

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PROFESSIONAL ARCHITECTURAL AND ENGINEERING CONSULTING SERVICES**

THIS AGREEMENT, entered into on the 21<sup>st</sup> day of September, 2018, by and between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY"), the CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES ("GRU"), a Florida municipal corporation, 301 SE 4<sup>th</sup> Ave, Gainesville, Florida 32601, and the GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY ("CRA"), a public body corporate and politic, created pursuant to part III of Chapter 163, Florida Statutes, (individually also referred to as "GOVERNMENTAL ENTITY" and KIMLEY-HORN AND ASSOCIATES, INC. ("CONSULTANT"), a Foreign Profit Corporation authorized to do business in the State of Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601 individually referred to as "Party." or collectively as "Parties", respectively.

**WHEREAS**, CITY is responsible for capital improvements and maintenance of public facilities; GRU owns and operates an electric system, natural gas system, water and wastewater system, a district energy system and telecommunication system combined as a single public community wide utility; and CRA is responsible for various redevelopment areas within the City of Gainesville which may include planning, designing, renovation, remodeling and/or construction; and

**WHEREAS**, THE CITY, GRU and CRA requires multiple firms to provide professional architectural and engineering consulting services on an as-needed basis and issued a Request for Statement of Qualifications for same; and

**WHEREAS**, CONSULTANT responded with a Statement of Qualifications which was selected and approved by THE CITY and CRA; and

**WHEREAS**, the PARTIES desire to enter into an agreement for performing professional architectural and engineering consulting services on an as-needed basis.

**NOW, THEREFORE**, in consideration of the foregoing premises and the covenants contained herein, the PARTIES agree as follows:

**1.0 SCOPE OF SERVICES.**

- 1.1** Project Description: This Agreement provides for the administration, compensation and responsibilities of the PARTIES relating to performance of architectural and engineering consulting work which is authorized by CITY, GRU, or CRA. When one of the GOVERNMENTAL ENTITIES has need of CONSULTANT's services, that GOVERNMENTAL ENTITY will enter into a separate agreement with CONSULTANT to perform the scope of services. The separate agreement will be between the individual GOVERNMENTAL ENTITY and the CONSULTANT. The specific scope of services to be provided by CONSULTANT will be mutually agreed to in separate Purchase Orders and/or Task Assignments. All related Purchase Orders and Task Assignments will become a part of this Agreement. These Purchase Orders and Task Assignments may be amended as provided herein as changes in scope or required levels of work effort are identified. Compensation for services will be as described in Section 7.0 of this Agreement.
- 1.2** Services performed at CITY, GRU or CRA's request beyond those defined in the approved Purchase Order and/or Task Assignment shall constitute a Change-of-Scope, which will be documented by a Change Order to be approved in writing by CONSULTANT and the GOVERNMENTAL ENTITY before services are performed. Written approval shall be obtained prior to performance of the services.

- 1.3 Nothing in this Agreement shall be construed to prohibit CITY, GRU, or CRA from awarding, authorizing, or directing its work to be performed, whether identified in this Agreement or otherwise, to firms other than CONSULTANT.
- 1.4 The GOVERNMENTAL ENTITY may use the CONSULTANT as a Subject Matter Expert.

