

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, between the Village of Tequesta, a municipal corporation with offices located at 345 Tequesta Drive, 33469 (hereinafter referred to as the "Village") and Kimley Horn & Associates, Inc., a Florida corporation with offices located at 1920 Wekiva Way, West Palm Beach, Florida 33411 (hereinafter referred to as "Engineer") is entered into this 12 day of May, 2016, effective immediately.

WHEREAS, the Village requires certain engineering services, including but not limited to engineering services for its water utility/system and general civil projects, hereinafter referred to in general terms as "Work"; and

WHEREAS, the Village has selected Engineer under the provisions of Sec. 287.055, *Florida Statutes*, also known as the "Consultant's Competitive Negotiation Act" ("CCNA") and desires to enter into a "continuing contract" with Engineer within the meaning the CCNA for provision of Work related services pursuant to this Agreement; and

WHEREAS, the Engineer has represented to the Village that it is capable and prepared to provide such Work services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

ARTICLE 1 - TERM; AGREEMENT NOT EXCLUSIVE

This Agreement shall remain in effect for a term of three (3) years from the date of this Agreement with three (3) one (1) year options to renew, unless otherwise terminated as provided herein at Article 13. Each option to renew shall be exercised automatically unless either party gives notice to the other at least sixty (60) days prior to the end of the term of its intent not to renew. Additionally, the parties may extend the Agreement upon mutually acceptable terms and conditions. Any such extension shall be in writing and must be executed by both parties. The extension may provide for the completion of all tasks previously authorized by the Village in accordance with Article 2 unless terminated in accordance with Article 13 hereinbelow, or allowed to lapse by failure to extend same at the end of the term. Any and all CSA Work authorizations issued during the term of this Agreement (including any extensions) shall remain in full force and effect beyond the term of this Agreement (including any extensions) as set forth herein, unless otherwise terminated in accordance with Article 13 hereinbelow.

Nothing in this Agreement shall prevent the Village from employing other consultants to perform the same or similar services. The Village also retains the option, at its sole discretion, to perform any and all professional engineering services by utilizing Village employees or other engineers.

PUBLIC RECORDS. In accordance with Sec. 119.0701, *Florida Statutes*, CONTRACTOR must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described in the Proposal or Bid. Upon request from the Village's custodian of public records, CONTRACTOR must provide the Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. A CONTRACTOR who fails to provide the public records to the Village, or fails to make them available for inspection or copying, within a reasonable time may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties under Sec. 119.10, *Florida Statutes*. Further, CONTRACTOR shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described in the Proposal or Bid are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if the CONTRACTOR does not transfer the records to the Village. Finally, upon completion of the Agreement, CONTRACTOR shall transfer, at no cost to the Village, all public records in possession of the CONTRACTOR, or keep and maintain public records required by the Village. If the CONTRACTOR transfers all public records to the Village upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to the VILLAGE, upon request from the Village's custodian of public records, in a format that is compatible with the Village's information technology systems.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 768-0685, OR AT lmckilliams@tequesta.org, OR AT 345 TEQUESTA DRIVE, TEQUESTA, FLORIDA 33469.

ARTICLE 2 - SERVICES TO BE PERFORMED BY ENGINEER; INSTRUMENT OWNERSHIP

2.1 - Services

Engineer shall perform certain professional general civil/engineering services and such other related services as may be required by the Village from time to time which are specifically authorized by the Village and set forth in a specific Scope of Services (herein referred to as the "Work"). Each such specific authorization will be referred to as a Consultant Services Authorization ("CSA"). Each CSA shall be designated as a consecutively numbered exhibit to this Agreement and shall be attached hereto and incorporated by reference as part of this Agreement. Each CSA form will set forth a specific scope of services, total amount of compensation and completion date. An individual CSA for projects costing up to twenty five thousand dollars (\$25,000.00) must be approved by the Village Manager prior to commencement of any work by Engineer, as more particularly set forth below (2.3 – Process). For all projects valued in excess of twenty five thousand dollars (\$25,000.00), the individual CSA must be approved by the Village Council prior to commencement of any work by Engineer. Typical projects that may be authorized include, but are not necessarily limited to the following:

1. Raw water pipe cleaning
2. Chemical feed system upgrade
3. Stormwater design
4. SCADA system upgrade
5. Filter Plant Upgrade
6. New MCC Room
7. Membrane Replacement
8. Aluminum Covers for Chlorine Tanks
9. All types of permitting
10. Roadway design

2.2 - Ownership

All instruments of professional services including, but not limited to, documents, records, disks, original drawings and/or other information created and/or procured by Engineer for any authorized Project shall become the property of the Village upon completion of the work for which the asset was utilized and upon payment by the Village in accordance with the applicable CSA and Article 16.

