

**PORT OF PALM BEACH DISTRICT
REQUEST FOR DISCUSSION AND
COMMISSION ACTION**

**OLD BUSINESS
ITEM H-3**

PREPARED BY: Manuel Almira Executive Director March 7, 2018

SUBJECT: CCNA Engineering Agreements

BACKGROUND: On August 17, 2017, the Board directed Port Staff to advertise for a Request for Qualifications under the CCNA process for Engineering Services firms for Study Activity under \$200,000, Projects Not to Exceed \$2.0 million, and Work of a Specified Nature. The Request for Qualifications for Professional Engineering Services was issued on October 9, 2017 with responses due by November 6, 2017.

At the December 21, 2017 Board Meeting, the Board selected four companies to make presentations at the January 18, 2018 Board Meeting. At that meeting, after the presentations, the Board ranked the firms and requested that the Port's Executive Director enter into negotiations with the first ranked firms in each of the three categories. Since that time, Port staff has met and negotiated with E. C. Fennell for both Study Activity under \$200,000 and Projects Not to Exceed \$2.0 million, and with Kimley-Horn on Work of a Specified Nature.

These negotiations have been successful with both firms. Uniform contracts, including both terms and fee rates, have been agreed upon and are reflected in the attached agreements submitted for your approval.

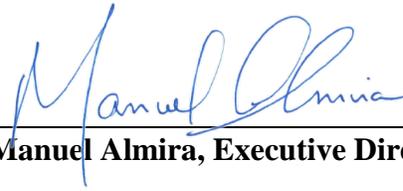
ADDITIONAL INFORMATION ATTACHED: No _____ Yes X

RECOMMENDATIONS: The Board of Commissioners of the Port of Palm Beach is respectfully requested to approve the CCNA Engineering Services Agreements as follows:

Study Activity Under \$200,000 with	E. C. Fennell
Projects Not to Exceed \$2.0 million with	E. C. Fennell
Work of a Specified Nature with	Kimley-Horn

FINANCIAL IMPACT: NONE

Respectfully Submitted By:



Manuel Almira, Executive Director

DATE ACTION TAKEN: _____

Approved: _____

Disapproved: _____

Deferred To: _____

Incorporated into Minutes: _____

Motion By: _____

Seconded By: _____

Unanimous: Yes _____ No _____

By: _____

**CONTINUING CONTRACT UNDER FLORIDA
STATUTE §287.055 (CCNA) - STUDY ACTIVITY**

Between

PORT OF PALM BEACH DISTRICT

and

**E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL
ASSOCIATION**

MARCH __, 2018

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CONTINUING CONTRACT UNDER CCNA FOR STUDY ACTIVITY

This Continuing Contract (“Agreement”), effective this MARCH ___, 2018, is by between PORT OF PALM BEACH DISTRICT (“Client”), 1 East 11th Street, Riviera Beach, Florida 33404 and E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION (“Firm”), having an address of 701 Northpoint Pkwy #110, West Palm Beach, FL 33407.

This is a non-exclusive agreement for both parties, as to the Services and otherwise. CLIENT reserves the right to go through the CCNA Process (if required) or use any existing Continuing Contract, as to all or any of the Services.

PROHIBITION AGAINST CONTINGENT FEES

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

Article One Services

Section 1.01 Services.

Under this Agreement FIRM shall perform the following services (“Services”) when and as authorized by the CLIENT on a Work Order basis:

Study activity where the fee for professional services for each individual study does not exceed \$200,000.

Article Two

Compensation Schedule

Section 2.01 Compensation for Services:

For all “Services” outlined above and below within the agreed to and established Work Orders or annual allowances FIRM shall be paid in accordance with: FIRM shall be paid on either a Lump Sum or Time and Materials basis, as determined by CLIENT. Lump Sum Work Orders shall be developed based on time estimates showing the applicable hourly rates contained in the Fee Schedule, which estimates shall be provided to CLIENT for CLIENT’s evaluation, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended. Time and Materials Work Orders shall include a “Not to Exceed Amount”.

The agreed to basis of compensation will be written into each Work Order. The Lump Sum basis of compensation will generally be used for tasks within Work Orders that have a well-defined scope of services. The Time and Materials basis of compensation will generally be used for tasks within Work Orders where the scope of services is not well-defined prior to the execution of the Work Order.

All Work Orders shall be limited, either by the Lump Sum amount agreed by CLIENT and FIRM, or by the “Not to Exceed” Amount. The Lump Sum amount shall be determined based on time estimates based the hourly rates in the Fee Schedule, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended.

FIRM shall NOT be reimbursed for travel expenses, mileages, subsistence, field equipment costs, reproduction, postage and any other expense related to the “Services” rendered, unless approved in advance by CLIENT.

Compensation shall be based on the Fee Schedule attached as ATTACHMENT A. The hourly rates contained in the Fee Schedule will be held until June 30th, 2019 and then increase annually at a 3% rate.

Section 2.02 Compensation for Reproduction Services:

CLIENT shall be responsible only for the cost of reproduction of review and final surveys, review and final bid documents and review and final contract sets. CLIENT, at election of the Executive Director or Deputy Director or Port Engineer, may have an outside third party vendor provide reproduction services, and either pay such vendor directly or have the cost as a straight FIRM pass-through. All other copying costs shall be at the expense of the FIRM, unless written approval for the copy cost is given by the Executive Director or Deputy Director or Port Engineer. There shall be no charge to CLIENT for scanning of documents.

Article Three Terms of Payment

Section 3.01 Invoices

FIRM will submit invoices for each Work Order to CLIENT each month covering Services completed to date and, as applicable, for materials and equipment delivered and stored on-site or off-site. Each invoice will be prepared in FIRM's standard form and supported by documentation according to FIRM's standard practice. Within 30 (thirty) days of receipt of the invoice, CLIENT shall give detailed, written notice of any sums which it may reasonably dispute or contest. If the parties are unable to resolve the matter within 15 days, only that portion so reasonably contested may be withheld from payment.

Section 3.02 Time of Payment

Invoices are due and payable within 30 days after receipt by CLIENT.

Section 3.03 Delay in Payment

If CLIENT fails to pay FIRM within 30 calendar days after receipt of any invoice, FIRM will be entitled any or all to the following:

(a) Interest: CLIENT will be charged interest at the rate of 1/2% per month, or that permitted by law if lesser, on all past-due amounts starting 30 calendar days after receipt of invoice. Payments will first be credited to interest and then to principal; provided, that in the event that the invoice has been disputed, interest will only apply as to that portion of the invoice with respect to which FIRM has prevailed.

(b) Suspension of Work: If CLIENT fails to make payment in full within 30 calendar days of the date due for any undisputed billing, FIRM may, after giving 7 calendar days' written notice to CLIENT, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, FIRM will have no liability to CLIENT for delays or damages caused by CLIENT because of such suspension. FIRM shall be entitled to an adjustment in compensation and the work schedule for the affected Work Order pursuant to Article Six.

Article Four Obligations of Firm

Section 4.01 Independent Contractor; Subcontracts

(a) FIRM represents that it is an independent contractor and will perform services pursuant to each Work Order as an independent contractor and not as an agent or employee of CLIENT.

(b) With prior written consent of Executive Director of CLIENT on a project by project ("Project") basis or through indication in a Work Order, FIRM may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of

Services. FIRM shall be responsible for the management of the subcontractors and subconsultants in the performance of their work fully as though such work had been performed directly by FIRM.