## 2.0 STANDARD OF CARE AND PERSONNEL.

- 2.1 Standard of Care: CONSULTANT shall perform as an independent consultant and all services shall be performed with the skill and care which would be exercised by comparable qualified professional architectural and engineering consultants performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies, the CONSULTANT shall furnish, at its own cost and expense, the redesign necessary to correct such deficiencies, and shall be responsible for any and all consequential damages arising from these deficiencies. If the CONSULTANT refuses to correct the discrepancies to the GOVERNMENTAL ENTITY's satisfaction, the GOVERNMENTAL ENTITY may, at its discretion, either terminate the Task Order or Purchase Order, or terminate this Agreement. Nothing in this paragraph will preclude the CITY, GRU or CRA from pursuing all available remedies.
- 2.2 Non-infringing: CONSULTANT warrants that any CONSULTANT generated Confidential Information, Work Product, or other material furnished to CITY, GRU or CRA shall not infringe on any third party rights in any US patent, copyright, trademark or trade secret.
- 2.3 Sub-consultants: The CONSULTANT will perform all of the services, and none of the work or services covered by this Agreement shall be subcontracted without prior written authorization by the GOVERNMENTAL ENTITY. It is understood that sub-consultants presented as part of a team in a project proposal/work order/task assignment are considered approved.
- 2.4 Staff: CONSULTANT shall staff the project with qualified individuals and secure others at CONSULTANT's own expense as required to carry out and perform the Scope of Services of this Agreement and the Task Assignment or Purchase Order. Such personnel shall not be employees of or have any personal fiscal relationship with any employees or officials of CITY, GRU or CRA. CONSULTANT retains the authority to utilize specific qualified personnel on the project from time to time as required.
- 2.5 Removal/Replacement of Staff: The GOVERNMENTAL ENTITY, for any reason, may request that the service of an individual or sub-consultant be removed from this Agreement or project work order or Task Assignment. Upon this request from the GOVERNMENTAL ENTITY, the CONSULTANT shall replace the individual or sub-consultant with an equivalent level of staff or sub-consultant. Failure to do so shall be cause for termination of this Agreement or project work order or Task Assignment. Any changes in personnel require mutual written consent of the CONSULTANT and the GOVERNMENTAL ENTITY.
- 2.6 Quality of Staff: Failure of CONSULTANT, for any reason, to staff a project with qualified personnel to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this Agreement or for termination of the Task Assignment or Purchase Order.
- 2.7 Independence: CONSULTANT is and shall perform this Agreement as an independent professional consultant. All persons engaged in any of the work performed pursuant to this Agreement shall at all times, and in all places, be subject to CONSULTANT's sole direction, supervision and control. Neither CONSULTANT, nor anyone employed by it, shall represent, act, or be deemed to be the agent or employee of CITY, GRU or CRA.

- 2.8 Legal compliance: CONSULTANT shall secure all licenses or permits required by law or regulations, and shall comply with all ordinances, laws, orders, rules and regulations pertaining to its Work hereunder.

### 3.0 CONTRACT TERM:

- 3.1 The term of the Agreement will commence on October 1, 2018 or upon final execution, whichever is later and will continue **through** September 30, 2023, subject to available funding approved by City of Gainesville City Commission for CITY and GRU projects and subject to available funding approved by the Board of Directors of the Gainesville CRA. Actual Projects/Task Assignments/Purchase Orders issued will be subject to available funding in subsequent years.
- 3.2 Upon expiration of this Agreement, no additional services may be negotiated under this Agreement, excepting that services which are already in process but not completed shall continue to be governed by the terms of this Agreement until their completion.
- 3.3 Rates negotiated shall be firm for a minimum of one year and may be re-negotiated annually thereafter without changing the terms and conditions of the Agreement. In the event rate renegotiations are not successful, the rates shall remain the same or any Party may terminate the Agreement.

### 4.0 TERMINATION:

- 4.1 Termination for Convenience: A GOVERNMENTAL ENTITY may, by providing thirty 30 calendar days written notice to CONSULTANT, terminate this Agreement, a Task Assignment, a Purchase Order, or any part thereof, for that GOVERNMENTAL ENTITY's convenience and without cause. The termination is effective only as to the specific GOVERNMENTAL ENTITY issuing the termination notice.

After the termination date, CONSULTANT shall stop all Work and cause its suppliers and/or subcontractors to stop all Work in connection with this Agreement, the Task Assignment or the Purchase Order. If a GOVERNMENTAL ENTITY terminates for convenience, that GOVERNMENTAL ENTITY shall pay CONSULTANT for consulting services accepted as of the date of termination, and for CONSULTANT's actual and reasonable, out of pocket costs incurred directly as a result of such termination. The terminating GOVERNMENTAL ENTITY is not responsible for work performed after the effective termination date of this contract.

- 4.2 Termination for Cause (Cancellation): A GOVERNMENTAL ENTITY may terminate this Agreement, A Task Assignment or a Purchase Order for cause if CONSULTANT materially breaches this Agreement, a Task Assignment or a Purchase Order by:
- (a) refusing, failing or being unable to properly manage or perform;
  - (b) refusing, failing or being unable to perform the Work pursuant to this Agreement, a Task Assignment or a Purchase Order with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
  - (c) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
  - (d) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Scope of Services;
  - (e) refusing, failing or being unable to substantially perform pursuant to the terms of this Agreement, a Task Assignment or a Purchase Order as determined by the GOVERNMENTAL ENTITY, or as otherwise defined elsewhere herein; and/or
  - (f) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between a GOVERNMENTAL ENTITY and CONSULTANT.

