



**AGREEMENT NO. 2022-129
PROFESSIONAL SERVICES (CCNA) CONTINUING CONTRACT**

This Agreement made this ____ day of _____, 2022 between **Englewood Water District**, a Special District, in the State of Florida, hereinafter referred to as "DISTRICT" having its principal place of business at 201 Selma Avenue, Englewood, Sarasota County, Florida and **Kimley-Horn and Associates, Inc.**, hereinafter referred to as "CONSULTANT" whose address is 1412 Jackson St, Ste. 2, Fort Myers, FL 33901 .

WITNESSETH:

Whereas, the DISTRICT has met the requirements of the Consultant's Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder and,

Whereas, the Administrator or his designee shall have full authority to manage and supervise the execution and completion of subsequent Task Orders and the terms and conditions of this Agreement and,

Whereas, the CONSULTANT acknowledges that this is a non-exclusive Agreement and the type(s) of work to be performed under this Agreement is defined within the Scope of Services, identified in the solicitation RFP 2022-129 and made a part hereto to this Agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the DISTRICT and CONSULTANT agree as follows:

1. CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to diligently and timely perform services for the DISTRICT relating to Professional Engineering and Consulting Services as identified in the **Request for Proposal No. 2022-129**.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the DISTRICT and the CONSULTANT. The term of the Agreement shall begin on the date of execution and continue through **April __, 2027**, with an option to renew for a further six (6) months, at the same pricing, terms and conditions, subject to CONSULTANT'S satisfactory performance and mutual agreement of the DISTRICT and CONSULTANT.
- C. The DISTRICT shall authorize engineering services through the execution of Task Orders to be negotiated with and performed by the CONSULTANT. No work shall be performed under this Agreement other than through the approval of a Task Order by the DISTRICT's Administrator or the Board of Supervisors. Fees negotiated in any Task Order shall be based on the hourly fee rate shown schedule in **Schedule of Fees, EXHIBIT "A"**. Pricing will be considered firm for the duration of the contract.
- D. The CONSULTANT shall provide Professional Services to the District under the following discipline(s), as defined in the RFP package:

CIVIL ENGINEERING

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

- i) Upon execution of a Task Order, the CONSULTANT shall receive monthly payments in accordance with the fees set forth in the **Schedule of Fees, EXHIBIT "A"**. The fees negotiated therein will be considered to be a lump sum price.
- ii) Compensation to the CONSULTANT shall include the following: all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, and all other costs not indicated as non-reimbursable below.

No claim for reimbursement for these expenses shall be made to the District:

- a. Travel related expenses and costs including labor. (Types of travel to be considered during negotiations).
- b. Four (4) sets of signed and sealed permitting plans;
- c. Computer usage, telephone expenses, fax, copies, printing and postage; and
- d. Subcontractor mark-up.

A copy of the invoice for each reimbursable expense shall be attached to CONSULTANT'S invoice. The DISTRICT will not allow Prime Consultant markups on any services provided by a Sub-Consultant.

- iii) The DISTRICT'S performance and obligation to pay under this Agreement are contingent upon an appropriation by the DISTRICT'S Board of Supervisors. The parties acknowledge and agree that the obligations of the DISTRICT to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement, or referenced herein to which DISTRICT is a party, are and shall remain subject to the provisions of Florida Statutes Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. The DISTRICT agrees to exercise all lawful and available authority to satisfy any financial obligations of DISTRICT that may arise under this Agreement; however, since funds are appropriated annually by the DISTRICT'S Board of Supervisors on a fiscal year basis, the DISTRICT'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the DISTRICT'S Board of Supervisors (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the DISTRICT'S Board of Supervisors). During the term of this Agreement, the Administrator or his designee shall, for each fiscal period, include in the budget application submitted to the DISTRICT'S Board of Supervisors the amount necessary to fund DISTRICT'S obligations hereunder for such fiscal period. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of DISTRICT shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by DISTRICT under this Section. This Agreement shall not constitute an indebtedness of DISTRICT nor shall it constitute an obligation for which the DISTRICT is obligated to levy or pledge any form of taxation or for which the DISTRICT has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

- i) The DISTRICT shall pay the CONSULTANT through payment issued in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes. CONSULTANT's invoice shall be accompanied with a project status report to substantiate the percent completeness of the work. The DISTRICT will review the invoice with the report and verify that the services invoiced have been completed in conformity with this agreement prior to approving the invoice for payment.