2.3 – Process

The Village and Engineer will confer prior to the issuance of any CSA to discuss the scope of the Work, the time needed to complete the Work, including phasing, if any, and the fees for services to be rendered in connection with the Work. Thereafter, Engineer will submit a proposed CSA to Village which shall state with specificity and detail the scope of Work, the time for completion, including

phasing, if any, and the fees. CSAs may divide the Work into individual tasks or phases, as discussed between the Village and Engineer prior to the issuance of the CSA. At the discretion of Village Manager, CSAs for certain general utility and civil services of minimal scope (those that do not exceed \$15,000.00 total cost per CSA) may be issued verbally for purposes of expediency, but shall be followed up by Engineer with a written CSA as soon as practical. Additionally, at the discretion of Village, a written CSA for general Work services to be performed over a specified period of time (months, or years) may be issued. In such event, Engineer shall invoice Village from time to time, pursuant to Article 3 hereinbelow, against the agreed fees based on authorization from the Village Manager.

Engineer shall commence no Work prior to receipt of Village authorization. Engineer shall not exceed the fee amount in any CSA without prior Village authorization.

Village agrees to cooperate with Engineer at all times with the provision of plans or other data in the possession of Village and available in Village files for any Work authorized hereunder.

ARTICLE 3 - COMPENSATION

3.1 - General

The Village shall pay Engineer in accordance with each individual CSA; however such CSA shall be based upon the Fee Schedule attached hereto as Exhibit "A" and incorporated by reference as part of this Agreement. Such Fee Schedule may be adjusted by mutual consent of both parties. Compensation based upon such Fee Schedule will be negotiated as a lump sum price or as an hourly rate for each individual CSA as set forth in Article 2 hereinabove. Payments shall be made by Village to Engineer on a monthly basis, pursuant to Engineer's invoice for Work completed.

3.2 – Reimbursable Expenses

All requests for payment of "out-of-pocket" expenses which may be eligible for reimbursement shall be included on the individual CSA applicable to the project. Copies of paid receipts, invoices or other documentation acceptable to the Village Manager may be requested by the Village for documentation sufficient to establish that the expense was actually incurred. No payment will be made for items not listed on the CSA unless approved by the Village Manager prior to the expenditure by Engineer.

ARTICLE 4 - INSURANCE

During the performance of the services under this Agreement, Engineer shall maintain the following insurance policies written by an insurance company authorized to do business in Florida:

1. **Professional liability** insurance with bodily injury limits of not less than \$2,000,000 for each claim, and with property damage limits of not less than \$2,000,000 for each claim.

2. **General and Automobile liability** insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident and with property damage limits of not less than \$500,000 for each accident, and any greater limits as may otherwise be required by law.

3. **Workers' Compensation** insurance in accordance with statutory requirements.

Engineer shall furnish the Village certificates of insurance which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least thirty (30) days written notice has been made to the Village. Engineer shall include the Village as an additional insured on the general and automobile liability insurance policies required by the Agreement. All of Engineer's subcontractors shall be required to include the Village and Engineer as additional insureds on their general and automobile liability insurance policies. Engineer shall not commence work under this Agreement or any CSA issued hereunder until all insurance required as stated herein has been obtained and certificates evidencing same are on file with the Village.

ARTICLE 5 - STANDARD OF CARE

Engineer shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and shall be obligated to correct services which fall below such standards at no additional cost to the Village. Engineer agrees that all services shall be performed by skilled and competent personnel.

ARTICLE 6 - INDEMNIFICATION

Engineer agrees to protect, indemnify, provide costs of defense and hold harmless the Village, its employees and representatives, from and against any and all claims and liabilities, including all attorneys' fees and court costs, including appeals, for which the Village, its employees and representatives, can or may be held liable as a result of injury (including death) to persons or damage to property to the extent occurring by reason of any negligent or intentional acts or omissions of Engineer, its employees or agents, including subcontractors, in the performance of services under this Agreement. Engineer shall not be required to indemnify the Village or its agents, employees or representatives when an occurrence results from the wrongful acts or omissions of the Village or its agents, employees or representatives. The terms and conditions of this Article shall survive the completion of all services, obligations and duties provided for in this Agreement as well as the termination of this Agreement for any reason.

