

**CITY OF PORT ST. LUCIE
CONTRACT #20260004
WASTEWATER BIOSOLIDS HAULING, DISPOSAL & DEWATERING SERVICES**

This CONTRACT executed this ____ day of _____, 2026, 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 SYNAGRO SOUTH, LLC, 435 Williams Court Suite 100, Baltimore, MD 21220, hereinafter called "Contractor" or "Proposer." City and Contractor may be referred to herein individually as a "party" or collectively as the "parties."

**SECTION I
RECITALS**

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

WHEREAS, Contractor is licensed in the State of Florida; and

WHEREAS, the City wishes to contract with a contractor for Wastewater Biosolids Hauling, Disposal & Dewatering Services, as well as other tasks more specifically described in this Contract; and

WHEREAS, Contractor is qualified, willing, and able to provide the Work specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Work specified and in the amount as agreed upon below.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein, 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 with read receipt, or by Fed-EX, UPS, courier or other similar and reliable carrier and addressed as follows, unless written notice of a change of address is given pursuant to the provisions of this Contract. Each such notice shall be deemed to have been provided:

- A. The same day, if sent via email with read receipt.
- B. 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,
- C. 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.

Contractor: Curt Brunner, Area Sales Manager
Synagro South, LLC
435 Williams Court, Suite 100
Baltimore, MD 21220
Telephone: 813-495-1060
Email: cdebrunner@synagro.com

City Contract Administrator: Robyn Holder, CPPB / Sr. Procurement Contracting Officer
Procurement Management Division
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
Telephone: 772-281-9284
Email: rholder@cityofpsl.com

City Project Manager: Raymond Wieber, Project Coordinator
Utility Systems Department
1001 SE Prineville Street
Port St. Lucie, FL 34983
Telephone: 772- 871-7666
Email: JWieber@cityofpsl.com

SECTION III

DESCRIPTION OF SERVICES TO BE PROVIDED

1. General Description

The Contractor shall provide all labor, equipment, materials, supervision, transportation, permits, and incidentals necessary to perform biosolids hauling, disposal, and emergency dewatering services for wastewater treatment facilities operated by the Utility Systems Department. Services shall be performed in compliance with all applicable federal, state, and local laws, regulations, and permit requirements.

2. Scope of Services

2.1 Biosolids Hauling

The Contractor shall:

- Transport and haul biosolids from designated city wastewater treatment facilities (Westport WWTF and Glades WWTF) and related sites.
- Provide appropriate vehicles (e.g., dump trucks, end-dumps, vacuum trucks, tankers, roll-off containers) suitable for the type and condition of biosolids.
- Ensure vehicles are watertight, leak-free, and covered as required. All trailers must be thoroughly washed out before returning to plant sites. Storage of loaded or partially loaded trailers outside an enclosed truck bay is prohibited without prior approval from the plant staff.

- Maintain compliance with all Department of Transportation (DOT) and environmental regulations.
 - Prevent spillage, odors, or nuisance conditions during loading, transport, and unloading.
 - Provide drivers trained and licensed for biosolids transport.
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2.2 Biosolids Disposal / Beneficial Reuse

The Contractor shall:

- Dispose of or beneficially reuse biosolids at facilities or land application sites permitted and approved by applicable regulatory agencies.
 - Provide disposal methods that may include, but are not limited to:
 - Land application
 - Landfill disposal
 - Composting
 - Incineration
 - Other FDEP approved reuse or disposal options
 - Obtain and maintain all permits, approvals, and authorizations required for disposal activities.
 - Coordinate disposal schedules to meet facility operational needs.
 - Provide documentation verifying final disposal location, method, and quantities. Return a completed dump ticket copy to the plant within 24 hours for every load.
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2.3 Emergency Dewatering Services

The Contractor shall provide on-call emergency dewatering services, including but not limited to:

- Rapid mobilization in response to unplanned events such as:
 - Equipment failure
 - Extreme weather events
 - Treatment process upsets
 - Storage capacity exceedances
- Deployment of mobile dewatering equipment, which may include:
 - Centrifuges
 - Belt filter presses
 - Screw presses
 - Portable Electric Generator