- ii) For those specific services that were partially completed, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the DISTRICT, based on the percentage of the amount for those specific services.
- iii) The CONSULTANT's invoices shall be in a form satisfactory to the DISTRICT'S Finance Department, who shall initiate disbursements.

3. LIABILITY OF CONSULTANT

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT MUST INDEMNIFY AND HOLD HARMLESS THE DISTRICT, AND ITS 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 INTENTIONALLY WRONGFUL CONDUCT OF THE CONSULTANT AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONSULTANT IN THE PERFORMANCE OF THE AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE DISTRICT TO SUIT BY THIRD PARTIES.**
- B. THE DISTRICT MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONSULTANT MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE DISTRICT MUST PROMPTLY NOTIFY THE CONSULTANT IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.**
- C. THIS AGREEMENT FOR INDEMNIFICATION SHALL SURVIVE TERMINATION OR COMPLETION OF THE AGREEMENT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE DISTRICT AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON THE CONSULTANT'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).**
- D. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE DISTRICT AS SET FORTH IN FLORIDA STATUTES SECTION 768.28. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.**
- E. FURTHER, THE CONSULTANT SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE DISTRICT, FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.**

4. CONSULTANT'S INSURANCE

A. INSURANCE

CONSULTANT and all sub-consultants and/or all sub-contractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance at the same levels specified in this agreement, against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

Before performing any work, CONSULTANT shall procure and maintain, during the life of the Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms

acceptable to the DISTRICT and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than “Excellent.” No changes are to be made to these specifications without the Administrator or designee’s prior written approval. The DISTRICT may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONSULTANT.

- i) Workers’ Compensation Insurance: In accordance with statutory requirements and Employer’s Liability Insurance with limits of not less than \$100,000 for each accident, not less than \$100,000 for each disease, and not less than \$500,000 aggregate.

Proof of such insurance shall be filed by the CONSULTANT with the DISTRICT within ten (10) days after the execution of this Agreement. Coverage is to apply for all employees in the statutory limits in compliance with the applicable state and federal laws. The policy must include proof of current Worker’s Compensation coverage or Worker’s Compensation exemption (notarized affidavit).

- ii) Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project, and with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The DISTRICT prefers all Professional Liability Insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by this Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Agreement is completed.

- iii) Comprehensive Commercial General Liability Insurance: (Occurrence Form CG 00 01): The CONSULTANT shall procure and maintain and require all sub-contractors to procure and maintain during the life of this Agreement, a comprehensive general liability policy, including but not limited to bodily injury, property damage, contractual liability, and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Proof of such insurance shall be filed by the CONSULTANT with the DISTRICT within ten (10) days after the execution of this Agreement. The policy must include comprehensive general liability with a limit of \$1,000,000 for general aggregate; \$1,000,000 for each occurrence; \$1,000,000 for products and completed ops; \$100,000 for damage to rented premises; and \$100,000 for fire damage.

The policy shall be endorsed to include the following additional insured language: “Englewood Water District, Florida, and its commissioners, officers, employees, agents, and volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CONSULTANT.”

- iv) Business Automobile Liability: The CONSULTANT shall procure and maintain and require all sub-contractors to procure and maintain during the life of this Agreement, business automobile liability insurance including on all owned, hired, and non-owned automobiles. Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8), and non-owned (Code 9) autos.

Proof of such insurance shall be filed by the CONSULTANT with the DISTRICT within ten (10) days after the execution of this Agreement. The policy must include automobile liability with a limit of \$1,000,000 for Combined Single Limit (CSL) for each accident; \$1,000,000 for bodily Injury (per person); \$1,000,000 for bodily Injury (per accident); and \$1,000,000 for property damage (per accident).

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the DISTRICT, its officers, officials, employees and volunteers, and the DISTRICT'S insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by CONSULTANT for the DISTRICT. It is CONSULTANT'S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, CONSULTANT, its officers, officials, agents, employees, volunteers, and any subcontractors, agree to waive all rights of subrogation against the DISTRICT and its insurance carriers for any losses paid, sustained, or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which the CONSULTANT or its agents may be responsible.