ARTICLE 7 - INDEPENDENT CONTRACTOR

Engineer undertakes performance of the services as an independent contractor and shall be wholly responsible for the methods of performance utilized. Engineer shall not pledge the Village's

credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Engineer further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 8 - AUTHORITY TO PRACTICE

Engineer hereby represents and agrees that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the services, Engineer will comply with applicable regulatory requirements, including federal, state, special district and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 10 - SUBCONTRACTING

The Village reserves the right, in its sole discretion, to accept or reject the use of a subcontractor and to inspect all facilities of any subcontractor to insure that the selected subcontractors will be able to perform properly under this Agreement. If a subcontractor fails to perform or make progress as required by any CSA and it becomes necessary to replace the subcontractor in order to complete the work in a timely fashion, Engineer shall promptly provide a replacement, subject to acceptance of the new subcontractor by the Village.

ARTICLE 11 - FEDERAL AND STATE TAXES

The Village is exempt from federal tax and state sales and use taxes. Upon request, the Village will provide an exemption certificate to Engineer. Engineer is not exempt from paying sales tax to its suppliers for materials to fulfill contractual obligations with the Village, nor shall Engineer be authorized to use the Village's Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the Village under this Agreement and any CSA are subject to the availability of funds lawfully appropriated for its purpose by the Village Council of the Village of Tequesta. Engineer may rely on the execution of an individual CSA as evidence that funds have been appropriated.

ARTICLE 13 - TERMINATION OF AGREEMENT

This Agreement, or any CSA issued hereunder, may be terminated by either party with or without cause upon thirty (30) days prior written notice to the other. Unless Engineer is in breach of this Agreement, Engineer shall be paid for services rendered to the Village's reasonable satisfaction through the date of termination. Notice as required hereunder shall be sufficient when provided in accordance

with Article 14 hereinbelow.

ARTICLE 14 - NOTICE

Any notice, demand, communication or request required or permitted hereunder shall be in writing and delivered in person, by facsimile or sent by certified mail as follows:

AS TO VILLAGE	WITH COPY TO	AS TO ENGINEER
Michael Couzzo Village Manager Village of Tequesta 345 Tequesta Drive Tequesta, FL 33469	Keith W. Davis, Esq. Village Attorney Corbett, White, Davis and Ashton, P.A. 1111 Hypoluxo Road, Suite 207 Lantana, FL 33462	Thomas C. Jensen, P.E. Kimley Horn & Associates, Inc. 1920 Wekiva Way West Palm Beach, Florida 33411

Notices shall be effective when received at the addresses as specified above. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e., printed) after 5:00 p.m. on weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be sent by certified mail. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice sent by regular mail or facsimile to the other party.

ARTICLE 15 - UNCONTROLLABLE FORCES

Neither Village nor Engineer shall be deemed in default of this Agreement if delays or failure of performance is due to uncontrollable forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "uncontrollable force(s)" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage and governmental actions. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement. Notice as required hereunder shall be sufficient when provided in accordance with Article 14 hereinabove.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

ARTICLE 16 - OWNERSHIP OF DOCUMENTS

Engineer shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. All instruments of professional services, including, but not limited to, documents, records, disks, original drawings or other information created or procured by Engineer for any project which is the subject of this Agreement and an individual CSA shall, upon completion of the work and payment of all monies due Engineer, become the property of the Village for its use and/or distribution as may be deemed appropriate by the Village. However, both parties specifically acknowledge and agree that any re-use of such documents by the Village, for other than the specific purpose intended, without written verification and adaption by Engineer for such specific purpose will be at the sole risk of the Village and without liability or legal exposure to Engineer.

ARTICLE 17 - ACCESS AND AUDITS

Engineer shall maintain adequate records to justify all charges and costs incurred in performing work authorized under this Agreement and individual CSAs for at least three (3) years after completion of the applicable project. The Village shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal working business hours at Engineer's place of business.

