

**CITY OF PORT ST. LUCIE  
CONTRACT # 20210107**

This Contract is for Design & Permitting of Class I Deep Injection Well at Prineville WTP, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City", and McNabb Hydrogeologic Consulting, Inc., 4600 Military Trail, Suite 116, Jupiter, FL, 33458, hereinafter called "Consultant" or "Proposer".

**SECTION I  
RECITALS**

In consideration of the below agreements and covenants set forth herein, the parties agree as follows:

**WHEREAS**, Consultant is licensed in the State of Florida; and

**WHEREAS**, Consultant provided a response to the City's eRFP # 20210107, incorporated herein by reference; and

**WHEREAS**, the City wishes to contract with a Consultant to provide the Scope of Services based on the terms and subject to the conditions contained herein; and

**WHEREAS**, Consultant is qualified, willing, and able to provide the Scope of Services specified on the terms and conditions set forth herein; and

**WHEREAS**, the City desires to enter into this Contract with Consultant to perform the Scope of Services specified to be paid as agreed upon below.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein name, the Parties agree as follows:

The Recitals set forth above are hereby incorporated into this Contract and made a part of hereof for reference.

**SECTION II  
NOTICES**

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person, sent by certified mail with return receipt request, email or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

Consultant: McNabb Hydrogeologic Consulting, Inc.  
President: David McNabb  
4600 Military Trail, Suite 116  
Jupiter, FL, 33458  
Telephone: 561-891-0763  
E-Mail: [david@mcnabbhydroconsult.com](mailto:david@mcnabbhydroconsult.com)

City Contract Administrator: Jason Bezak, CPPB, NIGP-CPP  
Procurement Agent II - Procurement Management Department  
121 SW Port St. Lucie Boulevard  
Port St. Lucie, FL 34984-5099  
Telephone: 772-344-4068 / FAX 772-871-7337  
E-mail: [JBezak@cityofpsl.com](mailto:JBezak@cityofpsl.com)

City Project Manager: John Eason, P.E.  
Manager, Utility Infrastructure  
City of Port St. Lucie, Utility Systems Dept.  
Utility Engineering Division  
900 SE Ogden Lane  
Port St. Lucie, FL 34983  
(772) 873-6487

### **SECTION III** **DESCRIPTION OF SERVICES TO BE PROVIDED**

#### **BACKGROUND**

The City owns and operates the Prineville Water Treatment Plant (WTP) deep injection well system for disposal of concentrate from the reverse osmosis (RO) process. The deep injection well system currently consists of one Class I deep injection well (IW-1) and an associated dual-zone monitor well (MW-1), a surge control system, yard piping and instrumentation. The permitted flow rate of IW-1 is up to 5.1 million gallons per day, which is equivalent to 3,510 gallons per minute for the RO plant at a capacity of 11.15 MGD. The Prineville Injection Well injection interval is set between 2,872 to 3,353 feet BPL and has been operational since 2011.

#### **PROJECT DESCRIPTION**

The City of Port St. Lucie (CITY) has requested the professional services of McNabb Hydrogeologic Consulting, Inc. (MHC) to provide injection well design, permitting, construction observation and reporting services for the construction of a Class I deep injection well (IW-2) at the CITY's Prineville Water Treatment Plant (WTP). The new injection well system will serve as a back-up well to existing injection well IW-1 and will be used for disposal of reverse-osmosis concentrate.

This project consists of the following:

1. Class I injection well permitting services - Prepare and submit to the Florida Department of Environmental Protection (FDEP) a permit application for the construction of one (1) Class I deep injection well (IW-2).
2. The injection well will be designed to have a cemented annulus rather than a fluid-filled annulus. A cemented annulus is considered an "alternate design" and requires FDEP approval. A Request for Alternate Design will be prepared for submittal to FDEP for approval.
3. NorthStar Geomatics will perform site surveys and prepare base drawings for the proposed well site.
4. Injection well IW-2 design services - The injection well will have a tubing and packer design with a cemented annulus and have a total depth of approximately 3,350 feet. The injection well design will be confined to the injection well concrete pad (i.e., the design ends at the edge of the pad) and will include the subsurface design of the injection well, the testing program to be performed during well construction, a concrete containment pad around IW-2, injection wellhead, wellhead piping, surge protection system, instrumentation, and connection of IW-2 piping to the existing RO concentrate pipe that connects IW-1 to the plant. The IW-2 subsurface design and a preliminary design of the surface facilities will be required to be submitted in support of the construction permit application.
5. Bidding assistance services – MHC will assist the CITY with bidding for the construction project. This will include attendance at a pre-bid meeting at the site and assistance with the preparation of addenda.
6. Construction phase services – Construction of IW-2 is anticipated to take 240 days with construction taking place 24 hours a day, seven days a week. Daily resident observation services will be provided on an average of 14 hours per day and the resident observer will be available 24 hours a day to avoid delaying the drilling contractor when specific phases of construction or testing must be witnessed by the resident observer.

7. SCADA Implementation Services – CC Controls will be contracted for the implementation and instrumentation programming services.
8. Construction and testing report and record documents – A report summarizing the construction and testing of IW-2 will be required to be submitted to FDEP for their records. Record Drawings and Certifications of Completion will also be prepared.
9. Operation and Maintenance Manual preparation – An operation and maintenance manual for IW-2 will need to be prepared to support a request for operational testing of IW-2.
10. Preparation of a request for operational testing – Upon completion of the well, a request for operational testing will be prepared for submittal to FDEP. A site visit of the completed wells with a FDEP representative (required by permit) is included in this task.
11. Operating permit professional services – Following 6 months of operational testing of IW-2, the City will need to apply for an operating permit for the injection well.