- Provision of polymers, chemicals, and ancillary equipment required for dewatering.
 - Temporary storage and handling of dewatered biosolids and centrate/filtrate.
 - Coordination with Owner staff to minimize plant downtime and regulatory risk.
 - Availability within 96 hours or less of emergency notification.
 - Dewatering services must be of sufficient capacity to allow plant processes to continue to meet compliance requirements.
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3. Performance Requirements

- All services shall be performed in a safe, efficient, and environmentally responsible manner.
 - Contractor shall comply with:
 - EPA regulations (including 40 CFR Part 503, as applicable)
 - State environmental and health regulations
 - Local ordinances and facility-specific rules
 - Contractor shall maintain uninterrupted service during normal and emergency operations.
 - Odor control and housekeeping shall be maintained at all times.
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4. Reporting and Documentation

The Contractor shall provide:

- Load tickets and manifests for each hauled load. These documents are due to the City after each trip made.
 - Monthly summaries include:
 - Total tons or gallons hauled
 - Disposal locations and methods
 - Emergency service activations
 - Certificates of disposal or beneficial reuse.
 - Regulatory agency incident reports for spills, violations, or safety events.
 - Regulatory agency documentation upon request.
 - All documentation, except as specifically stated for load tickets and manifests, shall be due to the City by the Contractor no later than fifteen (15) days after such request by the City.
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5. Health and Safety

- Personnel shall comply with OSHA and DOT requirements and facility safety rules.
- Contractor shall provide appropriate personal protective equipment (PPE).
- Contractor shall be responsible for spill prevention, control, and cleanup caused by its operations.

6. Equipment and Materials

- Contractor shall furnish and maintain all equipment in good working condition.
 - Backup equipment shall be available to ensure continuity of service.
 - All equipment shall meet applicable safety and environmental standards.
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7. Scheduling and Coordination

- Routine hauling schedules shall be coordinated with plant staff. Standard hauling hours are after 5:00 a.m. and before 8:00 p.m. When necessary, the Contractor shall be required to provide empty trailers in loading bays for extended hours operations, frequency based on sludge production rates and available storage capacity. This may require additional drivers and extended operating hours beyond the regular hauling schedule.
 - Emergency services shall take priority over routine operations when required.
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8. Quality Control

- Contractor shall implement quality control measures to ensure:
 - Proper loading and unloading
 - Accurate measurement of quantities
 - Compliance with disposal requirements
- Owner reserves the right to audit Contractor records and disposal sites.

SECTION IV **TIME OF PERFORMANCE**

The Contract Period start date will be _____ and will terminate two (2) years thereafter on _____. The Contractor will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in the bid specifications has not been completed by the specified date, the Contractor agrees to provide work as authorized by the Project Manager until all work specified in the bid specifications has been rendered and accepted by the City.

Written requests shall be submitted to the Project Manager for consideration of extension of completion time due to strikes, unavailable materials, or other similar causes over which the Contractor feels it has no control. Requests for time extensions shall be submitted immediately, but in no event, more than two (2) weeks upon occurrence of conditions, which, in the opinion of the Contractor, warrant such an extension with reasons clearly stated and a detailed explanation given as to why the delays are considered to be beyond the Contractor's control.

**SECTION V
RENEWAL OPTION**

The City shall have three (3), one (1) year option(s) to renew, which options shall be exercised by mutual agreement of the parties. Renewal(s), if provided and agreed upon by the parties, will be accomplished through the issuance of Contract Amendment.

**SECTION VI
COMPENSATION**

The total amount to be paid by the City to the Contractor is on a per project basis for the unit prices listed on **Schedule "A"**. Payments will be disbursed in the following manner.

Schedule A

Line #	Description	Unit	Unit Cost
1	Daily Transportation, Trailer Shifting & Disposal of Dewatered Biosolids	Wet Tons	\$141.00
2	Mobilization & Set-Up of Emergency Mobile Dewatering Equipment (including operators)	Each	\$2,142.86
3	Demobilization of Emergency Mobile Dewatering Equipment	Each	\$2,142.86
4	Emergency Dewatering Services (including operators)	Per gallon of WAS processed	\$0.1738

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

Invoices for services shall be submitted once per month, by the tenth (10th) day of each month, and payments shall be made within twenty (20) business days, unless Contractor has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. However, payments shall be made within twenty (20) business days of receipt of Contractor's valid invoice if and only if the invoice is accompanied by adequate supporting documentation, including any necessary partial release of liens as described herein, and is approved by the Project Manager as required under Section XIX of the Contract.