Section 4.02 Standard of Care:

The standard of care applicable to FIRM's engineering or related services will be the degree of skill and diligence normally employed by reputable professional engineers or consultants performing the same or similar Services in Palm Beach County, Florida, at the time said services are performed. FIRM will reperform any engineering or related services not meeting this standard without additional compensation.

Section 4.03 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Work Order cost and/or execution. These conditions and cost/execution effects are not the responsibility of FIRM.

Section 4.04 MWBE Representations

During the selection process through which FIRM was selected for this Agreement, FIRM made representations as to how it would assist the Port of Palm Beach District in achieving District's goal of 12% M/WBE participation in professional services. Within thirty days of request by District, FIRM shall provide such records as requested by District as will enable District to determine FIRM's success in assisting District with its M/WBE goals.

Section 4.05 FIRM's Personnel at Construction Site

(a) The presence or duties of FIRM's personnel at a construction site, whether as onsite representatives or otherwise, do not make FIRM or FIRM's personnel in any way responsible for those duties that belong to CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

(b) FIRM and FIRM's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except FIRM's own personnel.

(c) The presence of FIRM's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). FIRM neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

Section 4.06 Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, FIRM has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, FIRM makes no warranty that CLIENT's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from FIRM's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of Project cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

Section 4.07 Construction Progress Payments

Recommendations by FIRM to CLIENT for periodic construction progress payments to the construction contractor(s) will be based on FIRM's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by FIRM to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that FIRM has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

Section 4.08 Reliance on Third Party Work

It is intended that FIRM's work be relied upon by CLIENT and CLIENT's contractors. Thus, if FIRM's work relies on information supplied by third parties or CLIENT, FIRM cannot raise the defense that the information was provided by others (including by CLIENT), and FIRM shall be responsible for any damages resulting from such reliance if the information is incorrect. If FIRM believes that any third party information should be verified before incorporation into FIRM's work product, then FIRM shall separately list all information provided by third parties or CLIENT, and CLIENT will have responsibility for advising FIRM whether the information should

be relied on or whether further verification is required. Should further verification become necessary CLIENT shall compensate FIRM for this verification as part of a Work Order. Anyone and any entity hired or paid by FIRM (i.e. any of FIRM's subcontractors) shall be considered the FIRM, and not considered a "third party" for purposes of this Section. Further, the accuracy of any information arising from work previously performed by FIRM, under this Contract or any other contract between FIRM and CLIENT (and any work performed by FIRM as a subcontractor of another contractor of CLIENT), shall be the responsibility of FIRM as it relates to the scope of work performed on a project. Third party items not verified by FIRM will not be the responsibility of the FIRM if used by others. For Design work performed by FIRM and constructed by others where FRIM was not contracted by CLIENT or CLIENT's contractor to prepare record information, FIRM shall not be responsible for the accuracy of the record information.

Section 4.09 Access to FIRM's Accounting Records

FIRM will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to a Work Order will be available to CLIENT during FIRM's normal business hours for a period of 2 years after FIRM's final invoice pursuant to that Work Order for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. Only audit cost-reimbursable items will be subject to audit.

Section 4.10 FIRM's Insurance

FIRM will maintain throughout this Agreement the following insurance:

(a) Worker's compensation employer's liability insurance as required by the state where the work is performed and Employer's Liability with a limit of \$1,000,000.

(b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$5,000,000 combined single limits.

(c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of FIRM or of any of its employees, agents, or subcontractors, with \$5,000,000 per occurrence and in the aggregate.

(d) When furnishing engineering or engineering related services, professional liability (aka errors and omissions insurance) of \$5,000,000 per occurrence and in the aggregate.

CLIENT will be named as an additional insured with respect to FIRM's liabilities hereunder in insurance coverages identified in items (b) and (c) and FIRM waives subrogation against CLIENT as to said policies, except as to the coverages in (a) and (d). FIRM shall provide certificates on insurance evidencing the coverages in (a) though (d) to CLIENT within ten (10) business days after execution of this Agreement. Should any of the above-described policies be cancelled before the expiration date thereof, FIRM shall cease all Work under any Work Order until further written notice from CLIENT, and written notice of the cancellation will be delivered to CLIENT within ten (10) business days of the cancellation.

Article Five

Obligations of Client

Section 5.01 CLIENT-Furnished Data

CLIENT will provide to FIRM all data in CLIENT's possession relating to FIRM's Services. FIRM shall not rely upon the accuracy, timeliness, and completeness of the information provided by CLIENT, and shall conduct such testing and evaluations as it deems necessary to comply with the standard of care provided for under this Agreement.

Section 5.02 Access to Facilities and Property

CLIENT will make its facilities accessible to FIRM as required for FIRM's performance of its services and will provide labor and safety equipment as required by FIRM for such access. CLIENT will perform, at no cost to FIRM, such tests of equipment, machinery, pipelines, and other components of CLIENT's facilities as may be required in connection with FIRM's services; provided, that FIRM shall, at its sole expense, be responsible for complying with all security requirements, including without limitation, badging.

Section 5.03 Advertisements, Permits, and Access

Unless otherwise agreed to in the Work Order, CLIENT will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for FIRM's services or Project construction.

Section 5.04 Timely Review

CLIENT will examine FIRM's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

Section 5.05 Prompt Notice

CLIENT will give prompt written notice to FIRM whenever CLIENT observes or becomes aware of any development that affects the scope or timing of FIRM's Services, or of any defect in the work of FIRM or construction contractors.

Section 5.06 Asbestos or Hazardous Substances

(a) If asbestos or hazardous substances in any form are encountered or suspected, FIRM will stop its own work in the affected portions of the Project to permit testing and evaluation.

(b) CLIENT recognizes that FIRM assumes no risk and/or liability for a waste or hazardous waste site originated by other than FIRM.

Section 5.07 Litigation Assistance

Article One, Services generally, does not include costs of FIRM for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CLIENT. All such Services required or requested of FIRM by CLIENT, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

Section 5.08 Changes

CLIENT may make or approve changes within the scope of Services under a Work Order. If such changes affect FIRM's cost of or time for performance of the Services, an equitable adjustment will be made through an amendment to the affected Work Order.

Article Six Termination for Convenience

CLIENT may, for any reason whatsoever, terminate performance by the FIRM under this Agreement, and under any Work Order or portion thereof, for convenience. CLIENT shall give written notice of such termination to the FIRM specifying when termination becomes effective, which may be immediately. The FIRM shall incur no further obligations in connection with the Work and the FIRM shall stop Work when such termination becomes effective. The FIRM shall also terminate outstanding orders and subcontracts. The FIRM shall transfer title and deliver to CLIENT such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as the FIRM has. When terminated for convenience, the FIRM shall be paid for portions of the Work completed through the date of notice of Termination.

Article Seven General Legal Provisions

Section 7.01 Authorization to Proceed

Execution of the Work Order by CLIENT will be authorization for FIRM to proceed with the Services, unless otherwise provided in the Work Order.

Section 7.02 Reuse of Project Documents

All reports, drawings, specifications, documents, and other deliverables of FIRM, whether in hard copy or in electronic form, are instruments of service for the pertinent Work Order, whether the Work Order is completed or not; however, all such materials shall be the property of the CLIENT and can be reused by CLIENT in whole or in part, at CLIENT's own risk without cost to CLIENT or liability to FIRM. CLIENT agrees to indemnify FIRM and FIRM's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the

reuse, change or alteration of these Work Order documents, unless such reuse, change or alteration has been approved by FIRM in writing.