## **SCOPE OF SERVICES**

### **TASK 1 – INJECTION WELL CONSTRUCTION PERMITTING SERVICES**

MHC will provide the following injection well system permitting services:

1. Schedule and attend up to two (2) meetings with appropriate regulatory agencies and the CITY to discuss and review Florida Department of Environmental Protection Underground Injection Control (FDEP-UIC) permitting requirements for the construction of one (1) Class I industrial injection well at the WTP.
2. Attend up to two (2) meetings with CITY staff during the permitting process. One of the meetings will be the project kick-off meeting which will be held at the Prineville WTP.
3. Prepare draft construction permit application for CITY review and comment. Incorporate appropriate review comments and submit construction permit application for the construction of one (1) Class I injection well. The application will include:
  - FDEP Application Form to Construct one (1) Class I Injection Well with supporting information.
  - Local and regional geologic and hydrogeologic cross-sections.
  - Area of Review identifying all wells within a 2-mile radius of the site.
  - 30% design of the injection well.
  - Technical Specifications (for the subsurface design and testing program).
4. Respond to Requests for Additional Information (RAI) from the FDEP following the submittal of the construction permit application. This task includes response to up to two (2) RAI responses related to the FDEP construction permit application.
5. Attend one (1) public meeting in response to the FDEP draft construction permit.

### **TASK 2 – ALTERNATE DESIGN REQUEST PREPARATION**

The injection well will be designed to have a cemented annulus rather than a fluid-filled annulus. A cemented annulus is considered an “alternate design” and requires FDEP approval. MHC will provide the following Request for Alternate Design services:

1. Prepare draft Request for Alternate Design for CITY review and comment. Incorporate appropriate review comments and submit the Request for Alternate Design to FDEP. The Request will include:
  - Background information to explain why the alternate design is being requested.
  - A summary of the site geology and hydrogeology
  - Groundwater monitoring plan

- A discussion detailing the proposed alternate design
  - A discussion about testing during construction of IW-2
2. Submit the draft alternate design request to the CITY for review and comment. Appropriate review comments will be incorporated into the Request and finalized Request for Alternate Design will be submitted to FDEP.
  3. Respond to RAIs from FDEP following the submittal of the Request for Alternate Design.

### **TASK 3 – SURVEY SERVICES**

HCE (a sub-consultant to MHC) will contract with NorthStar Geomatics to perform site surveys and prepare base drawings for the proposed well site including the following:

- The horizontal control shall be based on the Florida State Plane Coordinate System, and the vertical shall be based on the North American Vertical Datum of 1988 (NAVD 88). A conversion to National Geodetic Vertical Datum of 1929 (NGVD 29) will be provided. Two horizontal and vertical control points shall be established.
- HCE will coordinate with the City to mark the approximate locations of existing below-grade utilities for inclusion on the site survey. Once the existing utilities are located, survey will be notified to commence work immediately.
- The topographic survey shall collect spot elevations on a 50-foot grid.
- The survey will locate above-grade improvements and any surface evidence of below-grade utilities and structures as well as all flagged utilities.

### **TASK 4 – INJECTION WELL SYSTEM DESIGN SERVICES**

The subsurface design and testing program and a preliminary design of the injection well surface facilities will be required to support the injection well system construction permit application. The injection well design will include the subsurface design of the injection well, the testing program to be performed during well construction, concrete pad around IW-2, wellhead, wellhead piping, surge protection system, instrumentation, and connection of IW-2 piping to the existing RO concentrate pipe that connects IW-1 to the plant. Final design of the system will be required for bidding purposes.

This task includes the following:

1. A 90% subsurface design and testing program for IW-2 will be prepared for review by the CITY. The 90% subsurface design will be accompanied by a 30% design of the IW-2 surface facilities. The purpose of the 30% design of the surface facilities is to provide enough detail to support the construction permit application by showing that the design includes instrumentation to collect IW-2 flowrate and injection pressure. The 90% subsurface design and 30% surface facilities design will be submitted to the CITY for review and comment. A review meeting will be held with the CITY to discuss design review comments and appropriate comments will be incorporated. A site visit will take place during the development of the 30% surface facilities design.
2. MHC will prepare and provide a 60% surface facilities design to the CITY for review and comment. Appropriate review comments will be incorporated to develop a 90% surface facilities design.
3. The 90% subsurface and 90% surface facilities designs will be combined and a 90% injection well IW-2 design will be provided to the CITY for review and comment.
4. Appropriate review comments will be incorporated into the design to develop a 100% design appropriate for bidding purposes. The 100% design will include technical specifications and design drawings for a Class I injection well.

### **TASK 5 – BID-PHASE SERVICES**

MHC will provide the following bid-phase services during well(s) bidding phase:

1. Assist the CITY with the preparation of a bid package for the construction of one injection well to include construction and testing technical specifications, drawings and bid form.
2. Participate in a pre-bid-site walk-down with CITY staff and well construction contractors.
3. Assist in the preparation of addenda.
4. Assist in the technical evaluation of submitted proposals.