**4.3** Funding out Clause:

If funds for this Agreement are no longer available, each GOVERNMENTAL ENTITY reserves the right to terminate this Agreement without cause by providing CONSULTANT with thirty (30) calendar days written notice to CONSULTANT.

**5.0 TASK ASSIGNMENTS (Work Orders).**

- 5.1** Task Assignments: All services to be performed having an amount greater than \$25,000 shall be authorized and performed in accordance with a written and jointly executed Task Assignment for each project for which services are requested. A sample format for the Task Assignment is included as Attachment "B". Each Task Assignment shall consist of the scope of work to be performed by CONSULTANT, project schedule, deliverables, any specific provisions and the signatures of authorized representatives of the GOVERNMENTAL ENTITY and CONSULTANT agreeing to the provisions of the Task Assignment. The GOVERNMENTAL ENTITY shall assign projects based upon CONSULTANT's experience in a given area, ability to meet the time constraints of a given project and/or CONSULTANT's current workload.
- 5.2** Written Proposals: Upon request by a GOVERNMENTAL ENTITY, CONSULTANT shall submit to that GOVERNMENTAL ENTITY's Project Manager a written proposal, which shall include as appropriate, completion dates, estimated fees and expenses, deliverables and the specific tasks necessary to accomplish the particular project objective. The GOVERNMENTAL ENTITY and Consultant may negotiate the terms of the proposal which will then be incorporated into a Task Assignment which, with a purchase order, constitutes the written acceptance. Work shall not begin until the acceptance is issued. The original proposal may be submitted to the GOVERNMENTAL ENTITY in Task Assignment format.
- 5.3** Changes to Scope: The GOVERNMENTAL ENTITY shall have the right to increase or reduce the scope of the services of CONSULTANT hereunder at any time and for any reason, upon written notice to CONSULTANT specifying the nature and extent of such reduction or increases. In the event of an addition to the scope of the services, CONSULTANT shall be fully compensated for additional work as agreed upon by the GOVERNMENTAL ENTITY and CONSULTANT. In the event of a reduction to the scope of services, CONSULTANT shall be fully compensated for the work already performed, including payment of all necessary contract fee amounts due and payable hereunder prior to the receipt of written notification of such reduction in scope and shall be compensated for the reduced scope of services, as determined by THE GOVERNMENTAL ENTITY. The work of revising documents as a result of reduction in scope of the project shall be compensated for as a change as provided in this Agreement.
- 5.4** Timeliness: CONSULTANT shall complete all assigned projects in accordance with the time of performance specified in the Task Assignment or change thereto.
- 5.5** Projects under \$25,000: Services to be performed having an amount of less than or equal to \$25,000 will be authorized by a GOVERNMENTAL ENTITY with a Purchase Order, which shall reference this Agreement number and the terms of this Agreement shall supersede any conflicting terms contained within said Purchase Order. The CONSULTANT will prepare a letter proposal that itemizes the major scope tasks and fee.

## 6.0 FORCE MAJEURE.

- 6.1 No Party to this Contract shall be liable for any default or delay in the performance of its obligations under this Contract due to an act of God or other event to the extent that: (a) the non-performing Party is without fault in causing such default or delay; and (b) such default or delay could not have been prevented by reasonable precautions. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, including without limitation, hurricanes; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the GOVERNMENTAL ENTITY or CONSULTANT under this Agreement (except for the CONSULTANT's license and authorizations to do business)..
- 6.2 In the event of any delay resulting from such causes, the time for performance of each of the Parties hereunder (including the payment of invoices if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a Force Majeure event will always be discussed and negotiated if additional delays are expected.
- 6.3 In the event of any delay or nonperformance resulting from such cause, the Party affected will promptly notify the other Party in writing of the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance. Such written notice, including change orders, will indicate the extent, if any, to which is anticipated that any delivery or completion date will be affected.