Section 7.03 Delay

In the event that a party (“Delayed Party”) is delayed in performance of its obligations hereunder, by any act or neglect of the other party (“Other Party”) or for whom such Other Party is responsible or by Acts of God, strikes, lockouts, accidents, or other events beyond the control of the Other Party, then FIRM’s compensation and the work schedule for an affected Work Order shall be equitably adjusted. In the event delays to the Work Order work is encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

Section 7.04 Limitations of Liability

(a) To the maximum extent permitted by law, FIRM's liability for CLIENT's damages under any Work Order will not, in the aggregate, exceed the greater of (i) Work Order value, or (ii) the limits of the FIRM’S required insurance under Section 4.10(d), whether such liability arises out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

(b) To the maximum extent permitted by law, FIRM and FIRM's affiliated corporations, officers, employees, and subcontractors shall not be liable for CLIENT’s special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect FIRM against indirect liability or third-party proceedings, CLIENT will indemnify FIRM for any such damages.

(c) This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it.

Section 7.05 No Third-Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than CLIENT and FIRM and has no third-party beneficiaries.

Section 7.06 Indemnification

(a) FIRM agrees to indemnify CLIENT for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of FIRM, FIRM's employees, affiliated corporations, and subcontractors in connection with Services performed under Work Order issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

(b) CLIENT agrees to indemnify FIRM from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CLIENT, or its employees or contractors in connection with Work Orders issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

Section 7.07 Assignment

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement or Work Order issued pursuant to it, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

Section 7.08 Jurisdiction

The substantive law of the state of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue in any action hereunder shall be state court in Palm Beach County, Florida.

Section 7.09 Severability and Survival

If any of the provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

Section 7.10 Materials and Samples

Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within 60 calendar days of Work Order close-out unless agreed to otherwise. CLIENT recognizes and agrees that FIRM is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.

Section 7.11 FIRM's Deliverables

FIRM's deliverables, including record drawings, are limited to the sealed and signed hard copies. Computer-generated drawing files furnished by FIRM are for CLIENT or others' convenience, but shall always be available to CLIENT upon request. Any conclusions or information derived or obtained from these files will be at user's sole risk.

Section 7.12 Dispute Resolution

Any controversy, dispute or claim arising hereunder or out of, or relating to this Agreement, or the breach hereof, or regarding the failure or refusal to perform the whole or any part of this Agreement, shall be settled by "fast track" arbitration in Palm Beach County, Florida, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Any decision made by an arbitrator or by arbitrators under this provision shall be enforceable as a final and binding decision as if it were a final decision or decree of a court of competent jurisdiction. This Agreement does not provide for attorneys' fees, and the arbitration award shall not include attorneys' fees.

Section 7.13 Entire Agreement

This Agreement, including its attachments and schedules, if any, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

Section 7.14 Jury Trial

The parties each waive trial by jury with regard to any matter arising hereunder or in connection herewith, as against each other, regardless of whether any third party to such matter shall have a right to trial by jury.

Section 7.15 Non-Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other breach or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; this is, in addition to every other remedy provided therein or by law. The failure of either party to enforce, at any time, any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require, at any time, performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver or create an estoppel from enforcement of such provisions, or in any way affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision, or to seek relief as a result of the prior breach.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:
PORT OF PALM BEACH DISTRICT

Printed Name of
Witness:_____

BY _____

Printed Name of
Witness:_____

FIRM:
E.C. FENNELL, P.A., A FLORIDA
PROFESSIONAL ASSOCIATION

Printed Name of
Witness:_____

BY _____
Everett C. Fennell, President

Printed Name of
Witness:_____

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, who is personally known to me or who produced Florida Driver's license as identification, as Chairman of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

[SEAL]

NOTARY PUBLIC
My commission expires:

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by Everett C. Fennell, who is personally known to me or who produced Florida Driver's license _____ as identification, as President of E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION.

[SEAL]

NOTARY PUBLIC
My commission expires:

APPROVED FOR LEGAL SUFFICIENCY:

Gregory C. Picken, Esq.
Gary, Dytrych & Ryan, P.A.

**PORT OF PALM BEACH DISTRICT
CONSULTANT WORK ORDER
PREPARED BY FIRM**

WORK ORDER NO: 20__-XXX

JOB NAME: *[INSERT PROJECT NAME]*

This WORK Order is issued by THE PORT OF PALM BEACH (CLIENT) pursuant to the Continuing Contract Under Florida Statute §287.055 for Professional Services – STUDY ACTIVITY, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES:

BACKGROUND

[INSERT PROJECT DESCRIPTION AND BACKGROUND]

1. SCOPE OF WORK

CONSULTANT will perform the following service:

[INSERT WORK ORDER SPECIFIC SCOPE OF WORK / SERVICES]

2. TIME OF COMPLETION

All Times of Completion are subject to exceptions for delays which are beyond the control of CONSULTANT.

[INSERT WORK ORDER SPECIFIC SCHEDULE FOR THE SCOPE OF WORK / SERVICES]

3. ASSUMPTIONS

[INSERT WORK ORDER SPECIFIC ASSUMPTIONS AND/OR EXCLUSIONS FOR THE SCOPE OF WORK / SERVICES IF ANY]

4. COMPENSATION

CONSULTANT will be compensated under the terms of the **Continuing Contract Under Florida Statute §287.055 for Professional Services – Study Activity, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES.**

CHECK ONE ONLY:

- THIS IS A FIXED LUMP SUM WORK ORDER: THE LUMP SUM IS \$_____.
- THIS IS A TIME AND MATERIALS WORK ORDER WITH A SUM NOT TO EXCEED AMOUNT. THE NOT TO EXCEED AMOUNT IS \$_____.
-

The Authorized Representatives designated below are authorized to act with respect to the Work Order. Communications between the parties shall be between parties and their consultants or subcontractors shall be through the Authorized Representatives:	
For the CLIENT:	For FIRM
Name:	Name:
Address:	Address:
Telephone:	Telephone

This Work Order No. _____ is effective this (date)	
Accepted for FIRM by:	Accepted for CLIENT by:
Name	Name
Title	Title

**CONTINUING CONTRACT UNDER FLORIDA
STATUTE §287.055 (CCNA) – Engineering Services For
Projects Where Construction Cost Does Not Exceed Two
Million Dollars**

Between

PORT OF PALM BEACH DISTRICT

and

**E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL
ASSOCIATION**

MARCH __, 2018

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Continuing Contract Under CCNA For Engineering Services For Projects Where Construction Cost Does Not Exceed Two Million Dollars

This Continuing Contract (“Agreement”, effective this MARCH ____, 2018, is by between PORT OF PALM BEACH DISTRICT (“Client”), 1 East 11th Street, Riviera Beach, Florida 33404 and E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION (“Firm”), having an address of 701 Northpoint Pkwy #110, West Palm Beach, FL 33407.

This is a non-exclusive agreement for both parties, as to the Services and otherwise. CLIENT reserves the right to go through the CCNA Process (if required) or use any existing Continuing Contract, as to all or any of the Services.

PROHIBITION AGAINST CONTINGENT FEES

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

Article One Services

Section 1.01 Services.

Under this Agreement FIRM shall perform the following services (“Services”) when and as authorized by the CLIENT on a Work Order basis:

Engineering services for any project where the estimated construction cost of each individual project does not exceed the sum of \$2,000,000.

Article Two

Compensation Schedule

Section 2.01 Compensation for Services:

For all “Services” outlined above and below within the agreed to and established Work Orders or annual allowances FIRM shall be paid in accordance with: FIRM shall be paid on either a Lump Sum or Time and Materials basis, as determined by CLIENT. Lump Sum Work Orders shall be developed based on time estimates showing the applicable hourly rates contained in the Fee Schedule, which estimates shall be provided to CLIENT for CLIENT’s evaluation, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended. Time and Materials Work Orders shall include a “Not to Exceed Amount”.