## **TASK 6 –CONSTRUCTION-PHASE SERVICES**

MHC will provide the following construction-phase services during construction of injection well IW-2:

1. Coordinate and attend a pre-construction meeting with the CITY, Contractor, and subcontractors. Meeting minutes will be prepared and MHC will distribute copies.
2. Maintain communication with the FDEP. Attend up to four (4) meetings with the FDEP during the well construction phase. Provide weekly work summary reports to the CITY and FDEP during well construction. Prepare and submit required information to the FDEP. This includes intermediate and final casing seat recommendations for the injection well.
3. Review shop drawing submittals and other data that the Contractor is required to submit. These shall be reviewed for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. Such review is not intended as an approval of the submittals if they deviate from the Contract Documents or contain errors, omissions, and inconsistencies, nor is it intended to relieve the Contractor of his full responsibility for Contract performance, nor is the review intended to ensure or guarantee lack of inconsistencies, errors, and/or omissions between the submittals and the Contract requirements.
4. Provide technical interpretations of the drawings, specifications, and Contract Documents, and evaluate requested deviations from the approved design or specifications. Act as the initial interpreter of the Contract Documents pertaining to the execution and progress of the work.
5. Review and make determinations necessary for the approval or rejection of the Contractor's monthly payment applications. The approved payment applications, with MHC's recommendation, will be forwarded to the CITY.
6. Provide onsite resident observation of the construction activities during construction of the injection well. Provide qualified staff who will serve as resident observer. Resident services are scheduled to be provided on an overall project average of 14 hours per day (7 days per week) during construction that has an estimated duration of 240 days. Daily onsite time will vary depending on the construction activities in progress. The resident observer will be available 24-hours a day to avoid delaying the Contractor.

The resident observer will be experienced with injection well system construction and will assist in monitoring the construction progress, in checking compliance with technical plans and specifications, and in the preparation of progress payment submittals. The resident observer will also be responsible for formation sample description, and daily record keeping.

7. Make a final review of the construction to determine if the work has been completed in conformance with the intent of the Contract Documents, assist in negotiating final payment for construction and submit a final letter report upon which final settlement and termination of the Contract can be based. The proceedings of all final settlement negotiations will be documented and the basis for final payment recorded.

## **TASK 7 –SCADA IMPLEMENTATION SERVICES**

HCE (a sub-consultant to MHC) will contract with CC Controls to perform SCADA implementation and instrumentation programming services. Work shall include modifications of existing SCADA screens, development of a new SCADA screen for IW-2, modifications to existing programming logic so IW-2 mimics the operations of IW-1, and start-up, testing, and troubleshooting services.

## **TASK 8 –CONSTRUCTION REPORT AND RECORD DOCUMENTS**

MHC will provide the following reporting and documentation services following construction of IW-2:

1. MHC will prepare a draft Construction and Testing Report summarizing the construction of testing of injection well IW-2 for CITY review and comment. MHC will meet with CITY staff to discuss draft report review comments. Appropriate review comments will be incorporated, and the report will be finalized. The report will be signed and sealed by a Professional Geologist and submitted to FDEP.

2. MHC will verify IW-2 Contractor-generated record drawings and prepare a Certification of Completion for each well.

**TASK 9 –OPERATION AND MAINTENANCE MANUAL PREPARATION** – FDEP requires that an Operation and Maintenance (O&M) Manual be prepared and submitted prior to beginning operational testing of the injection well system.

MHC will provide the following services related to preparing the O&M Manual for deep injection well IW-:

1. Prepare draft O&M manual for IW-2. The O&M manual will be finalized after receipt of comments from the CITY.
2. Attend one (1) meeting with the CITY to discuss the O&M Manual.

**TASK 10 –OPERATIONAL TESTING REQUEST PREPARATION** - Upon completion of the injection well surface facilities, MHC will prepare a Request for Operational Testing Approval. Approval from FDEP to begin operational testing of the injection well system is required prior to beginning to operate the system.

1. The Request for Operational Testing will include the following as required by the existing permit.
  - Lithologic and geophysical logs with interpretations.
  - A copy of the borehole television survey(s) or borehole viewer log(s) of the injection well with interpretation.
  - Certification of mechanical integrity and interpreted test data.
  - Results of the short-term injection test with interpretation of the data.
  - A description of the actual injection procedure including the anticipated maximum pressure and flow rate at which the well will be operated under normal and emergency conditions.
  - Information concerning the compatibility of the injected wastewater with fluids in the injection zone and formation in both the injection zone and the confining zone.
  - Certification of completion of well construction and certification by the Engineer of Record that permit conditions are met.
  - Surface equipment (including piping, pressure gauges and flow meters, and all appurtenances) installation certified by the Engineer of Record.
  - A survey indicating the exact location in metes and bounds of the wells.
  - Draft O&M manual, including a description of surge and water hammer control and emergency discharge management plan procedures.
  - Calibration certificates for pressure gauges and flow meters.
  - Signed and sealed record "as-built" engineering drawings of the injection well including all IW-2 well construction, subsurface and surface piping and equipment, and appurtenances.
  - Demonstration of confinement and definition of the injection and confining sequences utilizing data collected during the drilling, logging and testing of the wells. This submittal is required to be prepared, signed, and sealed by a Florida Registered Professional Geologist or appropriately qualified Professional Engineer.
2. This task includes two (2) meetings with CITY staff.
3. This task includes response to up to one (1) Request for Additional Information from FDEP during the FDEP's review and evaluation of the Request for Operational Testing.