## 7.0 COMPENSATION.

- 7.1 Fee and Expense Schedule: Compensation to CONSULTANT for services performed shall be based on the current fee and expense schedule, attached hereto as Attachment "A". The CONSULTANT and the GOVERNMENTAL ENTITY, based upon the fee and expense schedule, may agree to payment for services on a "lump sum" and/or "not to exceed" basis.
- 7.2 CONSULTANT Compensation Increases: CONSULTANT shall obtain the GOVERNMENTAL ENTITY's written approval prior to performing any work which results in the work assignment exceeding the mutually agreed upon scope of services contained in the Task Assignments or Purchase Order.
- a. Minor modifications, which mutually extend the product delivery dates and/or mutually agreeable project costs for less than 5%, may be approved by the GOVERNMENTAL ENTITY with the documentation from CONSULTANT as specifically requested by the GOVERNMENTAL ENTITY.
  - b. Major modifications which increase the project cost by more than 5% shall be documented by CONSULTANT with the following information:
    - (1) A description of the new work and/or new deliverables, that caused a major modification to the work.
    - (2) An explanation as to why the new work was not included in the original scope of work or project assignment or a detailed explanation of other reasons the modification is necessary.

- (3) A summary of all prior modifications to the project assignment, and reasons why additional modifications will not be necessary or reasons why additional modifications will be necessary.
    - (4) A description of any proposed work, which is outside the original work scope or project assignment. These shall be treated as a new project.
  - c. Upon submittal of the above information, the GOVERNMENTAL ENTITY and CONSULTANT shall mutually agree upon the price modification to complete the project or work assignment. Should agreement not be reached, THE GOVERNMENTAL ENTITY's decision shall be binding unless CONSULTANT requests reconsideration through the Dispute Resolution process described in Section 16.0.
- 7.3 Invoicing: CONSULTANT is responsible for invoicing the GOVERNMENTAL ENTITY for Work performed pursuant to this Agreement. Itemized invoices shall include the following information (if applicable): Contract number, Purchase Order number, Task Assignment Number, job number, description of services, Work location, the GOVERNMENTAL ENTITY's Project Representative, job start date, job completion date or other pertinent information. Itemized invoice(s) must be mailed to the project manager and address set forth in the Task Assignment or Purchase Order:
- 7.4 Receipting Report for Services: An itemized receipting report for services must be provided to the GOVERNMENTAL ENTITY's Project Representative prior to invoicing which includes the number of hours and labor rates by job title, overhead, authorized per diem or travel expenses, and other charges. Receipting reports shall be used by the Project Representative to verify the services rendered.
- 7.5 Payment Terms: Unless otherwise agreed upon in writing, the GOVERNMENTAL ENTITY's payment terms are net thirty (30) days from receipt of correct invoice. CONSULTANT shall not submit more than one invoice per thirty-day period. Any delay in receiving invoices, or error and omissions, will be considered just cause for delaying or withholding payment. Invoices for partially completed Work may be allowed with the GOVERNMENTAL ENTITY's prior approval. All partial invoices must be clearly identified as such on the invoice. Any charges or fees will be governed by current Florida Statutes.
- 7.6 Withholding Payment: The GOVERNMENTAL ENTITY may withhold payment of all or a portion of the invoiced amount due to failure of CONSULTANT to comply with project specifications. The GOVERNMENTAL ENTITY shall set forth in writing to CONSULTANT the reasons for the withholding of payment within 10 days after receipt of CONSULTANT invoice. In the event CONSULTANT does not agree with the GOVERNMENTAL ENTITY's determination, CONSULTANT may request reconsideration through the dispute resolution process described in Section 16.0. After CONSULTANT has complied with the project specifications the GOVERNMENTAL ENTITY will make payment of any withheld amount to CONSULTANT within 30 days.
- 7.7 Rate Increase: CONSULTANT shall have one opportunity per calendar year to request a labor classification rate increase. The request should be made to Utilities Purchasing at least 60 days prior to the desired effective date and include a justification. The annual increase, if approved by each of the GOVERNMENTAL ENTITIES, shall be in the form of an amendment to this contract. Work begun under a specific labor classification rate shall be completed under that labor classification rate.

**8.0 TAXES.**

CONSULTANT accepts exclusive liability for the payment of its (i) income, gross receipts, ad valorem, or value added taxes, arising out of Work rendered, now or hereafter imposed by any governmental authority, and (ii) payroll taxes or contributions for unemployment insurance, Medicare or Social Security for CONSULTANT'S employees.