C. POLICY FORM

- i) All policies required by this Agreement, with the exception of Professional Liability and Workers' Compensation, are to be written on an occurrence basis and the Comprehensive Commercial General Liability Insurance shall name the Englewood Water District, Florida, and its elected officials, officers, agents, employees, and volunteers as Additional Insured as their interest may appear under this Agreement. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the DISTRICT. All Claims made policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- ii) Insurance requirements itemized in this Agreement, and required of CONSULTANT, shall be provided by or in behalf of all subconsultants to cover their operations performed under this Agreement. CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subconsultants.
- iii) Each insurance policy required by this Agreement shall:
 - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. CONSULTANT is to notify the DISTRICT'S Purchasing Office by written notice via certified mail, return receipt requested.

D. The DISTRICT shall retain the right to review, at any time, coverage, form, and amount of insurance.

E. The procuring of required policies of insurance shall not be construed to limit CONSULTANT'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONSULTANT'S liability for indemnity of the DISTRICT shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between CONSULTANT and its carrier.

F. CONSULTANT shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the DISTRICT is an insured under the policy. CONSULTANT'S insurance is considered primary for any loss, regardless of any insurance maintained by the DISTRICT. CONSULTANT

is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.

- G. All certificates of insurance must be on file with and approved by the DISTRICT before commencement of any work under this Agreement. All certificates of insurance required herein must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing claims made or occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the DISTRICT'S Purchasing Office prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the DISTRICT'S Purchasing Office before CONSULTANT will be allowed to commence or continue work. The Certificate of insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.
- H. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to CONSULTANT'S insurer(s) and the DISTRICT'S Purchasing Office as soon as practicable after notice to the Insured.
- I. The Certificate of Insurance must include the following:
 - i) In the "Description of Operations/Special Provisions" section: "The Englewood Water District, is named as an Additional Insured, as their interests may appear on Commercial General Liability and Commercial Auto Policy."
 - ii) In the "Certificate Holder" section:
Englewood Water District
201 Selma Ave
Englewood, FL 34223

5. RESPONSIBILITIES OF THE CONSULTANT

- A. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. CONSULTANT warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for CONSULTANT), to solicit or secure this Agreement and that it 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 of this Agreement.
- D. CONSULTANT shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent consultant firms in effect at the time CONSULTANT'S services are rendered. CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct in Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. CONSULTANT agrees to

incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

- E. CONSULTANT shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof. The DISTRICT does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. CONSULTANT shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.
 - F. CONSULTANT shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at CONSULTANT'S offices for inspection, audit, and copying during normal business hours by the DISTRICT, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
 - G. The CONSULTANT shall comply with Florida Statutes Section 20.055(5), and must incorporate in all subcontracts the obligation to comply with Florida Statutes Section 20.055(5).
- 6. PUBLIC RECORDS LAW:** In accordance with Florida Statutes, Section 119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:
- A. Keep and maintain public records required by the DISTRICT to perform the service.
 - i) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.
(See <http://dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - ii) "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the DISTRICT. CONSULTANT'S records under this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Agreement.
 - B. Upon request from the DISTRICT provide the DISTRICT, at no cost, 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 for by law. All records kept electronically must be provided to the DISTRICT, upon request, in a format compatible with the information technology systems of the DISTRICT.
 - C. Ensure that project 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 Agreement term and, if CONSULTANT does not transfer the records to the DISTRICT following completion of the Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
 - D. Upon completion of the Agreement, transfer, at no cost, to the DISTRICT all public records in CONSULTANT'S possession or keep and maintain public records required by the DISTRICT to perform the service. If CONSULTANT transfers all public records to the DISTRICT upon completion of the Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If

CONSULTANT keeps and maintains public records upon the completion of the Agreement, CONSULTANT shall meet all applicable requirements for retaining public records.

E. Failure of CONSULTANT to comply with these requirements shall be a material breach of this Agreement. Further, CONSULTANT may be subject to penalties under Florida Statutes, Section 119.10.