**TASK 11 –OPERATING PERMIT SERVICES** – Following approximately 6 months of operational testing of IW-2, MHC will prepare an application for an operating permit for IW-2. The following services will be performed by MHC:

1. MHC will prepare a draft Class I deep injection well operating permit application with supporting information in conformance with FDEP form 62-528.900(1) – Application to Construct/Operate/Abandon Class I, III, or V Injection Well Systems.
2. Application supporting information shall include all supporting text descriptions, figures and maps including but not necessarily limited to:
  - Text including general project description and discussion of engineering and hydrogeological data requested in FDEP form 62-528.900.
  - Review of area wells including injection zone wells, Floridan Aquifer wells, and Surficial Aquifer wells
  - Tabulation of operational testing monitoring data for both monitoring zones
  - Site and well location maps

- Injection well profile figures
- Geological profiles
- Plug and abandonment diagrams

3. MHC will submit the draft operating permit application to the CITY for review and comment.
4. MHC will attend a meeting at the offices of the CITY to discuss any review comments. Review comments will be incorporated into the permit application as appropriate. The permit application will then be submitted to FDEP.
5. MHC will provide the services of Holtz Consulting Engineers, Inc., a Florida registered Professional Engineer, to review the permit application and sign and seal the permit application form 62-528.900.
6. This task includes response to up to two (2) RAIs from FDEP related to the operating permit application.
7. MHC will review the draft operating permit and provide review comments to the CITY and FDEP.
8. MHC will attend draft permit public comment meeting.
9. MHC will review the Notice of Intent to Issue Permit and provided review comments to the CITY and FDEP.

### **ASSUMPTIONS**

1. The CITY will pay all permitting fees associated with this project.
2. Final completion of subsurface construction of the well will be achieved within 240 days after resident observation services begin (beginning of construction).
3. The duration of construction is based on the drilling contractor working 24 hours per day during the drilling of the injection well.
4. The CITY will review draft documents within 10 days of receipt.

### **OBLIGATIONS OF THE CITY**

To assist meeting schedule and budget estimates contained in this proposal, the CITY will provide the following:

1. Prompt review and comment on all deliverables (within 10 working days of receipt).
2. Attendance of key personnel at meetings as requested.
3. Payment of all permit application fees.

### **DELIVERABLES**

1. Draft and Final construction permit application for submittal to FDEP
2. Response to RAIs related to the construction permit application
3. Draft and Final Request for Alternate Design
4. Weekly construction summaries
5. Casing Seat Recommendations
6. Reviewed Contractor submittals
7. Contractor Payment Applications with MHC recommendation
8. Draft and Final Construction and Testing Report
9. Draft and final injection well IW-2 operations and maintenance manual.
10. Draft and final injection well system operational testing request.

11. Draft and final operating permit application.

#### **ADDITIONAL SERVICES**

The following services are not included in the scope of work but can be added by the CITY through an amendment to the Purchase Order.

1. Additional onsite presence during construction due to delays that were beyond the control of MHC.
2. Claims reduction and preparation for litigation involving the Contractor or third party, in connection with this project.

#### **SECTION IV** **TIME OF PERFORMANCE**

The Contract period shall start **March 2, 2022** and will terminate **March 2, 2026**, four (4) years later ("Termination date"). In the event all work required in the contract specifications has not been completed by the Termination date, the Consultant agrees to provide work at no additional cost as authorized by the Project Manager until all work specified in the contract specifications has been rendered and accepted by the City.

#### **COMPLETION DATES**

Following are the estimated completion times from the Notice to Proceed.

**Task 1** – Construction Permitting Draft Permit Application – 21 days from NTP Final – 7 days after receipt of comments

**Task 2** – Alternate Design Request Draft Request – 45 days from NTP Final Request – 7 days after receipt of comments

**Task 4** – Design 30% Design – 21 days from NTP 60% Design – 90 days from NTP 90% Design – 115 days from NTP Final 100% Design – 130 days from NTP

**Task 8** –Reports and Record Docs Draft report within 60 days of well completion Final - 21 days after receipt of comments

**Task 9** – O&M Manual Draft O&M within 60 days of well completion Final - 21 days after receipt of comments

**Task 10** – Request for Op. Testing Draft Op. Testing Request – 60 days after well completion Final Op. Test Request – 21 days after receipt of review comments from the CITY

**Task 11** – Operating Permit Services Draft operating permit application – 90 days following the first 6 months of IW-2 operational testing

Unless indicated otherwise, the Consultant shall commence work within ten (10) days after receiving the fully executed contract.

#### **SECTION V** **RENEWAL OPTION**

N/A.

#### **SECTION VI** **COMPENSATION**

The total amount to be paid by the City to the Consultant is on a lump sum basis per the fee schedule for a grand total not to exceed **\$879,942.**



<b>TASKS</b>	<b>Compensation</b>
1 – INJECTION WELL SYSTEM CONSTRUCTION PERMITTING SERVICES	\$33,488
2 – REQUEST FOR ALTERNATE DESIGN	\$14,753
3 – SURVEYING SERVICES	\$10,309
4 – DESIGN SERVICES	\$79,915
5 – BID-PHASE SERVICES	\$8,919
6 –CONSTRUCTION-PHASE SERVICES	\$614,343
7 – SCADA IMPLEMENTATION SERVICES	\$16,632
8 –CONSTRUCTION REPORTS AND RECORD DOCUMENTS	\$35,483
9 – OPERATION AND MAINTENANCE MANUAL PREPARATION	\$22,404
10 –OPERATIONAL TESTING REQUEST PREPARATION	\$20,816
11 – OPERATING PERMIT SERVICES	\$22,880
<b>Total</b>	<b>\$879,942</b>