**9.0 PUBLIC RECORDS.**

If CONSULTANT is "CONSULTANT" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, CONSULTANT shall:

- 9.1 Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by the GOVERNMENTAL ENTITY to perform the service.
- 9.2 Upon request from the GOVERNMENTAL ENTITY'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.
- 9.3 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 the GOVERNMENTAL ENTITY.
- 9.4 Upon completion of the contract, transfer, at no cost, to the GOVERNMENTAL ENTITY all public records in possession of the contractor or keep and maintain public records required by the GOVERNMENTAL ENTITY to perform the service. If the contractor transfers all public records to the GOVERNMENTAL ENTITY 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 GOVERNMENTAL ENTITY, upon request from the GOVERNMENTAL ENTITY's custodian of public records, in a format that is compatible with the information technology systems of THE GOVERNMENTAL ENTITY.

- 9.5 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE GOVERNMENTAL ENTITY CUSTODIAN OF PUBLIC RECORDS AT (352) 393-1240, PURCHASING@GRU.COM, OR 301 SE 4TH AVENUE, GAINESVILLE FL 32601.**

**10.0 CONFIDENTIALITY.**

"Confidential information" includes, to the extent such information is defined in Sections 119.07 and 812.081, *Florida Statutes*, as trade secrets or data processing software, or otherwise confidential or exempt from Florida's Public Records Law, Chapter 119, *Florida Statutes*. "Confidential Information" that is marked as "confidential" upon receipt, may include certain information about the GOVERNMENTAL ENTITY's operations, specifications, formulas, codes, software, hardware, intellectual properties, and other confidential and proprietary information belonging to the GOVERNMENTAL ENTITY, work product or technical documentation, prepared, developed or obtained by the GOVERNMENTAL ENTITY or CONSULTANT, or any of its agents, representatives, or employees. CONSULTANT shall maintain the confidentiality of any information so marked and agrees not to disclose the information.

**11.0 RIGHTS TO INTELLECTUAL WORK PRODUCT.**

- 11.1 Except as otherwise provided herein, sealed original drawings, specifications, final project specific calculations, and other engineering documents which CONSULTANT prepares and delivers to the GOVERNMENTAL ENTITY pursuant to this Agreement shall become the property of the GOVERNMENTAL ENTITY when CONSULTANT has been compensated for services rendered. With the exception of Work Product developed in whole or in part by the GOVERNMENTAL ENTITY, nothing contained in this paragraph shall be construed as limiting or depriving CONSULTANT from its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.
- 11.2 CONSULTANT shall not use CITY, GRU or CRA's name in any such manner, except with the GOVERNMENTAL ENTITY's prior written consent which the GOVERNMENTAL ENTITIES will not unreasonably withhold. Nothing in this Agreement gives the CITY, GRU or any rights to any of CONSULTANT's, CONSULTANT's subcontractors, or Vendor's proprietary computer software that may be used in connection with the services except as expressly provided in the scope of services or as may be separately agreed.
- 11.3 CONSULTANT shall not publicly disseminate any information concerning the Agreement without prior written approval from each GOVERNMENTAL ENTITY, including but not limited to, mentioning the Agreement in a press release or other promotional material, identifying the GOVERNMENTAL ENTITIES as a reference, or otherwise linking the firms name and either a description of the Agreement or the name of any of the GOVERNMENTAL ENTITIES in any material published, either in print or electronically, to any entity that is not a party to Agreement, except potential or actual authorized distributors, dealers, resellers, or service representative.
- 11.4 All documents, including drawings, specifications, electronic files, engineering reports and computer software prepared by CONSULTANT (except for those pertaining to work developed by the GOVERNMENTAL ENTITY in whole or in part) pursuant to this Agreement are to be used only for the scope of work pursuant to the Task Assignment or Purchase Order. They are not intended or represented to be suitable for reuse by the GOVERNMENTAL ENTITY or others. Any reuse without prior written verification or adaption by CONSULTANT for the specific purpose intended will be at the GOVERNMENTAL ENTITY's sole risk and without liability or legal exposure to CONSULTANT.



**11.5** CONSULTANT hereby grants to the GOVERNMENTAL ENTITY an irrevocable, nonexclusive, royalty free license for use solely in connection with operation, maintenance, repair, or alternation of the designed facilities or processes, with respect to any invention first reduced to practice by CONSULTANT, its employees or agents, during the course of the services of this Agreement, Task Assignment or Purchase Order. The GOVERNMENTAL ENTITY shall retain all rights to plans and procedures based wholly or in part on or derived from proprietary information received from the GOVERNMENTAL ENTITY. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States, or in any other country, without the prior written approval of the GOVERNMENTAL ENTITY.

**11.6** Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. CONSULTANT makes no warranty as to the compatibility of these files with any other system or software. Because of potential degradation of electronic medium over time, in the event of a conflict between sealed original documents and electronic files, the sealed original documents will govern. The standard formats for files delivered in electronic medium will be specified by the GOVERNMENTAL ENTITY's project manager for the Task Assignment or Purchase Order.

## **12.0 AUDIT OF RECORDS.**

CONSULTANT shall maintain records sufficient to document completion of the scope of services established by this Agreement, each Task Assignment and Purchase Order. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the GOVERNMENTAL ENTITIES. These records shall be kept for a minimum of three (3) years after termination of this Agreement. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

## **13.0 INDEMNIFICATION.**

**13.1** Pursuant to Section 725.08, Florida Statutes, this Agreement qualifies as a professional services contract and CONSULTANT qualifies as a design professional. Notwithstanding the provisions of Section 725.06, Florida Statutes, CONSULTANT agrees to indemnify and hold harmless CITY, GRU, CRA, and each GOVERNMENTAL ENTITY's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the design professional and other persons employed or utilized by the CONSULTANT in the performance of this Agreement, Task Assignment or Purchase Order.

**13.2** CONSULTANT represents and warrants that CONSULTANT shall not infringe a trademark, copyright, patent, trade secret or any such intellectual property right in the performance of this Agreement. In the event of an infringement suit related to or resulting from this Agreement, CONSULTANT represents and warrants that CITY, GRU and CRA will not be liable for any damages or royalties if applicable.

## **14.0 LIMITATION OF LIABILITY.**

To the fullest extent permitted by law, each GOVERNMENTAL ENTITY shall not be liable to CONSULTANT for any incidental, consequential, punitive, exemplary or indirect damages, lost profits, revenue or other business interruption damages, including but not limited to, loss of use of equipment or facility.

**15.0 INSURANCE.**

CONSULTANT shall maintain the following insurance, and shall provide CITY, GRU and CRA a current Insurance Certificate.

Certificate of Insurance: Said insurance shall be written by a company licensed to do business in the State of Florida and satisfactory to the GOVERNMENTAL ENTITIES. A Certificate of Insurance shall be furnished in a form acceptable to the GOVERNMENTAL ENTITIES for the insurance required. Such certificate or an endorsement provided must state that CITY, GRU, and CRA will be given thirty (30) days written notice (or 10 days written notice for non-payment) prior to cancellation or material change in coverage. CITY, GRU and CRA must be listed as additional insured on the policy.

Professional Liability Insurance: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Commercial General Liability: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Automobile Liability: in the amount of \$500,000 combined single limit for bodily injury and property damage.

**Worker's Compensation:**

- |     |                      |   |
|-----|----------------------|---|
| (a) | State                | Statutory   |
| (b) | Applicable Federal   | Statutory   |
| (c) | Employer's Liability | \$500,000 per Accident<br>\$500,000 Disease, Policy Limit<br>\$500,000 Disease, Each Employee |

**Excess Liability** \$1,000,000

The GOVERNMENTAL ENTITIES reserve the right to require a limit increase or additional insurance (i.e. explosion, collapse and underground property damage; environmental impairment etc.) if the specific Task Assignment or Purchase Order warrants.

**16.0 DISPUTES.**

If a dispute arises out of or relates to this Agreement, a Task Assignment or Purchase Order, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the Parties will submit the dispute to a mediator. The Parties shall mutually agree to the mediator and the costs of the mediator will be born equally by both parties. The venue for mediation and any subsequent litigation shall be in Alachua County, Florida.

Continue Work: During the dispute process, CONSULTANT shall continue work pursuant to this Agreement as instructed by the GOVERNMENTAL ENTITY.