7. OWNERSHIP AND USE OF DOCUMENTS

It is understood and agreed that all the documents, or reproducible copies, developed by CONSULTANT in connection with its services, including but not limited to reports, designs, specifications, and data, shall be delivered to, and shall become the property of the DISTRICT as they are received by the DISTRICT and when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the DISTRICT. Specific written authority is required from the Administrator for CONSULTANT to use any of the work products of this Agreement on any non-DISTRICT project. Notwithstanding the above, any reuse of the work products by the DISTRICT on other projects will be at the risk of the DISTRICT.

8. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

The timely performance and completion of the required services is vitally important to the interest of the DISTRICT. CONSULTANT shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. CONSULTANT'S personnel assigned to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. CONSULTANT shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to CONSULTANT'S key personnel must receive the DISTRICT'S Technical Support Manager, written approval before said changes or substitution can become effective.

A. The services to be rendered by CONSULTANT shall commence within one (1) calendar week of CONSULTANT'S receipt of written Notice to Proceed/Purchase Order from the DISTRICT.

B. CONSULTANT specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of CONSULTANT or the DISTRICT. Time is of the essence in the performance of this Agreement.

C. CONSULTANT agrees to provide to the DISTRICT'S Technical Support Manager, monthly written progress reports concerning the status of the work. The DISTRICT'S Technical Support Manager may determine the format for this progress report. The DISTRICT shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by CONSULTANT.

D. In the event unreasonable delays occur on the part of the DISTRICT or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by CONSULTANT which delay any Project Schedule completion date, the DISTRICT shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay.

9. RESPONSIBILITIES OF THE DISTRICT

A. The DISTRICT'S Technical Support Manager is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. The responsibility of the DISTRICT'S Technical Support Manager shall include:

- i) Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by CONSULTANT, and render in writing, decisions pertaining thereto within a reasonable time.
 - ii) Transmission of instructions, receipt of information, interpretation and definition of the DISTRICT'S policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 - iii) Review for approval or rejection all CONSULTANT'S documents and payment requests.
- B. The DISTRICT shall, upon request, furnish CONSULTANT with all existing data, plans, studies, and other information in the DISTRICT'S possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the DISTRICT and shall be returned to the DISTRICT'S Technical Support Manager upon completion of the services to be performed by CONSULTANT.
- C. The DISTRICT'S Technical Support Manager shall conduct periodic reviews of the work of CONSULTANT necessary for the completion of CONSULTANT'S services during the period of this Agreement, and may make other DISTRICT personnel available, where required and necessary to assist CONSULTANT. The availability and necessity of said personnel to assist CONSULTANT shall be determined solely within the discretion of the DISTRICT.
- D. The DISTRICT shall not provide any services to CONSULTANT in connection with any claim brought on behalf of or against CONSULTANT.

10. TERMINATION

- A. **TERMINATION WITH OR WITHOUT CAUSE:** The performance of work under this Agreement may be terminated with or without cause by the Administrator or designee in whole or in part or whenever the Administrator determines that termination is in the DISTRICT'S best interest. Any such termination shall be effected by the delivery to the CONSULTANT of a written notice of termination at least thirty (30) days before the date of termination, specifying the extent to which performance of the work under the Agreement is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONSULTANT shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-contracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and sub-contracts; and settle all outstanding liabilities and claims. CONSULTANT will be paid only for such work performed and materials supplied up to the termination. Under no circumstances shall the DISTRICT make any payment to CONSULTANT for services that have not been performed or that are performed subsequent to the termination date.
- B. Upon termination CONSULTANT shall deliver to the DISTRICT all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by CONSULTANT in connection with its services. The DISTRICT shall, upon receipt of the aforesaid documents, pay to CONSULTANT and CONSULTANT shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in subsequent Task Orders issued, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments made to CONSULTANT in accordance with Section 2 of this Agreement and any amounts withheld by the DISTRICT to settle claims against or to pay indebtedness of CONSULTANT in accordance with the provisions of this Agreement.
- C. **FUNDING IN SUBSEQUENT FISCAL YEARS:** It is expressly understood by the DISTRICT and CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the DISTRICT'S Board of Supervisors, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the DISTRICT reserves the right to terminate any Task Orders issued, in connection with

this Agreement. The DISTRICT will be responsible for payment of any outstanding invoices and work completed by CONSULTANT prior to such termination.