The agreed to basis of compensation will be written into each Work Order. The Lump Sum basis of compensation will generally be used for tasks within Work Orders that have a well-defined scope of services. The Time and Materials basis of compensation will generally be used for tasks within Work Orders where the scope of services is not well-defined prior to the execution of the Work Order.

All Work Orders shall be limited, either by the Lump Sum amount agreed by CLIENT and FIRM, or by the “Not to Exceed” Amount. The Lump Sum amount shall be determined based on time estimates based the hourly rates in the Fee Schedule, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended.

FIRM shall NOT be reimbursed for travel expenses, mileages, subsistence, field equipment costs, reproduction, postage and any other expense related to the “Services” rendered, unless approved in advance by CLIENT.

Compensation shall be based on the Fee Schedule attached as ATTACHMENT A. The hourly rates contained in the Fee Schedule will be held until June 30th, 2019 and then increase annually at a 3% rate.

Section 2.02 Compensation for Reproduction Services:

CLIENT shall be responsible only for the cost of reproduction of review and final surveys, review and final bid documents and review and final contract sets. CLIENT, at election of the Executive Director or Deputy Director or Port Engineer, may have an outside third party vendor provide reproduction services, and either pay such vendor directly or have the cost as a straight FIRM pass-through. All other copying costs shall be at the expense of the FIRM, unless written approval for the copy cost is given by the Executive Director or Deputy Director or Port Engineer. There shall be no charge to CLIENT for scanning of documents.

Article Three Terms of Payment

Section 3.01 Invoices

FIRM will submit invoices for each Work Order to CLIENT each month covering Services completed to date and, as applicable, for materials and equipment delivered and stored on-site or off-site. Each invoice will be prepared in FIRM's standard form and supported by documentation according to FIRM's standard practice. Within 30 (thirty) days of receipt of the invoice, CLIENT shall give detailed, written notice of any sums which it may reasonably dispute or contest. If the parties are unable to resolve the matter within 15 days, only that portion so reasonably contested may be withheld from payment.

Section 3.02 Time of Payment

Invoices are due and payable within 30 days after receipt by CLIENT.

Section 3.03 Delay in Payment

If CLIENT fails to pay FIRM within 30 calendar days after receipt of any invoice, FIRM will be entitled any or all to the following:

(a) Interest: CLIENT will be charged interest at the rate of 1/2% per month, or that permitted by law if lesser, on all past-due amounts starting 30 calendar days after receipt of invoice. Payments will first be credited to interest and then to principal; provided, that in the event that the invoice has been disputed, interest will only apply as to that portion of the invoice with respect to which FIRM has prevailed.

(b) Suspension of Work: If CLIENT fails to make payment in full within 30 calendar days of the date due for any undisputed billing, FIRM may, after giving 7 calendar days' written notice to CLIENT, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, FIRM will have no liability to CLIENT for delays or damages caused by CLIENT because of such suspension. FIRM shall be entitled to an adjustment in compensation and the work schedule for the affected Work Order pursuant to Article Six.

Article Four Obligations of Firm

Section 4.01 Independent Contractor; Subcontracts

(a) FIRM represents that it is an independent contractor and will perform services pursuant to each Work Order as an independent contractor and not as an agent or employee of CLIENT.

(b) With prior written consent of Executive Director of CLIENT on a project by project ("Project") basis or through indication in a Work Order, FIRM may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of

Services. FIRM shall be responsible for the management of the subcontractors and subconsultants in the performance of their work fully as though such work had been performed directly by FIRM.

Section 4.02 Standard of Care:

The standard of care applicable to FIRM's engineering or related services will be the degree of skill and diligence normally employed by reputable professional engineers or consultants performing the same or similar Services in Palm Beach County, Florida, at the time said services are performed. FIRM will reperform any engineering or related services not meeting this standard without additional compensation.

Section 4.03 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Work Order cost and/or execution. These conditions and cost/execution effects are not the responsibility of FIRM.

Section 4.04 MWBE Representations

During the selection process through which FIRM was selected for this Agreement, FIRM made representations as to how it would assist the Port of Palm Beach District in achieving District's goal of 12% M/WBE participation in professional services. Within thirty days of request by District, FIRM shall provide such records as requested by District as will enable District to determine FIRM's success in assisting District with its M/WBE goals.

Section 4.05 FIRM's Personnel at Construction Site

(a) The presence or duties of FIRM's personnel at a construction site, whether as onsite representatives or otherwise, do not make FIRM or FIRM's personnel in any way responsible for those duties that belong to CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

(b) FIRM and FIRM's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except FIRM's own personnel.

(c) The presence of FIRM's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). FIRM neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

Section 4.06 Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, FIRM has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, FIRM makes no warranty that CLIENT's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from FIRM's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of Project cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

Section 4.07 Construction Progress Payments

Recommendations by FIRM to CLIENT for periodic construction progress payments to the construction contractor(s) will be based on FIRM's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by FIRM to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that FIRM has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

Section 4.08 Reliance on Third Party Work

It is intended that FIRM's work be relied upon by CLIENT and CLIENT's contractors. Thus, if FIRM's work relies on information supplied by third parties or CLIENT, FIRM cannot raise the defense that the information was provided by others (including by CLIENT), and FIRM shall be responsible for any damages resulting from such reliance if the information is incorrect. If FIRM believes that any third party information should be verified before incorporation into FIRM's work product, then FIRM shall separately list all information provided by third parties or CLIENT, and CLIENT will have responsibility for advising FIRM whether the information should

be relied on or whether further verification is required. Should further verification become necessary CLIENT shall compensate FIRM for this verification as part of a Work Order. Anyone and any entity hired or paid by FIRM (i.e. any of FIRM's subcontractors) shall be considered the FIRM, and not considered a "third party" for purposes of this Section. Further, the accuracy of any information arising from work previously performed by FIRM, under this Contract or any other contract between FIRM and CLIENT (and any work performed by FIRM as a subcontractor of another contractor of CLIENT), shall be the responsibility of FIRM as it relates to the scope of work performed on a project. Third party items not verified by FIRM will not be the responsibility of the FIRM if used by others. For Design work performed by FIRM and constructed by others where FRIM was not contracted by CLIENT or CLIENT's contractor to prepare record information, FIRM shall not be responsible for the accuracy of the record information.

Section 4.09 Access to FIRM's Accounting Records

FIRM will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to a Work Order will be available to CLIENT during FIRM's normal business hours for a period of 2 years after FIRM's final invoice pursuant to that Work Order for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. Only audit cost-reimbursable items will be subject to audit.

Section 4.10 FIRM's Insurance

FIRM will maintain throughout this Agreement the following insurance:

(a) Worker's compensation employer's liability insurance as required by the state where the work is performed and Employer's Liability with a limit of \$1,000,000.

(b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$5,000,000 combined single limits.

(c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of FIRM or of any of its employees, agents, or subcontractors, with \$5,000,000 per occurrence and in the aggregate.

(d) When furnishing engineering or engineering related services, professional liability (aka errors and omissions insurance) of \$5,000,000 per occurrence and in the aggregate.