**17.0 GOVERNING LAW, VENUE, ATTORNEY'S FEES, AND WAIVER OF RIGHT TO JURY TRIAL.**

This Agreement shall be construed pursuant to the laws of Florida and may not be construed more strictly against one party than against the other. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Alachua

County Florida; (2) the prevailing party shall be responsible for attorney's fees and costs, including any appeals; and (3) for civil proceedings, the Parties hereby waive the right to jury trial.

#### **18.0 SOVEREIGN IMMUNITY.**

Nothing in this Contract shall be interpreted as a waiver of CITY, GRU or CRA's sovereign immunity as granted pursuant to *Section 768.28 Florida Statutes*.

#### **19.0 MISCELLANEOUS.**


- 19.1 Statement of Non-inducement:** CONSULTANT warrants that no company or person, other than a bona fide employee working solely for CONSULTANT has been employed or retained to solicit or secure this Agreement. CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. Notwithstanding any other provision of this Agreement for breach or violation of this paragraph, the GOVERNMENTAL ENTITIES shall have the right to terminate this Agreement without liability, and at its discretion, to deduct from any amount due to CONSULTANT hereunder, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- 19.2 Non-Discrimination:** No person shall, on the grounds of race, sex, age, handicap, creed, color, national origin or any other characteristic protected by applicable federal, state or local law, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this Agreement.
- 19.3 Truth-in-Negotiation:** By execution of this Agreement, CONSULTANT certifies that the wage rates and other factual unit costs supporting compensation negotiated under project shall be accurate, complete and current at the time of execution of each such agreement. Each invoice shall be subject to adjustment to exclude any significant sums, by which the GOVERNMENTAL ENTITY determines the original compensation was increased due to inaccurate, incomplete, or non-current wage rates and other adjustments shall be made within one (1) year following the end of the applicable agreement.
- 19.4 Severability:** In the event that any provision of this Agreement is found to be unenforceable, the other provisions shall remain in full force and effect.
- 19.5 Assignability:** Neither the GOVERNMENTAL ENTITIES nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Section shall prevent CONSULTANT from employing independent consultants, associates, and subcontractors to assist in the performance of the services undertaken pursuant to this Agreement.
- 19.6 Third Party Rights:** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the GOVERNMENTAL ENTITIES and CONSULTANT.
- 19.7 Entire Agreement:** This Agreement and attachments hereto, the Request for Qualification 2018-049, the CONSULTANT's response thereto, and any resulting Task Assignments/Work Orders/Purchase Orders constitute the entire agreement between the PARTIES hereto. Modifications of this Agreement shall be in writing, signed by both PARTIES, and incorporated as written amendments to this Agreement prior to becoming effective.

- 19.8** Notices: Notices to CONSULTANT should be deemed to have been properly sent when electronically or physically delivered to CONSULTANT's address (as noted above). Notices to each GOVERNMENTAL ENTITY is deemed to have been properly sent when delivered to the Project Manager at the address listed in the Task Assignment or Purchase Order.
- 19.9** Order of Precedence: In the event that there is any conflict between the terms and conditions, the order of precedence shall be as follows:
- a. Change Order to Task Assignment/Work Order/Purchase Order
  - b. Task Assignment/Work Order/Purchase Order
  - c. Modification to this Agreement
  - d. This Agreement
  - e. Request for Statement of Qualifications 2018-049
  - f. CONSULTANT's Statement of Qualifications


[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement on the day first above written in counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original.


**KIMLEY-HORN AND ASSOCIATES, INC.**

  
\_\_\_\_\_  
M. Lewis Bryant, PE  
Vice President  
Date: 9/6/18


**CITY OF GAINESVILLE**

  
\_\_\_\_\_  
By: Anthony Lyons  
City Manager  
Date: 9-2-18

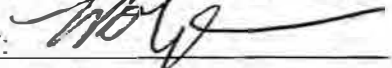
WITNESS (as to Consultant)

By:   
\_\_\_\_\_  
Print Name: Ashley Pardee

**GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Anthony Lyons  
CRA Executive Director  
Date: 9-2-18

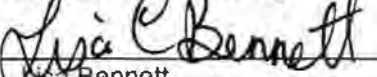
WITNESS (as to CITY and CRA)

BY:   
\_\_\_\_\_

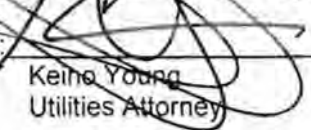
**CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES**

By:   
\_\_\_\_\_  
Edward J. Bielarski  
General Manager  
Date:

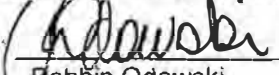
Approved as to form and legality

By:   
\_\_\_\_\_  
Lisa Bennett  
City Attorney

Approved as to form and legality

By:   
\_\_\_\_\_  
Keino Young  
Utilities Attorney

Purchasing Representative

By:   
\_\_\_\_\_  
Robbin Odowski  
Buyer Analyst

Attachments:  
"A" – Fee and Expense Schedule  
"B" – Sample Task Assignment Template

On File:  
CONSULTANT'S Statement of Qualifications (in response to RFSQ 2018-049)  
CONSULTANT'S Certificate of Insurance (as required above)

**KIMLEY-HORN AND ASSOCIATES, INC.****2018 BILLING RATE SCHEDULE**  
(Subject to change annually on July 1)

<u>Classification</u>	<u>Rate</u>
Analyst	\$95 - \$125
Professional	\$130 - \$165
Senior Professional I	\$215 - \$255
Senior Professional II	\$150 - \$230
Senior Planner	\$150 - \$230
Senior Technical Support	\$100 - \$145
Support Staff	\$70 - \$90
Technical Support	\$80 - \$100

**SAMPLE  
TASK ASSIGNMENT NO.**

**CONTRACT NO. 2018-049 with \_\_\_\_\_ for  
PROFESSIONAL ARCHITECTURAL AND ENGINEERING CONSULTING SERVICES**

**TITLE:** *(an appropriate title to distinguish this Task Assignment)*

**THIS TASK ASSIGNMENT** entered into on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_ (choose either GRU, CRA or City) and \_\_\_\_\_ (put CONSULTANT's name here) (CONSULTANT) describes services to be performed in accordance with the contract entered into between the parties dated \_\_\_\_\_, Agreement for Professional Architectural and Engineering Consulting Services, Contract 2018-049.

**ORDER OF PRECEDENCE:** In the event that there is any conflict between the terms and conditions contained in this Task Assignment, The Professional Architectural and Engineering Consulting Services Agreement, the Request for Statement of Qualifications (RFSQ), and/or the CONSULTANT's response to the RFSQ, or the CONSULTANT's proposal referenced in this Task Assignment, the order of precedence shall be the Contract, as amended or modified, interpreted as a whole, as applicable, and then as follows:

- a. Task Assignment
- b. Amendment to the Professional Architectural and Engineering Consulting Services Agreement
- c. Professional Architectural and Engineering Consulting Services, Agreement
- d. Request for Statement of Qualifications 2018-049
- e. CONSULTANT's Statement of Qualifications
- f. CONSULTANT's Proposal referenced in this Task Assignment

**BACKGROUND:** *(provide sufficient information to understand the current status)*

**PURPOSE:** *(explain what this TA will accomplish and how CITY, GRU OR CRA will benefit)*

- 1.0 **SCOPE OF PROJECT.**
- 2.0 **PROJECT SCHEDULE.**
- 3.0 **MEETINGS AND PROJECT MANAGEMENT**
- 4.0 **DELIVERABLES.**
- 5.0 **SPECIFIC GRU RESPONSIBILITIES.**
- 6.0 **BASIS OF COMPENSATION.** *(must be auditable to the rates on Attachment "A")*
- 7.0 **SPECIAL PROVISIONS.** The (choose one: City, GRU, CRA ) Project Manager will be (name and contact information, including address) \_\_\_\_\_; and  
(Consultant/Firm's Name) \_\_\_\_\_'s Project Manager will be (name and contact information, including address) \_\_\_\_\_

*(add any other special provisions)*

**IN WITNESS WHEREOF**, the parties hereto have executed this Task Assignment on the day first above written in two (2) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original.

**DO NOT SIGN – SAMPLE ONLY**

\_\_\_\_\_  
Name of Consultant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**CITY OF GAINESVILLE, d/b/a  
GAINESVILLE REGIONAL UTILITIES**

BY: \_\_\_\_\_  
GRU Project Manager  
(name & title)

Purchasing Representative

By: \_\_\_\_\_  
(name)