**McNabb Hydrogeologic Consulting, Inc.**  
**Port St. Lucie Prineville IW-2 Professional Services**  
**Cost Breakdown**

Task	Description	Senior Hydrogeologists \$195	Project Geologist \$125	Holtz Consulting Engineers	% markup	Sub-Total	Task Total
<b>Task 1 - Construction Permitting Services</b>							<b>\$33,488</b>
	Kick-Off Meeting	4	4			\$1,280	
	Draft and Final Permit Application	84	16			\$18,380	
	RAI Responses	24	8			\$5,680	
	Holtz Consulting Engineers			\$7,760	\$388	\$8,148	
<b>Task 2 - Request for Alternate Design Preparation</b>							<b>\$14,753</b>
	Draft and Final Request for Operational Testing	48	8			\$10,360	
	RAI Responses	8	2			\$1,810	
	Holtz Consulting Engineers			\$2,460	\$123	\$2,583	
<b>Task 3 - Survey Services</b>							<b>\$10,309</b>
	Holtz Consulting Engineers			\$9,818	\$491	\$10,309	
<b>Task 4 - IW-2 Design Services</b>							<b>\$79,915</b>
	60% Design	72				\$14,040	
	90% Design	8				\$1,560	
	Final Design with Bid Form	4				\$780	
	Meetings	12				\$2,340	
	Holtz Consulting Engineers			\$58,050	\$2,905	\$60,955	
	Expenses					\$200	
<b>Task 5 - Bid Services</b>							<b>\$8,919</b>
	Prepare and attend pre-bid conference	8	4			\$2,050	
	Prepare addenda	8				\$1,560	
	Bids evaluation	4				\$780	
	Award recommendation letter	2				\$390	
	Holtz Consulting Engineers			\$3,885	\$194	\$4,079	
	Expenses					\$50	
<b>Task 6 - Services During Construction</b>							<b>\$614,343</b>
	Pre-construction meeting	4	6			\$1,780	
	On-Site Construction Oversight	140	3360			\$447,300	
	Weekly Construction Reports	272				\$53,040	
	Submittals Review	64				\$12,480	
	Casing Seat Recommendations (2)	80				\$15,600	
	Meetings	40				\$7,800	
	Task Management	20				\$3,900	
	Holtz Consulting Engineers			\$34,660	\$1,733	\$36,393	
	Expenses					\$36,050	
<b>Task 7 - SCADA Implementation Services</b>							<b>\$16,632</b>
	Holtz Consulting Engineers			\$15,840	\$792	\$16,632	
<b>Task 8 - Record Drawings and Report</b>							<b>\$35,483</b>
	Record Drawings	8				\$1,560	
	IW-2 Construction and Testing Report	80				\$15,600	
	Holtz Consulting Engineers			\$17,450	\$873	\$18,323	
<b>Task 9 - Operations and Maintenance Manual</b>							<b>\$22,404</b>
	O&M Manual	80				\$15,600	
	Holtz Consulting Engineers			\$6,460	\$324	\$6,804	
<b>Task 10 - Operational Testing Request</b>							<b>\$20,816</b>
	Mechanical Integrity Tech Memo	24				\$4,680	
	Injection testing Tech Memo	32				\$6,240	
	Confinement Tech Memo	24				\$4,680	
	Operational Testing Request	12				\$2,340	
	Holtz Consulting Engineers			\$2,740	\$137	\$2,877	
<b>Task 11 - Operating Permit Services</b>							<b>\$22,860</b>
	Area of Review	8				\$1,560	
	Geologic and hydrogeologic cross sections	2	4			\$690	
	Application supporting information	50	30			\$13,500	
	Plug & abandonment plan, cost estimate and diagrams	4				\$780	
	RAI responses	8				\$1,560	
	Review draft and notice of intent permit	2				\$390	
	Holtz Consulting Engineers			\$4,000	\$200	\$4,200	
	<b>Project Total</b>						<b>\$879,342</b>

Payments will be disbursed in the following manner:

**The Contract Sum** - Work to be paid for on the basis of per unit prices: each, lump sum, linear feet, square yards, system, etc.

**Progress Payments-** Within twenty (20) business days, the City shall pay the Consultant, the sum of money due each Progress Payment that is properly allocated to labor, materials and equipment incorporated in the work for the period covered in the application for progress payment.

Invoices for services shall be submitted once a month, by the tenth (10th) day of each month, and payments shall be made within twenty (20) business days unless Consultant has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Payments shall be made within twenty (20) business days of receipt of Consultant's valid invoice, provided that the invoice is accompanied by adequate supporting documentation and is approved by the Project Manager as required under Section XV of the Contract.

All invoices and correspondence relative to this Contract must contain the City's Contract number and Purchase Order number, detail of items with prices that correspond to the Contract, a unique invoice number .

All invoices are to be sent to: [APNOTIFICATIONS@CITYOFPSL.COM](mailto:APNOTIFICATIONS@CITYOFPSL.COM) .

The Consultant shall not be paid additional compensation for any loss or damage, arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the performance of the work, or for any expenses incurred by or in consequence of the suspension or discontinuance of the work.

In the event the City deems it expedient to perform work which has not been done by the Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, at the City's option, will be invoiced to the Consultant and/or deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

All payments not made within the time specified by this section shall bear interest from 30 calendar days after the due date at the rate of one (1) percent per month on the unpaid balance.