CLIENT will be named as an additional insured with respect to FIRM's liabilities hereunder in insurance coverages identified in items (b) and (c) and FIRM waives subrogation against CLIENT as to said policies, except as to the coverages in (a) and (d). FIRM shall provide certificates on insurance evidencing the coverages in (a) though (d) to CLIENT within ten (10) business days after execution of this Agreement. Should any of the above-described policies be cancelled before the expiration date thereof, FIRM shall cease all Work under any Work Order until further written notice from CLIENT, and written notice of the cancellation will be delivered to CLIENT within ten (10) business days of the cancellation.

Article Five

Obligations of Client

Section 5.01 CLIENT-Furnished Data

CLIENT will provide to FIRM all data in CLIENT's possession relating to FIRM's Services. FIRM shall not rely upon the accuracy, timeliness, and completeness of the information provided by CLIENT, and shall conduct such testing and evaluations as it deems necessary to comply with the standard of care provided for under this Agreement.

Section 5.02 Access to Facilities and Property

CLIENT will make its facilities accessible to FIRM as required for FIRM's performance of its services and will provide labor and safety equipment as required by FIRM for such access. CLIENT will perform, at no cost to FIRM, such tests of equipment, machinery, pipelines, and other components of CLIENT's facilities as may be required in connection with FIRM's services; provided, that FIRM shall, at its sole expense, be responsible for complying with all security requirements, including without limitation, badging.

Section 5.03 Advertisements, Permits, and Access

Unless otherwise agreed to in the Work Order, CLIENT will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for FIRM's services or Project construction.

Section 5.04 Timely Review

CLIENT will examine FIRM's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

Section 5.05 Prompt Notice

CLIENT will give prompt written notice to FIRM whenever CLIENT observes or becomes aware of any development that affects the scope or timing of FIRM's Services, or of any defect in the work of FIRM or construction contractors.

Section 5.06 Asbestos or Hazardous Substances

(a) If asbestos or hazardous substances in any form are encountered or suspected, FIRM will stop its own work in the affected portions of the Project to permit testing and evaluation.

(b) CLIENT recognizes that FIRM assumes no risk and/or liability for a waste or hazardous waste site originated by other than FIRM.

Section 5.07 Litigation Assistance

Article One, Services generally, does not include costs of FIRM for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CLIENT. All such Services required or requested of FIRM by CLIENT, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

Section 5.08 Changes

CLIENT may make or approve changes within the scope of Services under a Work Order. If such changes affect FIRM's cost of or time for performance of the Services, an equitable adjustment will be made through an amendment to the affected Work Order.

Article Six Termination for Convenience

CLIENT may, for any reason whatsoever, terminate performance by the FIRM under this Agreement, and under any Work Order or portion thereof, for convenience. CLIENT shall give written notice of such termination to the FIRM specifying when termination becomes effective, which may be immediately. The FIRM shall incur no further obligations in connection with the Work and the FIRM shall stop Work when such termination becomes effective. The FIRM shall also terminate outstanding orders and subcontracts. The FIRM shall transfer title and deliver to CLIENT such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as the FIRM has. When terminated for convenience, the FIRM shall be paid for portions of the Work completed through the date of notice of Termination.

Article Seven General Legal Provisions

Section 7.01 Authorization to Proceed

Execution of the Work Order by CLIENT will be authorization for FIRM to proceed with the Services, unless otherwise provided in the Work Order.

Section 7.02 Reuse of Project Documents

All reports, drawings, specifications, documents, and other deliverables of FIRM, whether in hard copy or in electronic form, are instruments of service for the pertinent Work Order, whether the Work Order is completed or not; however, all such materials shall be the property of the CLIENT and can be reused by CLIENT in whole or in part, at CLIENT's own risk without cost to CLIENT or liability to FIRM. CLIENT agrees to indemnify FIRM and FIRM's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the

reuse, change or alteration of these Work Order documents, unless such reuse, change or alteration has been approved by FIRM.

Section 7.03 Delay

In the event that a party (“Delayed Party”) is delayed in performance of its obligations hereunder, by any act or neglect of the other party (“Other Party”) or for whom such Other Party is responsible or by Acts of God, strikes, lockouts, accidents, or other events beyond the control of the Other Party, then FIRM’s compensation and the work schedule for an affected Work Order shall be equitably adjusted. In the event delays to the Work Order work is encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

Section 7.04 Limitations of Liability

(a) To the maximum extent permitted by law, FIRM's liability for CLIENT's damages under any Work Order will not, in the aggregate, exceed the greater of (i) Work Order value, or (ii) the limits of the FIRM’S required insurance under Section 4.10(d), whether such liability arises out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

(b) To the maximum extent permitted by law, FIRM and FIRM's affiliated corporations, officers, employees, and subcontractors shall not be liable for CLIENT’s special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect FIRM against indirect liability or third-party proceedings, CLIENT will indemnify FIRM for any such damages.

(c) This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it.

Section 7.05 No Third-Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than CLIENT and FIRM and has no third-party beneficiaries.

Section 7.06 Indemnification

(a) FIRM agrees to indemnify CLIENT for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of FIRM, FIRM's employees, affiliated corporations, and subcontractors in connection with Services performed under Work Order issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

(b) CLIENT agrees to indemnify FIRM from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CLIENT, or its employees or contractors in connection with Work Orders issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

Section 7.07 Assignment

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement or Work Order issued pursuant to it, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

Section 7.08 Jurisdiction

The substantive law of the state of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue in any action hereunder shall be state court in Palm Beach County, Florida.

Section 7.09 Severability and Survival

If any of the provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

Section 7.10 Materials and Samples

Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within 60 calendar days of Work Order close-out unless agreed to otherwise. CLIENT recognizes and agrees that FIRM is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.

Section 7.11 FIRM's Deliverables

FIRM's deliverables, including record drawings, are limited to the sealed and signed hard copies. Computer-generated drawing files furnished by FIRM are for CLIENT or others' convenience, but shall always be available to CLIENT upon request. Any conclusions or information derived or obtained from these files will be at user's sole risk.

Section 7.12 Dispute Resolution

Any controversy, dispute or claim arising hereunder or out of, or relating to this Agreement, or the breach hereof, or regarding the failure or refusal to perform the whole or any part of this Agreement, shall be settled by "fast track" arbitration in Palm Beach County, Florida, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Any decision made by an arbitrator or by arbitrators under this provision shall be enforceable as a final and binding decision as if it were a final decision or decree of a court of competent jurisdiction. This Agreement does not provide for attorneys' fees, and the arbitration award shall not include attorneys' fees.

Section 7.13 Entire Agreement

This Agreement, including its attachments and schedules, if any, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

Section 7.14 Jury Trial

The parties each waive trial by jury with regard to any matter arising hereunder or in connection herewith, as against each other, regardless of whether any third party to such matter shall have a right to trial by jury.

Section 7.15 Non-Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other breach or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; this is, in addition to every other remedy provided therein or by law. The failure of either party to enforce, at any time, any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require, at any time, performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver or create an estoppel from enforcement of such provisions, or in any way affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision, or to seek relief as a result of the prior breach.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:
PORT OF PALM BEACH DISTRICT

Printed Name of
Witness:_____

BY _____

Printed Name of
Witness:_____

FIRM:
E.C. FENNELL, P.A., A FLORIDA
PROFESSIONAL ASSOCIATION

Printed Name of
Witness:_____

BY _____
Everett C. Fennell, President

Printed Name of
Witness:_____

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, who is personally known to me or who produced Florida Driver's license as identification, as Chairman of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

[SEAL]

NOTARY PUBLIC
My commission expires:

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by Everett C. Fennell, who is personally known to me or who produced Florida Driver's license _____ as identification, as President of E.C. FENNELL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION.