No payment for projects involving improvements to real property shall be due until Contractor delivers to City a complete release of all claims arising out of the Contract or receipts in full in lieu thereof, and an affidavit based on Contractor's affiant's personal knowledge that the releases and receipts include labor and materials for which a lien could be filed.

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, and partial and final release of liens.

All invoices are to be sent to the assigned Project Manager for this Contract.

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

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

After the first twenty-four (24) months of the Contract, this Contract allows for a PPI index increase/decrease as per Section VI of the Sample Contract. The adjustment will be allowed, if agreed upon in writing by the City, based on the U.S. Department of Labor, Bureau of Labor Statistics, and Product Price Index – Series ID #WPU501 Not Seasonally Adjusted. See link provided below.

<https://data.bls.gov/timeseries/wpu501>

The City will not allow Contract adjustments up or down to exceed five (5%) combined total in any one (1) year. Any increases/decreases, if agreed upon by the City, will be effective on the Contract anniversary date. The prices will be held firm for that period (i.e., the renewal term in which it is in place).

Taxes - Contractor 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. Any dispute concerning work changes which is not resolved by mutual agreement shall be decided by the City Manager who shall reduce the decision to writing. The decision of the City Manager shall be final and conclusive.

SECTION VIII **CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the bid made by the Contractor pursuant to the Solicitation and Specifications on file in the Procurement Management Division of the City. All documents submitted by the Contractor in relation to said bid, 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

Contractor agrees to indemnify, defend, 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 Contractor, agents, laborers, subcontractors or other personnel entity acting under Contractor's control in connection with the Contractor's performance of services under this Contract. To that extent, Contractor 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 agreement by Contractor 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 Contractor or any agent, laborers, subcontractors, or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Contractor 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 Contractor 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 Contractor 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 and limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor 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 sovereign 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 and/or 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.

1. Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis. Should scope of work performed by Contractor qualify its employee(s) for benefits under Federal Workers' Compensation Statute (for example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.
2. Commercial General Liability Insurance: The Contractor shall agree to maintain 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	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of possession by City or completion of Contract. Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non-contributory basis. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for mold, silica or respirable dust or bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Coverage shall extend to independent contractors 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 and Employers' Liability, said Certificate(s) 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 added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract #20260004 – Wastewater Biosolids Hauling, Disposal and Dewatering Services."** The Policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. All notices shall be sent to the Procurement Management Division, 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida 34984. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor 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. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

4. Business Automobile Liability Insurance: The Contractor 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 Contractor does not own any automobiles, the Business Auto Liability

requirement shall be amended allowing Contractor 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 shall be provided. Coverage shall apply on a primary non-contributory basis.

5. Pollution Insurance: Contractor shall procure and agree to maintain in full force during the term of this Contract, Contractors Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, for any operations relating to the construction, handling, storage, and transportation of hazardous materials and/or waste. Contractors Pollution should be in force for no less than the entire term of the project and two years extended Completed Operations. The City of Port St. Lucie shall be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.
6. Waiver of Subrogation: By entering into this Contract, Contractor agrees 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 Contractor 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. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Contractor enter into such a contract on a pre-loss basis.
7. Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor 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 is not obligated, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and/or subcontractors comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage for a minimum of five (5) years from the date of possession by City or completion of Contract. It will be the responsibility of the Contractor to obtain Certificates of Insurance from all contractors and subcontractors listing the City as an Additional Insured, without the language, "when required by written contract." If Contractor, any independent contractors, and/or any subcontractors maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Contractor/independent contractor/subcontractor.

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or 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 is not obligated, 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.