**Taxes.** Consultant is responsible for all federal, state, and local taxes and other charges related to the performance of this contract.

## **SECTION VII** **WORK CHANGES**

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the contract price and time for completion. Any and all changes must be authorized by a written change order signed by the City's Purchasing Agent or his designee as representing the City. Work shall be changed and the contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change.

## **SECTION VIII** **CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Consultant pursuant to the Solicitation and Specifications on file in the Procurement Management Department of the City. All documents submitted by the Consultant in relation to said proposal, and all documents promulgated by the City for inviting proposals are, by reference, made a part hereof as if set forth herein in full.

## **SECTION IX** **INDEMNIFICATION/HOLD HARMLESS**

Consultant agrees to indemnify and hold harmless, the City, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful

death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of Consultant, agents, laborers, subconsultants or other personnel entity acting under Consultant control in connection with the Consultant's performance of services under this Contract and to that extent Consultant shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses including appeals. That the aforesaid hold-harmless Contract by Consultant shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Consultant or any agent laborers, subconsultants or employee of Consultant regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by Consultant on the work. This indemnification shall survive the termination of this Contract.

## **SECTION X** **SOVEREIGN IMMUNITY**

Nothing contained in this Contract shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in [Section 768.28, Florida Statutes](#).

## **SECTION XI** **INSURANCE**

The Consultant agrees to indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent act, recklessness, or intentional wrongful misconduct of the Consultant and persons employed or utilized, including any independent consultants or subconsultants by the Consultant in the performance of this contract.

The Consultant shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

**Workers' Compensation Insurance & Employer's Liability:** The Consultant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

**Commercial General Liability Insurance:** Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000

Fire damage  
Medical expense

\$100,000 any 1 fire  
\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation Employers' Liability, and Professional Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a Florida municipal corporation, its officers, employees and agents for Contract # 20210107 Design & Permitting of Class I Deep Injection Well at Prineville WTP shall listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Automobile Liability Insurance: The Consultant shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Consultant does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Consultant to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the obligation, to review and request a copy of Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Consultant warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Consultant shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided

Waiver of Subrogation: The Consultant shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then Consultant shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Consultant for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of the Consultant to ensure that all independent consultants and sub-consultants comply with the same insurance requirements referenced herein. It will be the responsibility of the consultant to obtain Certificates of Insurance from all independent consultants and subconsultants listing the City as an Additional Insured without the language when required by written contract. If consultant, independent consultant or subconsultant maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by consultant/independent consultant/subconsultant.

The Consultant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not

less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation, to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement.

A failure on the part of the consultant to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

## **SECTION XII** **ACTS OF GOD**

The Consultant shall be responsible for all preparation of the site for Acts of God, including but not limited to; earthquake, flood, tropical storm, hurricane or other cataclysmic phenomenon of nature, rain, wind or other natural phenomenon of normal intensity, including extreme rainfall. No reparation shall be made to the Consultant for damages to the Work resulting from these Acts. The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

**Emergencies** – In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the Consultant, or his designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. In the event such actions are taken, the Consultant shall promptly give to the City written notice and contact immediately by phone, of any significant changes in work or deviations from the Contract documents caused thereby, and if such action is deemed appropriate by the City a written authorization signed by the City covering the approved changes and deviations will be issued.

## **SECTION XIII** **PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS**

Subject to the laws of the State of Florida and of the United States, neither Consultant nor any Sub-Consultant supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

## **SECTION XIV** **COMPLIANCE WITH LAWS**

The Consultant shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. Consultant will comply with all requirements of [28 C.F.R. § 35.151](#). Consultants and Sub-Consultant, shall comply with [§ 119.0701, Fla. Stat.](#) The Consultant and Sub-Consultant, are to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this Contract, unless the records are exempt from [Art. I, § 24\(a\), Fla. Const.](#) and [§ 119.07\(1\)\(a\), Fla. Stat.](#) Pursuant to [§ 119.10\(2\)\(a\), Fla. Stat.](#), any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in [§ 775.082](#) and [§ 775.083 Fla. Stat.](#)

## **RECORDS**

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

Consultant agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service;

1. The timeframes and classifications for records retention requirements must be in accordance with the [General Records Schedule GS1-SL for State and Local Government Agencies](#).
2. During the term of the contract, the Consultant shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Consultant's records under this Contract include but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.
4. The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
5. A Consultant who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.

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

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
121 SW Port St. Lucie Blvd.**

Port St. Lucie, FL 34984  
(772) 871 5157  
[pr@cityofpsl.com](mailto:pr@cityofpsl.com)

**SECTION XV  
INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Project Manager shall make inspection as soon as practicable after receipt from the Consultant of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Project Manager shall approve the invoice when it is received. Thereafter the Consultant shall be entitled to payment, as described in Section V. If, on such inspection the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Consultant shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Project Manager. Upon failure of the Consultant to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five (5) days written notice to the Consultant, the City may, without prejudice to any other remedy he may have, correct such deficiencies. The Consultant shall be charged all costs incurred to correct deficiencies. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Consultant of his responsibility to remedy any deviation, deficiency, or defect.

**Authority** - The Consultant is hereby informed that City inspectors are not authorized to alter, revoke, enlarge, or relax the provisions of these specifications. They are not authorized to approve or accept any portion of the completed work, or instructions contrary to the specifications. An inspector is placed on the project (or sent to the location of materials) to inspect materials being used in the work and to observe the manner in which the work is being performed and to report the progress of the work to the City. The inspector shall have the authority to reject defective materials or suspend any work that is being improperly done subject to the final decision of the City.