[SEAL]

NOTARY PUBLIC
My commission expires:

APPROVED FOR LEGAL SUFFICIENCY:

Gregory C. Picken, Esq.
Gary, Dytrych & Ryan, P.A.

**PORT OF PALM BEACH DISTRICT
CONSULTANT WORK ORDER
PREPARED BY FIRM**

WORK ORDER NO: 20__-XXX

JOB NAME: *[INSERT PROJECT NAME]*

This WORK Order is issued by THE PORT OF PALM BEACH (CLIENT) pursuant to the Continuing Contract Under Florida Statute §287.055 for Professional Services – Engineering Services For Projects Where Construction Cost Does Not Exceed Two Million Dollars, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES:

BACKGROUND

[INSERT PROJECT DESCRIPTION AND BACKGROUND]

1. SCOPE OF WORK

CONSULTANT will perform the following service:

[INSERT WORK ORDER SPECIFIC SCOPE OF WORK / SERVICES]

2. TIME OF COMPLETION

All Times of Completion are subject to exceptions for delays which are beyond the control of CONSULTANT.

[INSERT WORK ORDER SPECIFIC SCHEDULE FOR THE SCOPE OF WORK / SERVICES]

3. ASSUMPTIONS

[INSERT WORK ORDER SPECIFIC ASSUMPTIONS AND/OR EXCLUSIONS FOR THE SCOPE OF WORK / SERVICES IF ANY]

4. COMPENSATION

CONSULTANT will be compensated under the terms of the **Continuing Contract Under Florida Statute §287.055 for Professional Services – Engineering Services For Projects Where Construction Cost Does Not Exceed Two Million Dollars, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES.**

CHECK ONE ONLY:

- THIS IS A FIXED LUMP SUM WORK ORDER: THE LUMP SUM IS \$_____.

 - THIS IS A TIME AND MATERIALS WORK ORDER WITH A SUM NOT TO EXCEED AMOUNT. THE NOT TO EXCEED AMOUNT IS \$_____.
-

The Authorized Representatives designated below are authorized to act with respect to the Work Order. Communications between the parties shall be between parties and their consultants or subcontractors shall be through the Authorized Representatives:

For the CLIENT:	For FIRM
Name:	Name:
Address:	Address:
Telephone:	Telephone

This Work Order No. _____ is effective this (date)	
Accepted for FIRM by:	Accepted for CLIENT by:
Name	Name
Title	Title

**CONTINUING CONTRACT UNDER FLORIDA
STATUTE §287.055 (CCNA) - WORK OF A SPECIFIED
NATURE**

Between

PORT OF PALM BEACH DISTRICT

and

**KIMLEY-HORN AND ASSOCIATES, INC., A
NORTH CAROLINA CORPORATION**

MARCH __, 2018

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Continuing Contract Under CCNA For WORK OF A SPECIFIED NATURE

This Continuing Contract (“Agreement”, effective this MARCH ____, 2018, is by between PORT OF PALM BEACH DISTRICT (“Client”), 1 East 11th Street, Riviera Beach, Florida 33404 and KIMLEY-HORN AND ASSOCIATES, INC., A NORTH CAROLINA CORPORATION (“Firm”), having an address of 1920 Wekiva Way, Suite 200, West Palm Beach, FL 33411.

This is a non-exclusive agreement for both parties, as to the Services and otherwise. CLIENT reserves the right to go through the CCNA Process (if required) or use any existing Continuing Contract, as to all or any of the Services.

PROHIBITION AGAINST CONTINGENT FEES

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

Article One Services

Section 1.01 Services.

Under this Agreement FIRM shall perform the following services (“Services”) when and as authorized by the CLIENT on a Work Order basis:

Scope of Services:

- (A) Work of a specified nature (as defined in Florida Statutes §287.055(2)(g)), which shall include:
 1. Port master plan development, amendment, and implementation;
 2. Conceptual and long range - planning;

3. Implementation of current and future projects in the current Capital Improvement Program;
4. Railroad expansion/improvements;
5. Site layout, parking, traffic circulation, signage, site lighting, storm water, infrastructure and utility design;
6. Paving projects;
7. Landscape design;
8. Multimodal/inter-modal transportation planning;
9. Security planning and design projects;
10. Fencing design;
11. Feasibility analysis;
12. Cost benefit analysis;
13. Regulatory permit applications and processing with the agencies;
14. Warehouse design;
15. Land use and zoning applications;
16. MOB Laydown Area design and inspection services;
17. Bulkhead replacement planning and design;
18. On-port inter-modal rail improvements planning and design;
19. Security grant projects planning and design;
20. Cargo transfer facility projects planning and design;
21. Inspection services and related engineering services during construction;
22. Design Build Criteria Package Preparation services.

Article Two Compensation Schedule

Section 2.01 Compensation for Services:

For all “Services” outlined above and below within the agreed to and established Work Orders, FIRM shall be paid on either a Lump Sum or Time and Materials basis, as determined by CLIENT. Lump Sum Work Orders shall be developed based on time estimates showing the applicable hourly rates contained in the Fee Schedule, which estimates shall be provided to CLIENT for CLIENT’s evaluation, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended. Time and Materials Work Orders shall include a “Not to Exceed Amount”.

The agreed to basis of compensation will be written into each Work Order. The Lump Sum basis of compensation will generally be used for tasks within Work Orders that have a well-defined scope of services. The Time and Materials basis of compensation will generally be used for tasks within Work Orders where the scope of services is not well-defined prior to the execution of the Work Order.

All Work Orders shall be limited, either by the Lump Sum amount agreed by CLIENT and FIRM, or by the “Not to Exceed” Amount. The Lump Sum amount shall be determined based on time estimates based the hourly rates in the Fee Schedule, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended.

FIRM shall NOT be reimbursed for travel expenses, mileages, subsistence, field equipment costs, reproduction, postage and any other expense related to the “Services” rendered, unless approved in advance by CLIENT.

Compensation shall be based on the Fee Schedule attached as ATTACHMENT A. The hourly rates contained in the Fee Schedule will be held until June 30th, 2019 and then increase annually at a 3% rate.

Section 2.02 Compensation for Reproduction Services:

CLIENT shall be responsible only for the cost of reproduction of review and final surveys, review and final bid documents and review and final contract sets. CLIENT, at election of the Executive Director or Deputy Director or Port Engineer, may have an outside third party vendor provide reproduction services, and either pay such vendor directly or have the cost as a straight FIRM pass-through. All other copying costs shall be at the expense of the FIRM, unless written approval for the copy cost is given by the Executive Director or Deputy Director or Port Engineer. There shall be no charge to CLIENT for scanning of documents.

Article Three Terms of Payment

Section 3.01 Invoices

FIRM will submit invoices for each Work Order to CLIENT each month covering Services completed to date and, as applicable, for materials and equipment delivered and stored on-site or off-site. Each invoice will be prepared in FIRM’s standard form and supported by documentation according to FIRM’s standard practice. Within 30 (thirty) days of receipt of the invoice, CLIENT shall give detailed, written notice of any sums which it may reasonably dispute or contest. If the parties are unable to resolve the matter within 15 days, only that portion so reasonably contested may be withheld from payment.

Section 3.02 Time of Payment

Invoices are due and payable within 30 days after receipt by CLIENT.

Section 3.03 Delay in Payment

If CLIENT fails to pay FIRM within 30 calendar days after receipt of any invoice, FIRM will be entitled any or all to the following:

(a) Interest: CLIENT will be charged interest at the rate of 1/2% per month, or that permitted by law if lesser, on all past-due amounts starting 30 calendar days after receipt of invoice. Payments will first be credited to interest and then to principal; provided, that in the event that the invoice has been disputed, interest will only apply as to that portion of the invoice with respect to which FIRM has prevailed.

(b) Suspension of Work: If CLIENT fails to make payment in full within 30 calendar days of the date due for any undisputed billing, FIRM may, after giving 7 calendar days' written notice to CLIENT, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, FIRM will have no liability to CLIENT for delays or damages caused by CLIENT because of such suspension. FIRM shall be entitled to an adjustment in compensation and the work schedule for the affected Work Order pursuant to Article Six.

Article Four Obligations of Firm

Section 4.01 Independent Contractor; Subcontracts

(a) FIRM represents that it is an independent contractor and will perform services pursuant to each Work Order as an independent contractor and not as an agent or employee of CLIENT.

(b) With prior written consent of Executive Director of CLIENT on a project by project ("Project") basis or through indication in a Work Order, FIRM may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of Services. FIRM shall be responsible for the management of the subcontractors and subconsultants in the performance of their work fully as though such work had been performed directly by FIRM.

Section 4.02 Standard of Care:

The standard of care applicable to FIRM's engineering or related services will be the degree of skill and diligence normally employed by reputable professional engineers or consultants performing the same or similar Services in Palm Beach County, Florida, at the time said services are performed. FIRM will reperform any engineering or related services not meeting this standard without additional compensation.

Section 4.03 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground

conditions may occur that could affect total Work Order cost and/or execution. These conditions and cost/execution effects are not the responsibility of FIRM.

Section 4.04 MWBE Representations

During the selection process through which FIRM was selected for this Agreement, FIRM made representations as to how it would assist the Port of Palm Beach District in achieving District's goal of 12% M/WBE participation in professional services. Within thirty days of request by District, FIRM shall provide such records as requested by District as will enable District to determine FIRM's success in assisting District with its M/WBE goals.

Section 4.05 FIRM's Personnel at Construction Site

(a) The presence or duties of FIRM's personnel at a construction site, whether as onsite representatives or otherwise, do not make FIRM or FIRM's personnel in any way responsible for those duties that belong to CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

(b) FIRM and FIRM's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except FIRM's own personnel.

(c) The presence of FIRM's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). FIRM neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

Section 4.06 Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, FIRM has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, FIRM makes no warranty that CLIENT's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from FIRM's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of Project cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

Section 4.07 Construction Progress Payments

Recommendations by FIRM to CLIENT for periodic construction progress payments to the construction contractor(s) will be based on FIRM's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by FIRM to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that FIRM has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

Section 4.08 Reliance on Third Party Work

It is intended that FIRM's work be relied upon by CLIENT and CLIENT's contractors. Thus, if FIRM's work relies on information supplied by third parties or CLIENT, FIRM cannot raise the defense that the information was provided by others (including by CLIENT), and FIRM shall be responsible for any damages resulting from such reliance if the information is incorrect. If FIRM believes that any third party information should be verified before incorporation into FIRM's work product, then FIRM shall separately list all information provided by third parties or CLIENT, and CLIENT will have responsibility for advising FIRM whether the information should be relied on or whether further verification is required. Should further verification become necessary CLIENT shall compensate FIRM for this verification as part of a Work Order. Anyone and any entity hired or paid by FIRM (i.e. any of FIRM's subcontractors) shall be considered the FIRM, and not considered a "third party" for purposes of this Section. Further, the accuracy of any information arising from work previously performed by FIRM, under this Contract or any other contract between FIRM and CLIENT (and any work performed by FIRM as a subcontractor of another contractor of CLIENT), shall be the responsibility of FIRM as it relates to the scope of work performed on a project. Third party items not verified by FIRM will not be the responsibility of the FIRM if used by others. For Design work performed by FIRM and constructed by others where FRIM was not contracted by CLIENT or CLIENT's contractor to prepare record information, FIRM shall not be responsible for the accuracy of the record information.

Section 4.09 Access to FIRM's Accounting Records

FIRM will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to a Work Order will be available to CLIENT during FIRM's normal business hours for a period of 2 years after FIRM's final invoice pursuant to that Work Order for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. Only audit cost-reimbursable items will be subject to audit.

Section 4.10 FIRM's Insurance

FIRM will maintain throughout this Agreement the following insurance:

(a) Worker's compensation employer's liability insurance as required by the state where the work is performed and Employer's Liability with a limit of \$1,000,000.

(b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$5,000,000 combined single limits.

(c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of FIRM or of any of its employees, agents, or subcontractors, with \$5,000,000 per occurrence and in the aggregate.

(d) When furnishing engineering or engineering related services, professional liability (aka errors and omissions insurance) of \$5,000,000 per occurrence and in the aggregate.

CLIENT will be named as an additional insured with respect to FIRM's liabilities hereunder in insurance coverages identified in items (b) and (c) and FIRM waives subrogation against CLIENT as to said policies, except as to the coverages in (a) and (d). FIRM shall provide certificates on insurance evidencing the coverages in (a) through (d) to CLIENT within ten (10) business days after execution of this Agreement. Should any of the above-described policies be cancelled before the expiration date thereof, FIRM shall cease all Work under any Work Order until further written notice from CLIENT, and written notice of the cancellation will be delivered to CLIENT within ten (10) business days of the cancellation.

Article Five Obligations of Client

Section 5.01 CLIENT-Furnished Data

CLIENT will provide to FIRM all data in CLIENT's possession relating to FIRM's Services. FIRM shall not rely upon the accuracy, timeliness, and completeness of the information provided by CLIENT, and shall conduct such testing and evaluations as it deems necessary to comply with the standard of care provided for under this Agreement.

Section 5.02 Access to Facilities and Property

CLIENT will make its facilities accessible to FIRM as required for FIRM's performance of its services and will provide labor and safety equipment as required by FIRM for such access. CLIENT will perform, at no cost to FIRM, such tests of equipment, machinery, pipelines, and other components of CLIENT's facilities as may be required in connection with FIRM's services; provided, that FIRM shall, at its sole expense, be responsible for complying with all security requirements, including without limitation, badging.

Section 5.03 Advertisements, Permits, and Access

Unless otherwise agreed to in the Work Order, CLIENT will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for FIRM's services or Project construction.

Section 5.04 Timely Review

CLIENT will examine FIRM's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

Section 5.05 Prompt Notice

CLIENT will give prompt written notice to FIRM whenever CLIENT observes or becomes aware of any development that affects the scope or timing of FIRM's Services, or of any defect in the work of FIRM or construction contractors.

Section 5.06 Asbestos or Hazardous Substances

(a) If asbestos or hazardous substances in any form are encountered or suspected, FIRM will stop its own work in the affected portions of the Project to permit testing and evaluation.

(b) CLIENT recognizes that FIRM assumes no risk and/or liability for a waste or hazardous waste site originated by other than FIRM.

Section 5.07 Litigation Assistance

Article One, Services generally, does not include costs of FIRM for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CLIENT. All such Services required or requested of FIRM by CLIENT, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

Section 5.08 Changes

CLIENT may make or approve changes within the scope of Services under a Work Order. If such changes affect FIRM's cost of or time for performance of the Services, an equitable adjustment will be made through an amendment to the affected Work Order.