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

SECTION XII
RELIEF FOR FORCE MAJEURE/UNCONTROLLABLE CIRCUMSTANCES; CHANGE IN LAW

Neither party shall be liable to the other party for breach or for failure or delay in the performance of its obligations hereunder caused by any act or occurrence beyond its reasonable control, including, but not limited to: fires; floods; strikes (except any strikes involving a party's personnel); a change in Federal, State, or local law or ordinance; orders or judgments of any Federal, State or local court, administrative agency or governmental body; change in permit conditions or requirements; accidents; extreme weather conditions including, for example, hurricanes, tornadoes, unusually high amounts of precipitation, unusual extremes of temperature or wind, or unusually extended periods of adverse weather conditions; acts of war, aggression or terrorism (foreign or domestic); riot, insurrection; equipment failure (other than due to the inadequate maintenance thereof); and acts of God. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute an act or occurrence beyond a party's reasonable control: (i) reasonably anticipated weather conditions normal for the region in which the work is performed.

Whenever the provisions of this Section are believed to apply, the party relying thereon shall give prompt notice (no more than forty-eight (48) hours after the start or notice of the event or condition a party believes triggers this Section) to the other party of the circumstances, the basis for applicability of this Section and the time required to cure such breach or delay. Contractor shall promptly provide notice of the need, if any, for additional compensation or for renegotiation of terms in order to mitigate the effects of such event or to comply with a change in law or regulation or interpretation thereof. If Contractor requests additional compensation, it must provide documentation demonstrating the need for such and the request must be directly related to the delays described herein.

Contractor may be entitled to additional time and compensation if such event delays performance into a season different from that assumed when this Contract was executed. Contractor and City shall use reasonable best efforts to agree on appropriate mitigating actions under the circumstances.

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 Contractor nor any subcontractor, supplier of materials, laborer, or other person or entity 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 the above parties is hereby expressly waived.

SECTION XIV
COMPLIANCE WITH LAWS

The Contractor 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. Contractor will comply with all requirements of 28 C.F.R. § 35.151.

SECTION XV
PUBLIC RECORDS

Contractor and any subcontractors shall comply with section 119.0701, Florida Statutes. The Contractor and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Contract, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The City of Port St. Lucie is a public agency subject to chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Laws. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes, Contractor 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.

- A. 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 and GS2 for Criminal Justice Agencies and District Medical Examiners](#).
- B. During the term of the Contract, the Contractor 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.
- C. 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. Contractor's records under this Contract include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Contract.
- D. The Contractor agrees to make available to the City, during normal business hours all books of account, reports and records relating to this Contract.
- E. A Contractor 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 City 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 chapter 119 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 Contractor 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 Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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**

TRADE SECRETS

Any material submitted to the City that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including chapter 119, Florida Statutes) ("Trade Secret Materials"), must be separately submitted and conspicuously labeled: "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, simultaneous with the submission of any Trade Secret Materials, the Contractor shall provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under section 688.002, Florida Statutes, and stating the factual basis to support the attestation. If a third party submits a request to the City for records designated by the Contract as Trade Secret Materials, the City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by the Contractor. Contractor shall indemnify and defend the City, its employees, agents, assigns, successors, and subcontractors from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorney's fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

SECTION XVI **SCRUTINIZED COMPANIES**

By entering into this Contract with the City, Contractor certifies that it and those related entities of Contractor, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The City may terminate this Contract if Contractor or any of those related entities of Contractor, as defined by Florida law, are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the City reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of any amount, should the City determine that the conditions set forth in section 287.135(4), Florida Statutes, are met.

SECTION XVII

CONTRACT ADMINISTRATION

Amendments. The City and the Contractor 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 Contractor.

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

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 contractor contracting for the services and acting toward the mutual benefits expected to be derived from the mutually agreed upon Contract. Neither Contractor nor any of Contractor's agents, employees, subcontractors, or contractors shall become or be deemed to become agents, or employees of the City. Contractor shall therefore be responsible for compliance with all laws, rules, and regulations involving its employees and any subcontractors, 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.

Performance by Industry Standards. The Contractor 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 Contractor'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 Contractor 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 Contractor 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.

Use of Name or Intellectual Property. Contractor 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 express 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 Contractor, 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**

In the event of any conflict between the terms and conditions, appearing 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.

Implied Warranty of Merchantability – It is understood that the implied warranty of merchantability and fitness for the specified purpose are not disclaimed, notwithstanding any representation to the contrary.

Warranty and Guarantee – All products furnished by the Contractor shall be supplied with all warranties and guarantees of the manufacturer. All products must be warranted by the Contractor to be free of defects in workmanship and material for a period of not less than three hundred sixty-five (365) calendar days; said period to commence upon the date products are accepted by the City and Contractor has received final payment.

Miscellaneous Testing – The Contractor agrees to reimburse the City for any expenditure incurred by the City in the process of testing products supplied by the Contractor if said products prove to be defective and/or in other manners not in compliance with the specifications. Expenditures as defined therein shall include, but are not limited to, the replacement value of products destroyed in testing, the cost paid by the City to testing laboratories and other entities utilized to provide tests, and the value of labor and materials expended by the City in the process of conducting the testing. Reimbursement of charges as specified herein shall not relieve the Contractor from other remedies.

City's Public Relations Image – The Contractor'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 Contractor involved in the execution of work that is deemed to be conducting himself in an unacceptable manner shall be removed from the project at the request of the City Manager.

Dress Code – All personnel in the employ of the Contractor 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. Tee shirts with obscene pictures or writings shall not 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 Contractor requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the Contractor 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 Contractor 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 Contractor 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 Contractor 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

Cooperative Purchasing Agreement - This Contract may be expanded to include other governmental agencies. Contractor 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 public entity will be responsible for execution of its own requirements with the Contractor.

Discrepancies – If, in the course of performing work resulting from an award under this specification, the Contractor finds any discrepancy between the area defined in these specifications and the actual area where work is being performed, the Contractor shall discontinue work on the subject area and inform the City of the discrepancy. The Contractor shall thereafter proceed as authorized by the City who will document any modification to these specifications that City has authorized in writing as soon as possible.

Permission to Use – The Contractor shall permit any portion of the new work, which is in suitable condition, to be used by the City for the purpose for which it was intended, provided such use does not hinder or make more expensive the work still to be done by the Contractor.

Contractual Relations – The Contractor(s) are advised that nothing contained in the Contract or specifications shall create any contractual relations between the City and subcontractor(s) of the Contractor.

Labor and Equipment – The Contractor shall utilize experienced personnel who are thoroughly capable of performing the work assigned to them. The Contractor shall utilize proper equipment in good repair to perform assigned work. Failure on the part of the Contractor to furnish such labor or equipment shall be sufficient cause for annulment of any award resulting from these specifications.

Standard Production Items - All products offered must be standard production items that have been available to the trade for a period of not less than two (2) years and are expected to remain available in future years.

Storage and Stockpiling – All storage or stockpiling of tools or materials (i.e., lumber, pilings, etc.) shall be limited to uplands. Excess lumber, scrap wood, trash, garbage or other types of debris shall be removed from the project site upon completion of the work.

Florida Produced Lumber – The Contractor agrees to comply with the provisions of section 255.20, Florida Statutes.

Erosion and Sediment Control – The Contractor is responsible for all erosion and sediment control in accordance with all local, State, and Federal regulatory agency guidelines.

Water Resources – The Contractor shall not discharge without permit into waters of lakes, rivers, canals, waterways and ditches, any fuel, oils, bitumen's, garbage, sewage, or other materials which may be harmful to fish, wildlife, or vegetation, or that may be detrimental to outdoor recreation. The Contractor shall be responsible for investigating and complying with all applicable Federal, State, and Local laws and regulations governing pollution of waters. All work under this Contract shall be performed in such a manner that objectionable conditions will not be created in waters through or adjacent to the project areas.

Native Vegetation – No native vegetation shall be removed without written authorization and prior approval by the City.

Sanitary Conditions – the Contractor shall be responsible to permit the City, its inspectors, and other authorized representatives of the City to have access to all parts of the work, and to all materials intended for use in the work, and to all factories where such materials are manufactured, at all times. The above designated City personnel shall be permitted during said access to remove materials and make such inspections, as they deem necessary. Materials submitted for approval will be inspected and passed upon as promptly as practical as will work in process. However, failure to reject defective work at the time it is done and/or failure to reject materials shall in no way prevent rejection at any time prior to final acceptance of the work authorized by the City.

Foreman or Superintendent and Workmen – The Contractor shall at all times during progress of the work, have on site a competent foreman or superintendent with authority to act for it and to cooperate with the City. The Contractor shall provide competent, careful, and reliable workmen engaged on special work, or skilled work, such as concrete bases, pavements, or structure, or in any trade, with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Contractor shall provide workmen that shall make do and proper effort to execute the work in the manner prescribed in the Contract Documents.

It is prohibited as a conflict of interest for a Contractor to subcontract with a consultant to perform Contractor Quality Control when the consultant is under contract with the City to perform work on any project described in the Contractor's Contract with the City. Prior to approving a consultant for Contractor Quality Control, the Contractor shall submit to the City a certificate from the proposed consultant certifying that no conflict of interest exists.

Adjustments – The Contractor shall be responsible to arrange with utility companies for any adjustment necessary to the valve boxes, manholes, or castings so that they will conform to the new grade after placement of the sidewalk. The Contractor shall also be responsible to identify and avoid damage to all utilities (publicly and privately owned) within the area where work is being performed.

Damages – The Contractor shall be responsible for the charge and care of all work from damage by the elements or from any cause whatsoever until the City confirms in writing to the Contractor that said work is, “substantially complete” and/or “accepted.” The Contractor shall be responsible until said written notice is received to repair and make good at their expense any such damage.

Damage to Property – The Contractor shall preserve from damage all property along the line of work, or which is in the vicinity of or is in any way affected by the work, the removal, or destruction of which is not called for by the plans. This applies to public and private property, public and private utilities, trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, public highways, etc., whenever such property is damaged due to the activities of the Contractor, it shall be immediately restored to a condition equal to or better than existing before such damage or injury was done by the Contractor, and at the Contractor's expense. The Contractor's special attention is directed to protection of any geodetic monument, horizontal, vertical or property corner, located within the limits of construction.

National Geodetic Vertical Datum 1929 (NGVD '29) or North American Vertical Datum 1988 (NAVD '88) monuments shall be protected. If in danger of damage, notify:

Geodetic Information Center
6001 Executive Boulevard
Rockville, MD 20852
Attn: Maintenance Center (301) 443-8319

City of Port St. Lucie vertical or horizontal datum shall also be protected. In case of damage or if relocation is needed, notify:

City of Port St. Lucie
Engineering Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099 (772) 871-5175

SECTION XIX **INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required materials have 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 Contractor of a Notice of Performance or delivery ticket. If such inspection shows that the required materials have 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 Contractor shall be entitled to payment

, as described in Section VI. However, if, upon 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. Contractor 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 Contractor 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 Contractor, the City may, without prejudice to any other remedy it may have, correct such deficiencies. The Contractor 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 Contractor of his responsibility to remedy any deviation, deficiency, or defect.

Authority – The Contractor 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 Contractor shall be responsible to give twenty-four (24) hour notification to the City when field observations are required.

Defective Work – All work and/or materials not meeting the requirements of these specifications shall be deemed as defective by the City, and all such work and/or material, whether in place or not, shall be removed immediately from the site of the work. All rejected materials that have been corrected shall not be used until the City has issued written approval to the Contractor. Without unnecessary delay and without any additional cost to the City, all work that has been rejected shall be remedied or removed and replaced in a manner acceptable to the City. If the Contractor fails to promptly remove and properly dispose of rejected materials and/or work then replaces same immediately after being notified to do so, the City may employ labor to remove and replace such defective work and/or materials. All charges for replacement of defective materials and/or work shall be charged to the Contractor and may be deducted from any monies due to the Contractor or his Surety.

Repair or Replacement – Should any defect appear during the warranty period, the Contractor shall, at their own expense, have repaired or replaced such item upon receipt of written notice from the City of said defect. Said repair or replacement must be accomplished within fourteen (14) calendar days after receipt of notification from the City of the defect.

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

SECTION XX **LICENSING**

Contractor warrants that it and its employees possess all licenses and certifications necessary to perform required work and is not in violation of any laws. Contractor warrants that such licenses and certificates are current and will be maintained throughout the duration of the Contract.

SECTION XXI **SAFETY PRECAUTIONS**

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The Contractor shall erect and maintain all necessary safeguards for the protection of the Contractor's employees and

subcontractors, City personnel, and the general public; including, but not limited to, posting danger signs, and other warnings against hazards as is prudent and/or required by law to protect the public interest. All damage, injury or loss to persons and/or property caused, directly or indirectly, in whole or in part, by the Contractor's employees, or subcontractor(s), or anyone directly or indirectly employed by said parties shall be remedied by the Contractor. The safety provisions of all applicable laws and building and construction codes shall be observed.

Safety Data Sheets – The Contractor shall provide SDS's and description literature for each chemical/compound/mixture used in the performance of the Contract to the City before the commencement of any work. All SDS's shall be of the latest version and comply with 29 CFR 1910.1200. Hazardous products shall not be used except with prior approval of the City, and must be disposed of properly by the Contractor in accordance with U.S. Environmental Protection Agency 40 CFR 260-265. The Contractor shall maintain and have readily accessible on-site a complete SDS book of all chemicals, compounds/mixtures used in the execution of the Contract.

Personal Protective Equipment (PPE) – All personnel are required to wear PPE in the process of the work including eye protection, hearing protection, respiratory protection as necessary, gloves, approved safety boots with steel or composite toes, and any other PPE as necessary for the work.

OSHA Compliance – Contractors must agree that the products furnished, and application methods will comply with applicable provisions of the Williams-Steiger Occupational Safety and Health Act of 1970. These requirements shall include all primary and refresher training mandated under the OSHA guidelines.

SECTION XXII **ASSIGNMENT**

Contractor 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. If Contractor sells all or a majority of its shares, merges with, or otherwise is acquired by or unifies with a third party, it shall notify the City within ten (10) days. If after such notice, the City determines in its sole discretion, it may terminate the Contract, without penalty. The City's consent to any assignment is strictly conditioned upon the third party assuming all obligations under the Contract as it exists at the time of the assignment and/or assumption. Contractor shall ensure that any business transaction complies with the terms of this section, and failure to so comply shall render any alleged assignment and/or assumption void.

SECTION XXIII **TERMINATION, DELAYS, AND LIQUIDATED DAMAGES**

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

- I. The Contractor 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 Contractor;
- II. The Contractor fails to make substantial and timely progress toward performance of the Contract;
- III. In the event the Contractor 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 Contractor 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 Contractor

terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state laws;

- V. The Contractor 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. The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
- VII. The Contractor furnished any statement, representation, or certification in connection with the Contract, which is materially false, deceptive, incorrect, or incomplete.

Notice of Default. Except in the case of an irreparable or irreversible breach, default, or noncompliance, which shall be governed as provided below, if there is a default, breach, or noncompliance event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach, default, or noncompliance be remedied within the period specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied within the period 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 Contractor. Such a charge, in the City's option, may be invoiced to the Contractor and/or may be deducted from payments due to the Contractor. Deductions thus made will not excuse the Contractor from other penalties and conditions contained in the Contract.

Irreparable or Irreversible Breach, Default, or Noncompliance. The parties agree that there may be certain breaches, defaults, or acts or omissions of noncompliance that are, by their very nature, irreparable or irreversible. In the event of a breach, default, or noncompliance that is irreparable or irreversible, the City may immediately terminate this Contract upon notice of its decision to exercise this termination right, without providing prior notice or a remedy period. Whether a breach, default, or noncompliance is irreparable or irreversible will be determined in the sole discretion of the City.

Termination for Convenience. The City, in its sole discretion, may terminate this Contract at any time without cause, by providing at least thirty (30) days' prior written notice to Contractor. Following termination without cause, the Contractor 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.

Conversion of Termination for Cause to Termination for Convenience. If the City terminates this Contract for cause, and the basis for such termination is later found to be insufficient, then the termination shall automatically convert to a termination for convenience. In such an instance, the notice provided in the Notice of Default or Irreparable or Irreversible Breach, Default, or Noncompliance sections shall serve as the City's notice for termination for convenience.

Liquidated Damages for Delays. If material is not provided or work is not completed within the time stipulated in this Contract, including any extensions of time for excusable delays as herein provided, the Contractor shall provide to the City one thousand dollars (\$1,000.00) as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed. The parties agree that this amount represents a good faith estimate on the part of the parties as to the actual potential damages that would occur because of late completion, given the unique nature of this Contract and the services hereunder, as well as the unique potential damages. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of City's actual damages at the time of contracting. The Contractor and his sureties shall be jointly and severally liable to the City for the total amount thereof. This shall

be the City's sole remedy as to these delays. Any other provision herein that provides for multiple, alternative, discretionary, or cumulative relief, shall not apply to this paragraph.

SECTION XXIV
APPROPRIATION APPROVAL

The Contractor 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 Contractor agrees that, in the event such appropriation is not forthcoming, this Contract may be terminated by the City effective the last date for which funding was appropriated and that no charges, penalties, or other costs shall be assessed.

SECTION XXV
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, arising out of this Contract, or related to 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 XXVI
CONFLICT OF INTEREST

The City hereby acknowledges that the Contractor 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 Contractor shall terminate its relationship with the other client(s) 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 Contractor shall disclose all its Treasure Coast clients and related Scope of Work.

SECTION XXVII
PROHIBITION AGAINST CONTINGENT FEES

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

SECTION XXVIII
ATTORNEY'S FEES

Each party is responsible for its own attorney's fees for any action arising from or related to this Contract. Each party expressly waives any right to seek attorney's fees from the other party, regardless of the source of such right.

SECTION XXIX

CODE OF ETHICS

Contractor 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 XXX **POLICY OF NON-DISCRIMINATION**

Contractor shall not discriminate against any person in its operations, activities, or delivery of services under this Contract. Contractor 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 XXXI **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. By way of example, but not limitation, if there is a statute that limits the applicability of a provision herein, then the provision shall be interpreted to apply to the extent permissible by said statute.

SECTION XXXII **AUDITS**

The Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify the Contractor's assets, expenses, costs of goods, and use of funds 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 shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; canceled checks; deposit slips; bank statements; journals; original estimates; estimating worksheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. 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 to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Contract kept by or under the control of the Contractor, including, but not limited to, those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Contractor's office or place of business. 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. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Contractor. Evidence of criminal conduct will be turned over to the proper authorities.

The Contractor shall ensure the City has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

SECTION XXXIII **CONSTRUCTION**

The title of the section and paragraph headings in this Contract are for reference only and shall not govern, suggest, or affect the interpretation of any of the terms or provisions within each section or this Contract as a whole. The use of the term "including" in this Contract shall be construed as "including, without limitation." Where specific examples are given to clarify a general statement, the specific language shall not be construed as limiting, modifying, restricting, or otherwise affecting the general statement. All singular words and terms shall also include the plural, and vice versa. Any gendered words or terms used shall include all genders. Where a rule, law, statute, or ordinance is referenced, it indicates the rule, law, statute, or ordinance in place at the time the Contract is executed, as well as may be amended from time to time, where application of the amended version is permitted by law.

The parties have participated jointly in the negotiation and drafting of this Contract and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Contract. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the parties, and there shall be no presumption or burden of proof or persuasion based on which party drafted a provision of the Contract.

SECTION XXXIV **E-VERIFY**

The Contractor agrees to comply with section 448.095, Florida Statutes, including the following:

- A. Contractor must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor. The Contractor must provide the City with sufficient proof of compliance with this provision before beginning work under this Contract.
- B. If Contractor enters into a contract with a subcontractor, Contractor must require each and every subcontractor to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontractor with an unauthorized alien. The Contractor shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.
- C. The City shall terminate this Contract if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
- D. Contractor shall immediately terminate any contract with any subcontractor if Contractor has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If the City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.

- E. The City shall terminate this Contract for violation of any provision in this section. If the Contract is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Contract under this section, the Contractor may not be awarded a public contract for at least one (1) year after the date on which the Contract was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of the contract.
- F. The City, Contractor, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Contract was terminated. The parties agree that any such a cause of action must be filed in St. Lucie County, Florida, in accordance with the Venue provision herein.

SECTION XXXV
NON-EXCLUSIVITY

The Contractor acknowledges and agrees that this Contract is non-exclusive.

SECTION XXXVI
DISCRIMINATORY, CONVICTED, AND ANTITRUST VIOLATOR VENDOR LISTS

Contractor certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

SECTION XXXVII
COOPERATION WITH INSPECTOR GENERAL

Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Contractor understands and will comply with this statute.

SECTION XXXVIII
ENTIRE AGREEMENT

This Contract sets forth the entire agreement between Contractor and City with respect to the subject matter of this Contract. This Contract supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This Contract may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

Signature page to follow