**Notification** – The Consultant shall be responsible to give twenty-four (24) hour notification to the City, when field observations are required.

**Deductions** - In the event the City deems it expedient to perform work which has not been done by the Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, in the City's option, will be invoiced to the Consultant and/or may be deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

**SECTION XVI  
SCRUTINIZED COMPANIES**

[Section 287.135, Florida Statutes](https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global%20Governance%20Mandates%20and%20Florida%20Statutes%202019%2001%2029.pdf?ver=2019-01-29-130006-790), prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to [Section 215.473, Florida Statutes](https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global%20Governance%20Mandates%20and%20Florida%20Statutes%202019%2001%2029.pdf?ver=2019-01-29-130006-790)  
[https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global Governance Mandates and Florida%20Statutes 2019 01 29.pdf?ver=2019-01-29-130006-790.](https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global%20Governance%20Mandates%20and%20Florida%20Statutes%202019%2001%2029.pdf?ver=2019-01-29-130006-790)



**SECTION XXVII**  
**CONTRACT ADMINISTRATION**

**Amendments.** The City and the Consultant agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract. The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the City and the Consultant.

**Fiscal Year-** All reference to Fiscal Year shall mean the City's Fiscal Year. The City's Fiscal Year is from October 1<sup>st</sup> through September 30<sup>th</sup>.

**Integration of Terms.** This Contract represents the entire contract between the parties. The parties shall not rely on any representation that may have been made by either party which is not included in the Contract.

**Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the vested parties. Each party shall be deemed to be an independent Consultant contracting for the services and acting toward the mutual benefits expected to be derived from the mutually agreed upon contract. Neither Consultant nor any of Consultant's agents, employees, subconsultants or Consultants shall become or be deemed to become agents, or employees of the City. Consultant shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subconsultants, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**Notice(s).** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Fed-EX, UPS, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the contract. Each such notice shall be deemed to have been provided:

- I. Within one (1) day in the case of overnight hand delivery, courier or Services such as Fed-Ex or UPS with guaranteed next day delivery; or,
- II. Within seven (7) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person or their designees and/or address shall be in writing to the other party and as provided herein.

**Performance by Industry Standards.** The Consultant represents and expressly warrants that all aspects of the Services provided or used by it shall, at a minimum, conform to the standards in the Consultant's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence

**Permits, Licenses, and Certifications.** The Consultant shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The Consultant shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the City's contract, and return it with the signed contract and insurance documents.

**Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the City and the Consultant for the Services provided in connection with the Contract.

**Use of Name or Intellectual Property.** Consultant agrees it will not use the name or any intellectual property, including but not limited to, City trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the City.

**Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the City and the Consultant, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach. Each waiver, if mutually agreed upon, shall be published as a contract amendment.

## **SECTION XVIII ADDITIONAL REQUIREMENTS**

**Conflict -** In the event of any conflict between the terms and conditions, appearing in the eRFP, on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply.

**City's Public Relations Image.** – The Consultant's personnel shall at all times handle complaints and any public contact with due regard to the City's relationship with the public. Any personnel in the employ of the Consultant involved in the execution of work that is deemed to be conducting him/herself in an unacceptable manner shall be removed from the project at the request of the City Manager.

**Contractual Relations.** - The Consultant(s) are advised that nothing contained in the Contract or specifications shall create any contractual relations between the City and Sub-Consultant of the Consultant(s).

**Cooperative Purchasing Agreement.** - This contract may be expanded to include other governmental agencies provided a cooperative purchasing agreement exists or an inter-local agreement for joint purchasing exists between the City of Port St. Lucie and other public agencies. Consultant(s) may agree to allow other public agencies the same items at the same terms and conditions as this contract, during the period of time that this contract is in effect. Each political entity will be responsible for execution of its own requirements with the Consultant.

**Dress Code.** – All personnel in the employ of the Consultant(s) shall be appropriately attired. Employees engaged in the course of work shall wear company uniforms neat and clean in appearance, readily identifiable to all City employees and the public. No tee shirts with obscene pictures or writings will be allowed. Swimsuits, tank tops, shorts and sandals are also prohibited. Safety toed shoes shall be worn at all times.

**Patent Fees, Royalties, and Licenses.** – If the Consultant requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the Consultant and his surety shall indemnify and hold harmless the City from any and all claims for infringement in connection with the work agreed to be performed. The Consultant shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

**Permits.** - The Consultant shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The Consultant shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the City's contract, and return it with the signed contract and insurance documents.

**SECTION XIX**  
**ASSIGNMENT**

Consultant shall not delegate, assign or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City.

**SECTION XX**  
**TERMINATION AND DELAYS**

**Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the City to declare the Consultant in default of its obligations under the contract:

- I. The Consultant fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the contract, including, but without limitation, the express warranties made by the Consultant;
- II. The Consultant fails to make substantial and timely progress toward performance of the contract;
- III. In the event the Consultant is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect;
- IV. The Consultant becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Consultant terminates or suspends its business; or the City reasonably believes that the Consultant has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- V. The Consultant has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the contract;
- VI. If the City determines that the actions, or failure to act, of the Consultant, its agents, employees or subconsultants have caused, or reasonably could cause, life, health or safety to be jeopardized;
- VII. The Consultant has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
- VIII. The Consultant furnished any statement, representation or certification in connection with the contract, which is materially false, deceptive, incorrect or incomplete.