- D. In the event that CONSULTANT has abandoned performance under this Agreement, then the Administrator or designee may terminate this Agreement upon three (3) calendar days' written notice to CONSULTANT indicating its intention to do so. The written notice shall state the evidence indicating CONSULTANT'S abandonment.
- E. CONSULTANT shall have the right to terminate services only in the event of the DISTRICT failing to pay CONSULTANT'S properly documented and submitted invoice within ninety (90) calendar days of the approval by the DISTRICT'S Technical Support Manager, or if the project associated with an issued Task Order is suspended by the DISTRICT for a period greater than ninety (90) calendar days.
- F. The Administrator or designee reserves the right to terminate and cancel this Agreement in the event CONSULTANT is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for CONSULTANT or an assignment is made for the benefit of creditors.
- G. In the event CONSULTANT breaches this Agreement, the DISTRICT shall provide written notice of the breach and CONSULTANT shall have ten (10) calendar days from the date the notice is received to cure. If CONSULTANT fails to cure to the DISTRICT'S satisfaction within the ten (10) calendar days, the Administrator or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to CONSULTANT due to:
 - i) The quality of a portion or all of CONSULTANT'S work not being in accordance with the requirements of Task Orders issued in connection to this Agreement;
 - ii) The quantity of CONSULTANT'S work not being as represented in CONSULTANT'S Payment Request, or otherwise;
 - iii) CONSULTANT'S rate of progress being such that, in the DISTRICT'S opinion, substantial or final completion, or both, may be inexcusably delayed;
 - iv) CONSULTANT'S failure to use Agreement funds, previously paid to CONSULTANT by the DISTRICT, to pay CONSULTANT'S project related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - v) Claims made, or likely to be made, against the DISTRICT or its property;
 - vi) Loss caused by CONSULTANT; or
 - vii) CONSULTANT'S failure or refusal to perform any of the obligations to the DISTRICT, after written notice and a reasonable opportunity to cure as set forth above.

11. CHANGES IN SCOPE OF SERVICE ASSOCIATED WITH TASK ORDERS

Services beyond the Task Order Scope of Services which would increase or decrease compensation, time of performance or which are otherwise outside the level of effort contemplated by Task Order must have prior written approval of the Administrator or approval by the DISTRICT'S Board of Supervisors ("BOARD") as provided by this Agreement. All terms for the performance of such services must be agreed upon in a written document prior to any deviation from the terms herein, and when properly authorized and executed shall, become an Amendment associated with individual Task Orders.

In the event of a dispute between the Administrator and CONSULTANT arise over whether requested services constitute additional services and such dispute cannot be resolved by the Administrator and CONSULTANT, such dispute shall be

promptly presented to the BOARD for resolution. The BOARD'S decision shall be final and binding on the parties. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

12. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be, in the performance of all work services and activities under this Agreement, an independent contractor and not an employee, agent or servant of the DISTRICT. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to CONSULTANT'S sole direction, supervision, and control. CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CONSULTANT'S relationship and the relationship of its employees to the DISTRICT shall be that of an independent contractor and not as employees or agents of the DISTRICT. CONSULTANT does not have the power or authority to bind the DISTRICT in any promise, agreement, or representation other than as specifically provided for in this Agreement. CONSULTANT shall not pledge the DISTRICT'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

13. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

14. NO HIRE

CONSULTANT shall not hire any DISTRICT employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

15. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONSULTANT'S REPRESENTATIVE:

Heather Ripley, P.E.
Contract Manager
Kimley-Horn and Associates, Inc.
1412 Jackson St, Ste 2
Fort Myers, FL 33901
Email: Heather.Ripley@kimley-horn.com

DISTRICT'S REPRESENTATIVE:

Keith Ledford, P.E.
Technical Support Manager
Englewood Water District
201 Selma Ave
Englewood, FL 34223
TEL: 941.474.3217
Email: kledford@englewoodwater.com

16. ATTORNEY'S FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).

17. INCORPORATION OF REQUEST FOR PROPOSALS

The terms and conditions of this Agreement shall include and incorporate the terms, conditions and specifications set forth in the DISTRICT'S Request for Proposals, **RFP 2022-129**, and the CONSULTANT'S response thereto, including all documentation submitted, as required by the Request for Proposals.

