in accordance with the Local Government Prompt Payment Act, sections 218.70-79, Florida Statutes. The calculations shall begin using the date the invoice was received. Invoices should be sent to mary.fowler@stlucievillagefl.gov or may be mailed to Town of St. Lucie Village Attn: Mary Fowler, Clerk, 3233 N Indian River Drive, Fort Pierce, FL 34946

Total job price: not to exceed the amount specified in the work order based on the terms contained in the Contractor's proposal for the doing of said work and the said award therefore, and the Specifications herein specifically referred to and made a part of this Contract.

Section 6

Contractor shall, under no circumstances, look to SLV to provide any labor or equipment for Contractor. Contractor shall provide all of the labor and equipment necessary to perform the job or services contracted for at the expense of Contractor. Property of any kind that may be on the premises, which are the site of the performance of this Contract, during the performance of this Contract, shall be at the sole risk of Contractor.

Section 7

Contractor shall provide certificate of insurance to SLV setting forth the type and amount of insurance carried by Contractor and conforming to the minimum requirements set forth in Attachment A. All requirements of this section shall be approved by SLV.

Section 8

This instrument contains the entire agreement between the parties and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Contract shall be valid or binding and this Contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

Section 9

This Contract shall commence on upon execution of this contract and end with conclusion of the work, unless otherwise terminated. Notwithstanding any other provision of this Agreement, the Contractor shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of SLV, third parties, or governmental agencies.

Section 10

Contractor acknowledges and understands that he is an independent contractor in his relationship to SLV.

Section 11

This Contract shall inure to the benefit of and be binding upon the heirs, executors, administrator, assignees and successors of the respective parties.

Section 12

SLV shall have the right to terminate said Contract by giving Contractor thirty (30) days written notice if the service that is being provided is not maintained at levels necessary to provide the required service. SLV will determine in its sole judgment what constitutes a satisfactory level of service.

SLV may terminate this Contract in accordance with the following terms and conditions:

- A. **Termination for Convenience.** SLV may, when in the interests of SLV, terminate performance under this Contract by Contractor, in whole or in part, for the convenience of SLV. SLV shall give written notice of such termination to Contractor specifying when termination becomes effective. Contractor shall incur no further obligation in connection with the work so terminated, other than warranties and guarantees for completed work, and Contractor shall

stop work when such termination becomes effective. Contractor shall also terminate outstanding orders and subcontracts for the affected work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. SLV may direct Contractor to assign Contractor's rights, title and interest under termination orders or subcontracts to SLV or its designee. Contractor shall transfer title and deliver to SLV such completed or partially completed work and materials, equipment, parts, fixtures, information and contract rights as Contractor has in their possession or control. When terminated for convenience, Contractor shall be compensated as follows:

- i. Contractor shall submit a termination claim to SLV specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by SLV. If Contractor fails to file a termination claim within one (1) year from the effective date of termination, SLV shall pay Contractor an amount derived in accordance with subsection (iii) below:
- ii. SLV and Contractor may agree to the compensation, if any, due to Contractor hereunder;
- iii. Absent agreement to the amount due to Contractor, SLV shall pay Contractor the following amounts:
 - a) Contract costs for labor, materials, equipment and other services accepted to SLV's satisfaction under this Contract;
 - b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating Contractor's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and
 - c) Reasonable costs of settling and paying claims arising out of the termination of subcontractors or order pursuant to subsection A of this section (if contingent assignment of such contracts has not been elected as provided herein). These costs shall not include amounts paid in accordance with other provisions hereof. This clause is subject to and Contractor shall be limited by SLV's right to direct the replacement of subcontractors under section 12.A.

The total sum to be paid Contractor under this subsection A shall not exceed the total contract amount, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- B. Termination for Cause.** If Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligation for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then SLV, in addition to any other rights it may have against Contractor or others, may immediately terminate the performance of Contractor, in whole or in part at SLV's sole option, and assume possession of the Project Site and all materials and equipment at the site and may complete the work.

In such case, Contractor shall not be paid further until the work is complete. After completion has been achieved, if any portion of the contract price, as it may be modified hereunder, remains after the cost to SLV of completing the work, including all costs and expenses of every nature incurred, has been deducted by SLV, such remainder shall belong to Contractor. Otherwise, Contractor shall pay and make whole SLV for such cost. This obligation for payment shall survive the termination of the Contract.

In the event the employment of Contractor is terminated by SLV for cause pursuant to this subsection B and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under subsection A and the provisions of subsection A shall apply.

- C. **Termination for Non-Appropriation.** SLV may also terminate this Contract in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the project, regardless of the source of such funds, and such termination shall be on the terms of subsection A.
- D. SLV's rights under this section shall be in addition to those contained elsewhere herein or provided by law.
- E. If SLV fails to comply with any covenant or obligation imposed by this Agreement, then Contractor may furnish written notice to SLV identifying the breach and applicable provisions of this Agreement violated. If SLV fails to cure the breach within thirty (30) days, Contractor may then terminate this Agreement without further written notice to SLV.