ARTICLE 18 - NON-DISCRIMINATION

Engineer represents that all of its employees are treated in a fair and equitable manner without regard to race, color, religion, gender, age or national origin.

ARTICLE 19 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incidental to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 20 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in the state or federal courts in and for Palm Beach County and the Agreement will be interpreted according to the laws of Florida.

ARTICLE 21 - SUCCESSORS AND ASSIGNS

The Village and Engineer each binds itself and its partners, successors, assigns and legal

representatives to the other party in this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives. Engineer shall not assign this Agreement without the express written approval of the Village.

ARTICLE 22 - SEVERABILITY

The invalidity, illegality or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

ARTICLE 23 - OFFICE OF THE INSPECTOR GENERAL

Pursuant to Article XII of the Palm Beach County Charter, the Office of the Inspector General has jurisdiction to investigate municipal matters, review and audit municipal contracts and other transactions, and make reports and recommendations to municipal governing bodies based on such audits, reviews or investigations. All parties doing business with the Village shall fully cooperate with the inspector general in the exercise of the inspector general's functions, authority and power. The inspector general has the power to take sworn statements, require the production of records and to audit, monitor, investigate and inspect the activities of the Village, as well as contractors and lobbyists of the Village in order to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct and abuses.

ARTICLE 24 - PUBLIC RECORDS

In accordance with Sec. 119.0701, *Florida Statutes*, Engineer must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described herein and in Engineer's proposal. Upon request from Village's custodian of public records, Engineer must provide Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. Should Engineer fail to provide the public records to Village, or fail to make them available for inspection or copying, within a reasonable time, Engineer may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties under Sec. 119.10, *Florida Statutes*. Further, Engineer shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described herein and in Engineer's proposal are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if Engineer does not transfer the records to the Village. Finally, upon

completion of the Agreement, Engineer shall transfer, at no cost to the Village, all public records in possession of Engineer, or keep and maintain public records required by the Village. If Engineer transfers all public records to the Village upon completion of the Agreement, Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Engineer shall be entitled to retain a copies of documents it creates for record purposes, pursuant to the requirements of this Article and Chapter 119, *Florida Statutes*. If Engineer keeps and maintains public records upon completion of the Agreement, Engineer shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to Village, upon request from Village's custodian of public records, in a format that is compatible with Village's information technology systems.

IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 768-0685, OR AT lmcwilliams@tequesta.org, OR AT 345 TEQUESTA DRIVE, TEQUESTA, FLORIDA 33469.

ARTICLE 25 - ENTIRETY OF AGREEMENT

The Village and Engineer agree that this Agreement, including Exhibit "A" Fee Schedule; Exhibit "B" Engineer's Proposal submitted in response to Village's RFQ, which is hereby incorporated into this Agreement; and all required insurance, licenses and approvals required by this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

ATTEST:

Village of Tequesta

Lori McWilliams
Lori McWilliams, MMC, Village Clerk

Abigail Brennan
Abigail Brennan, Mayor
(SEAL)

Approved as to form and legal
sufficiency

Keith W. Davis, Esq., Village Attorney



WITNESSES:

Kimley Horn & Associates, Inc.

Garda Dunne
Thomas

Bryan T. Rapp

(Corporate Seal)

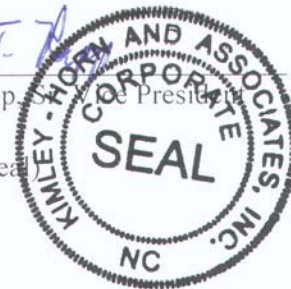




EXHIBIT "A"

VILLAGE OF TEQUESTA
BILLING RATE SCHEDULE
EFFECTIVE JULY 1, 2015

<u>STAFF CATEGORY</u>	<u>HOURLY RATES</u>
PRINCIPAL	N/A
PROJECT MANAGER	\$225
SENIOR PROFESSIONAL	\$205
PROFESSIONAL	\$175
ANALYST	\$125
DESIGNER / INSPECTOR	\$120
CADD OPERATOR	\$90
ADMINISTRATIVE SUPPORT STAFF	\$75

*NOTES:

Beginning on July 1, 2017 Consultant's hourly rates will be increased two percent (2%) per year on July 1st of each year.

An amount corresponding to 4.5% will be added to the billing rates for miscellaneous expenses.