Article Six

Termination for Convenience

CLIENT may, for any reason whatsoever, terminate performance by the FIRM under this Agreement, and under any Work Order or portion thereof, for convenience. CLIENT shall give written notice of such termination to the FIRM specifying when termination becomes effective, which may be immediately. The FIRM shall incur no further obligations in connection with the Work and the FIRM shall stop Work when such termination becomes effective. The FIRM shall also terminate outstanding orders and subcontracts. The FIRM shall transfer title and deliver to CLIENT such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as the FIRM has. When terminated for convenience, the FIRM shall be paid for portions of the Work completed through the date of notice of Termination.

Article Seven

General Legal Provisions

Section 7.01 Authorization to Proceed

Execution of the Work Order by CLIENT will be authorization for FIRM to proceed with the Services, unless otherwise provided in the Work Order.

Section 7.02 Reuse of Project Documents

All reports, drawings, specifications, documents, and other deliverables of FIRM, whether in hard copy or in electronic form, are instruments of service for the pertinent Work Order, whether the Work Order is completed or not; however, all such materials shall be the property of the CLIENT and can be reused by CLIENT in whole or in part, at CLIENT's own risk without cost to CLIENT or liability to FIRM. CLIENT agrees to indemnify FIRM and FIRM's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the reuse, change or alteration of these Work Order documents, unless such reuse, change or alteration has been approved by FIRM in writing.

Section 7.03 Delay

In the event that a party ("Delayed Party") is delayed in performance of its obligations hereunder, by any act or neglect of the other party ("Other Party") or for whom such Other Party is responsible or by Acts of God, strikes, lockouts, accidents, or other events beyond the control of the Other Party, then FIRM's compensation and the work schedule for an affected Work Order shall be equitably adjusted. In the event delays to the Work Order work is encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

Section 7.04 Limitations of Liability

(a) To the maximum extent permitted by law, FIRM's liability for CLIENT's damages under any Work Order will not, in the aggregate, exceed the greater of (i) Work Order value, or (ii) the limits of the FIRM'S required insurance under Section 4.10(d), whether such liability arises out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

(b) To the maximum extent permitted by law, FIRM and FIRM's affiliated corporations, officers, employees, and subcontractors shall not be liable for CLIENT's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect FIRM against indirect liability or third-party proceedings, CLIENT will indemnify FIRM for any such damages.

(c) This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it.

Section 7.05 No Third-Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than CLIENT and FIRM and has no third-party beneficiaries.

Section 7.06 Indemnification

(a) FIRM agrees to indemnify CLIENT for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of FIRM, FIRM's employees, affiliated corporations, and subcontractors in connection with Services performed under Work Order issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

(b) CLIENT agrees to indemnify FIRM from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CLIENT, or its employees or contractors in connection with Work Orders issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

Section 7.07 Assignment

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement or Work Order issued pursuant to it, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

Section 7.08 Jurisdiction

The substantive law of the state of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue in any action hereunder shall be state court in Palm Beach County, Florida.

Section 7.09 Severability and Survival

If any of the provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

Section 7.10 Materials and Samples

Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within 60 calendar days of Work Order close-out unless agreed to otherwise. CLIENT recognizes and agrees that FIRM is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.

Section 7.11 FIRM's Deliverables

FIRM's deliverables, including record drawings, are limited to the sealed and signed hard copies. Computer-generated drawing files furnished by FIRM are for CLIENT or others' convenience, but shall always be available to CLIENT upon request. Any conclusions or information derived or obtained from these files will be at user's sole risk.

Section 7.12 Dispute Resolution

Any controversy, dispute or claim arising hereunder or out of, or relating to this Agreement, or the breach hereof, or regarding the failure or refusal to perform the whole or any part of this Agreement, shall be settled by "fast track" arbitration in Palm Beach County, Florida, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Any decision made by an arbitrator or by arbitrators under this provision shall be enforceable as a final and binding decision as if it were a final decision or decree of a court of competent jurisdiction. This Agreement does not provide for attorneys' fees, and the arbitration award shall not include attorneys' fees.

Section 7.13 Entire Agreement

This Agreement, including its attachments and schedules, if any, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

Section 7.14 Jury Trial

The parties each waive trial by jury with regard to any matter arising hereunder or in connection herewith, as against each other, regardless of whether any third party to such matter shall have a right to trial by jury.

Section 7.15 Non-Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other breach or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; this is, in addition to every other remedy provided therein or by law. The failure of either party to enforce, at any time, any of the provisions of this Agreement, or to exercise any

option which is herein provided, or to require, at any time, performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver or create an estoppel from enforcement of such provisions, or in any way affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision, or to seek relief as a result of the prior breach.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:
PORT OF PALM BEACH DISTRICT

Printed Name of
Witness:_____

BY _____

Printed Name of
Witness:_____

FIRM:
KIMLEY-HORN AND ASSOCIATES, INC.,
A NORTH CAROLINA CORPORATION

Printed Name of
Witness:_____

BY _____
John C. Atz, President

Printed Name of
Witness:_____

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, who is personally known to me or who produced Florida Driver's license as identification, as Chairman of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

[SEAL]

NOTARY PUBLIC
My commission expires:

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by John C. Atz, who is personally known to me or who produced Florida Driver's license _____ as identification, as President of KIMLEY-HORN AND ASSOCIATES, INC., A NORTH CAROLINA CORPORATION.

[SEAL]

NOTARY PUBLIC
My commission expires:

APPROVED FOR LEGAL SUFFICIENCY:

Gregory C. Picken, Esq.
Gary, Dytrych & Ryan, P.A.

**PORT OF PALM BEACH DISTRICT
CONSULTANT WORK ORDER
PREPARED BY FIRM**

WORK ORDER NO: 20__-XXX

JOB NAME: *[INSERT PROJECT NAME]*

This WORK Order is issued by THE PORT OF PALM BEACH (CLIENT) pursuant to the Continuing Contract Under Florida Statute §287.055 for Professional Services – WORK OF A SPECIFIED NATURE, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES:

BACKGROUND

[INSERT PROJECT DESCRIPTION AND BACKGROUND]

1. SCOPE OF WORK

CONSULTANT will perform the following service:

[INSERT WORK ORDER SPECIFIC SCOPE OF WORK / SERVICES]

2. TIME OF COMPLETION

All Times of Completion are subject to exceptions for delays which are beyond the control of CONSULTANT.

[INSERT WORK ORDER SPECIFIC SCHEDULE FOR THE SCOPE OF WORK / SERVICES]

3. ASSUMPTIONS

[INSERT WORK ORDER SPECIFIC ASSUMPTIONS AND/OR EXCLUSIONS FOR THE SCOPE OF WORK / SERVICES IF ANY]

4. COMPENSATION

CONSULTANT will be compensated under the terms of the **Continuing Contract Under Florida Statute §287.055 for Professional Services – WORK OF A SPECIFIED NATURE, between FIRM (CONSULTANT) and the Port of Palm Beach District (CLIENT), MARCH __, 2018, which is incorporated herein by this reference for the below SERVICES.**

CHECK ONE ONLY:

- THIS IS A FIXED LUMP SUM WORK ORDER: THE LUMP SUM IS \$_____.

 - THIS IS A TIME AND MATERIALS WORK ORDER WITH A SUM NOT TO EXCEED AMOUNT. THE NOT TO EXCEED AMOUNT IS \$_____.
-

The Authorized Representatives designated below are authorized to act with respect to the Work Order. Communications between the parties shall be between parties and their consultants or subcontractors shall be through the Authorized Representatives:	
For the CLIENT:	For FIRM
Name:	Name:
Address:	Address:
Telephone:	Telephone

This Work Order No. _____ is effective this (date)	
Accepted for FIRM by:	Accepted for CLIENT by:
Name	Name
Title	Title