Section 13

- A. **Indemnification.** Contractor shall indemnify and hold harmless SLV and its officers, agents and employees, from any 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 Contractor and persons employed or used by Contractor in the performance of this Contract.
- B. **Audit Rights.** SLV has the right to audit the books and records of Contractor under any Contract other than a firm fixed-price contract to the extent that such books and records are pertinent to the performance of such Contract. Such books and records shall be maintained by Contractor for a period of three (3) years from the date of final payment under the Contract.
- C. **No Assignment or Third-Party Rights.** Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same without the prior written approval of SLV. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than SLV and Contractor.
- D. **Consequential Damages.** Neither party shall be liable to the other for any incidental, consequential, exemplary, special, or punitive damages, including lost profits, that may arise in connection with this Contract, regardless of the cause of action (whether in contract, tort,

negligence, strict liability, or otherwise) and regardless of how characterized, even if such party was advised of the possibility of such damages in advance.

- E. **Choice of Law and Venue.** This Contract shall be construed in accordance with the laws of the State of Florida, without consideration of any conflict of law principles. Venue shall be in the federal or state courts in St. Lucie County.
- F. **E-Verify Required.** Pursuant to 448.095, Florida Statutes, every Contractor and subcontractor entering into an agreement to provide labor, supplies or services to SLV must use the E-Verify system (www.e-verify.gov) to verify the work authorization status of any newly hired employees. If a Contractor subcontracts any of the labor or services for SLV, the subcontractor must provide the Contractor with an affidavit stating that it does not employ, contract or subcontract with any person not authorized to work in the United States. The contractor must keep a copy of the affidavit on file for the duration of the contract. If SLV or any Contractor or subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, or recruited an unauthorized alien for public or private employment, it must terminate the contract with that person or entity. Pursuant to 448.095 a contract terminated under this provision is not a breach of contract.
- G. **Scrutinized Companies List.** Pursuant to Section 287.135, Florida Statutes, a company is ineligible and may not bid on, submit a proposal, or enter into or renew a contract with an agency or local governmental entity, and SLV is prohibited from contracting or renewing contracts for goods or services: (1) for any amount with a company that is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, or is engaged in a boycott of Israel; (2) for \$1,000,000 or more with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List, created pursuant to Section 215.473; or (3) is engaged in business operations in Cuba or Syria. By signing below Contractor certifies that it is not on any of the above referenced lists, is not engaged in a boycott of Israel, and is not engaged in business operations in Cuba or Syria. The company further acknowledges that SLV may immediately terminate any contract if the company is found to have falsely certified that it is not on any of the forgoing lists, been placed on any of the foregoing lists, been engaged in a boycott of Israel, or engaged in business operations in Cuba or Syria.

H. **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 SLC CLERK, MARY FOWLER AT MARY.FOWLER@STLUCIEVILLAGEFL.GOV, (772) 466-6900, OR 3233 N INDIAN RIVER DRIVE, FORT PIERCE, FL 34946.

To the extent the Contract includes providing services and acting on behalf of a SLV as provided under section 119.011(2), Florida Statutes, the Contractor agrees to comply with Florida Public Records Law, Chapter 119, Florida Statutes, and shall:

- 1) Keep and maintain public records required by SLV to perform the service;
- 2) Upon request from SLV's custodian of public records, provide SLV 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 or as otherwise provided by law;

3) 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 SLV;

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

- I. **Trade Secret or Confidential Material.** In accordance with Florida Statutes, including 119.01 (Public Records) and 815.045 (Trade Secret Information), if Contractor considers any information related to this Contract or the services to be provided to SLV thereunder to be a trade secret or confidential material under Florida or federal law(s), Contractor shall designate such portions of the material by clearly marking it CONFIDENTIAL or TRADE SECRET when it is submitted to SLV (hereinafter the Confidential Material). If SLV receives a public records request for the Confidential Material SLV will provide only the materials not designated confidential or trade secret. If the requester of the information asserts a right to examine the Confidential Material SLV will notify Contractor, and Contractor shall be responsible for responding to and resolving any claims for access to the Confidential Material. If SLV is served with a request for discovery or order related to the Confidential Material, SLV will promptly notify Contractor, and Contractor shall be responsible for filing the appropriate motion, objection, or seek an injunction to prevent disclosure of its Confidential Material. SLV will provide the Confidential Material only if the Contractor fails to take appropriate action to protect the Confidential Material from disclosure within the timeframe(s) established by the applicable statute, rule or order. The Contractor agrees to indemnify and hold harmless SLV and its members and employees from all claims, fines or costs, including attorney's fees, arising from or relating to the designation of Confidential Material.

[signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Contract the day and year set forth below.

Signed, sealed and delivered in the presence of:

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Signature/Officer of Firm (Manual)

Name (Typed or Printed)

TITLE: _____

DATE: _____

ATTEST:

Clerk
(SLV Seal)

TOWN OF SAINT LUCIE VILLAGE

BY: _____
Mayor

DATE: _____