18. AMENDMENT

No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation for the services, the Administrator and the duly authorized representative for CONSULTANT shall agree in writing to this change. For all other changes, except as provided herein, the DISTRICT's Technical Support Manager and CONSULTANT'S representative shall agree in writing to the change.

19. ASSIGNMENT

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the Administrator or designee, except that claims for the money due or to become due to CONSULTANT from the DISTRICT under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the DISTRICT. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the DISTRICT.

20. CONFLICTS

In the event of any conflict between the provisions of this Agreement and RFP No. 2022-129 or CONSULTANT'S response, which are made a part hereof by reference, the Agreement shall control.

21. E-VERIFY

The DISTRICT, CONSULTANT, and every subcontractor shall register with and use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all new employees as required by Section 448.095, Florida Statutes, Employment Eligibility, including but not limited to, verifying the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract.

22. SCRUTINIZED COMPANIES

A. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or less, the CONSULTANT shall certify on a form provided by the DISTRICT, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel.

B. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or more, the CONSULTANT shall certify on a form provided by the DISTRICT, that all of the following are true:

i) It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel; and

- ii) It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes, Section 215.473; and
 - iii) It is not engaged in business operations in Cuba or Syria.
- C. If the CONSULTANT provides a false certification, has been placed on one of the above-noted Lists of Scrutinized Companies, or has engaged in business operations in Cuba or Syria, the CONSULTANT will be in breach of this Agreement and the DISTRICT may terminate the Agreement.
- D. PENALTY:
- i) A CONSULTANT that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2,000,000.00 or twice the amount of the Agreement, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
 - ii) Shall be ineligible to bid on any contract with the DISTRICT for three (3) years after the date the DISTRICT determined that the CONSULTANT submitted a false certification.

23. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it 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 other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, DISTRICT shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

24. CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for a Project as long as said key staff are in CONSULTANT'S employment. If Administrator or his designee desires to request removal of any of CONSULTANT'S staff from a Project or Task Order, Administrator or his designee shall first meet with CONSULTANT and provide reasonable justification for said request.

25. FORCE MAJEURE

- A. Should performance of any obligation created under this Agreement become illegal or impossible by reason of:
- i) A strike or work stoppage, unless caused by a negligent act or omission of either Party;
 - ii) An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
 - iii) An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
 - iv) A declared emergency of the federal, state, or local government; or
 - v) Any other like event that is beyond the reasonable control of the non-performing party;
Then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided that:
 - vi) The non-performing party provides written notice within five (5) days of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has precluded the non-performing party from performing, and the

means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Agreement;

- vii) The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;
 - viii) No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and
 - ix) The non-performing party uses all reasonable diligence to remedy its inability to perform.
- B. Economic hardship of a party does not constitute an event of *force majeure*. A party will not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.
- C. The non-performing party's affected obligations under this Agreement will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance shall not be excused under this Section for a period exceeding two (2) months, provided that in extenuating circumstances, the DISTRICT may excuse performance for a longer term.
- D. The term of the Agreement will be extended by a period equal to that during which the non-performing party's performance is suspended under this Section.

26. MISCELLANEOUS

- A. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant shall not be construed as a waiver of a subsequent breach by the other party.
- F. Non-Discrimination. The DISTRICT does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The CONSULTANT

shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates hereinafter written.

Executed by the DISTRICT, this _____ day of April, 2022.

ENGLEWOOD WATER DISTRICT

By: _____
Raymond Burroughs, Administrator

Executed by the CONSULTANT, this _____ day of April, 2022.

KIMLEY-HORN & ASSOCIATES, INC.

By: _____

Print Name: Lewis Bryant, P.E.

Title: Vice President

EXHIBIT A – SCHEDULE OF FEES



Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	Rate
Chief Engineer	\$300
Senior Project Manager	\$272
Project Manager	\$221
Senior Professional Engineer	\$261
Professional Engineer II	\$193
Professional Engineer I	\$154
Engineer Intern	\$130
Senior Designer/ Engineering Tech	\$156
Designer/Engineering Tech	\$138
Drafter/CADD Operator	\$121
Construction Engineer	\$184
Construction Inspector	\$162
Administrative/Clerical	\$98