**Notice of Default.** If there is a default event caused by the Consultant, the City shall provide written notice to the Consultant requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Consultant. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

- I. Immediately terminate the contract without additional written notice(s); and/or
- II. Enforce the terms and conditions of the contract and seek any legal or reasonable remedies; and/or
- III. Procure substitute services from another source and charge the difference between the contract and the substitute contract to the defaulting Consultant

**Termination for Convenience.** The City may, at any time, with or without cause, or for its convenience terminate all or a portion of the Contract upon twenty (20) days written notice to successful Consultant Any such termination shall be accomplished by delivery in writing of a notice to Consultant. Following termination without cause, the Consultant shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the contract to the City up to the time of termination, pursuant to Florida law.

**Termination for Non-Appropriation.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under the awarded contract, the City will have the right to terminate the contract, without penalty, on the last day of the fiscal period for which funds were legally available.

**SECTION XXI**  
**LAW, VENUE AND WAIVER OF JURY TRIAL**

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Contract shall be in St. Lucie County, Florida.

The Parties to this Contract hereby freely, voluntarily and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

**SECTION XXII**  
**APPROPRIATION APPROVAL**

The Consultant acknowledges that the City of Port St Lucie's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. The Consultant agrees that, in the event such appropriation is not forthcoming, this Contract may be terminated by the City and that no charges, penalties or other costs shall be assessed.

**SECTION XXIII**  
**TRUTH-IN-NEGOTIATIONS**

In accordance with the provisions of Section 287.055, Florida Statutes, the Consultant agrees to execute a truth-in-negotiations certificate and agrees that the original Contract price and any additions may be adjusted to exclude any significant sums by which the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

**SECTION XXIV**  
**CONFLICT OF INTEREST**

The City hereby acknowledges that the Consultant may be performing professional services for private developers within the Treasure Coast area. Should a conflict of interest arise between providing services to the City and/or other clients, the Consultant shall terminate its relationship with the other client to resolve the conflict of interest. The City Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal the Consultant shall disclose all of its Treasure Coast clients and related Scope of Work.

**SECTION XXV**  
**PUBLIC RECORDS / TRADE SECRETS / COPYRIGHT**

The Proposer's response to the City's proposal request is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, [Florida Statutes Chapter 119.07](#) ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this City's proposal request and the Contract to be executed as subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the Solicitation purporting to require confidentiality of any portion of the Proposer's response to the Solicitation, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the Solicitation constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE SOLICITATION AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE SOLICITATION OR ANY PART THEREOF AS COPYRIGHTED.

#### **SECTION XXIV** **PROHIBITION AGAINST CONTINGENT FEES**

The Consultant warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract 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 Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

#### **SECTION XXVII** **ATTORNEY'S FEES**

If this matter is placed in the hands of an attorney for collection, or in the event suit or action is instituted by the City to enforce any of the terms or conditions of the Contract, Consultant shall pay to the City, in such suit or action in both trial court and appellate court, the City's costs, and reasonable attorney's fees for the anticipated cost of collection and judgment enforcement.

#### **SECTION XXVIII** **CODE OF ETHICS**

Consultant warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in [Chapter 112.311 et seq.](#), Florida Statutes, and Code of Ethics Ordinances in [Section 9.14 of the City of Port St. Lucie Code](#).

#### **SECTION XXIX** **POLICY OF NON-DISCRIMINATION**

Consultant shall not discriminate against any person in its operations, activities or delivery of services under this Contract. Consultant shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

**SECTION XXX**  
**SEVERABILITY**

The Parties to this Contract expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Contract is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Contract) and the remainder of this Contract, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Contract to be inequitable under the circumstances.

**SECTION XXXI**  
**AUDITS**

The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the City throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

**SECTION XXXII**  
**ORDER OF PREFERENCE**

In the case of any inconsistency or conflict among the specific provisions of this Contract (including any amendments accepted by both the City and the Consultant attached hereto), the eRFP (including any subsequent addenda and written responses to bidders' questions), and the Consultant's Response, any inconsistency or conflict shall be resolved as follows:

- (i) First, by giving preference to the specific provisions of this Contract.
- (ii) Second, by giving preference to the specific provisions of the eRFP.
- (iii) Third, by giving preference to the specific provisions of the Consultant's Response, except that objections or amendments by a Consultant that have not been explicitly accepted by the City in writing shall not be included in this Contract and shall be given no weight or consideration.

**SECTION XXXIII**  
**ENTIRE AGREEMENT**

The written terms and provisions of this Contract shall supersede any and all prior verbal or written statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or Contract documents.

IN WITNESS WHEREOF, the parties have executed this contract, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

CONSULTANT

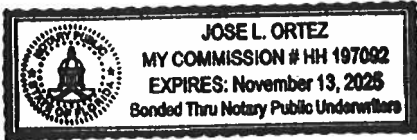
By: \_\_\_\_\_  
Purchasing Agent

By: David McNabb  
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA            )  
  ) ss  
COUNTY OF Palm Beach    )

The foregoing instrument was acknowledged before me by  physical presence or  online notarization, this 17th day of February, 2022, by David McNabb who is  personally known to me, or who has  produced the following identification:  
driver's license



Jose L. Ortez  
Signature of Notary Public

Jose L. Ortez  
Print Name of Notary Public  
Notary Public, State of Florida  
My Commission expires: