

**CITY OF PORT ST. LUCIE
SAMPLE CONTRACT #20240053**

This Contract, executed this _____ day of _____, 2024, 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 _____, hereinafter called "Planner," "Consultant," or "Contractor." The City and Planner 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, Florida Statute 163.3177 synthesizes the Comprehensive Planning process; and

WHEREAS, the City wishes to contract with a Consultant to provide Comprehensive Planning Services for a twenty (20) year planning period, as well as preparation of the Evaluation and Appraisal Report (EAR) due 2026 ("Work") more specifically described in this Contract based on the terms and subject to the conditions contained herein; and

WHEREAS, Consultant is qualified (e.g., American Institute of Certified Planners), willing, and able to provide the Scope of Services and products / 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 and product / services specified and, with a commission amount 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: Geroge M. Kramer, AICP, President
 Inspire Placemaking Collective, Inc.
 4767 New Broad Street
 Orlando, FL 32814
 Telephone: 407-202-8387
 E-mail: gkramer@inspireplacemaking.com

City Contract Administrator: Angelene Frederick
Procurement Contracting Officer I
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
Telephone: 772-344-4055
E-mail: afrederick@cityofpsl.com
772-871-5224 / FAX 772-871-7337

City Project Manager: Mary Savage Dunham, Director
Planning & Zoning Department
121 SW Port St. Lucie Blvd., Bldg. B, 2nd Floor
Port St. Lucie, Florida 34984
Telephone : 772-873-6350
Email: mdunham@cityofpsl.com

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

This specific work that the Consultant has agreed to perform pursuant to the **E-BID #20240053, Consulting Services for Comprehensive Planning & 2026 EAR**, including all Attachments, all Addenda, and all other restrictions and requirements are incorporated by this reference for the City.

The scope of work to be performed by the selected consultant(s) shall include, but are not limited to:

This new update should address existing conditions analysis, needs assessment, update plan to reflect citywide strategic initiatives including the City's transition from a transportation concurrency system to the adoption of a mobility fee and multi-modal plan, and provide a vision for the future consistent with the City's Strategic Plan. The 2026 EAR submittal should also be generated as part of this process. The consultant will work with the Planning and Zoning Department, and by extension, the City team. The consultant team and City staff will work closely throughout the duration of the project. The following elements are included in the City's Comprehensive Plan and should be reviewed to identify areas requiring revision:

1. Future Land Use Element and Map,
2. Future Land Use Map,
3. Transportation Element,
4. Housing Element,
5. Infrastructure Element (Sanitary Sewer, Solid Waste, Drainage, Natural Groundwater Recharge, and Potable Water),
6. Conservation and Coastal Management Element,
7. Intergovernmental Coordination Element,
8. Recreation and Open Space Element,
9. Economic Development Element,
10. Capital Improvement Element,
11. Public Schools Facilities Element, and

12. Property Rights Element.

The selected Consultant is expected to review a number of approved studies or plans related to development of the City to help inform the Comprehensive Plan Update, as follows:

1. Multi-Modal Plan and Mobility Fee Implementation
2. 2045 Mobility Plan
3. Planning & Infrastructure Study
4. Capital Improvements Plan
5. Southern Grove Business District Master Plan
6. Becker Road Overlay District Design Standards
7. City Center Master Plan
8. Parks and Recreation Master Plan
9. Analysis of conversion areas
10. Strategic Plan, and
11. Port Saint Lucie Blvd. Corridor Study.

The Consultant selected will be expected to address the following concerns/issues and perform the following functions:

1. **Data Collection:** The selected Consultant will collect detailed demographic and economic data related to population, labor force characteristics, economic conditions, infrastructure capacity, land use and zoning, public health and quality of life and provide:
 - a. A comprehensive description and analysis of existing conditions including demographic, economic, transportation, infrastructure, and housing of Port St. Lucie now and in the twenty-year horizon (2025-2045). Reflect current and projected demographic and socioeconomic trends and their implications on the City's land use needs.
 - b. An analysis and incorporation of relevant data and trends related to population, employment, and housing forecasts.
 - c. A suggested list of proposed amendments to the elements mentioned above, as part of the Needs Assessment, through the existing conditions analysis, and from the input gained through the public and stakeholder engagement.
 - d. Opportunities for redevelopment, revitalization of major commercial corridors and districts
 - e. Recommendations to enhance economic development.
 - f. Opportunities for strategic reinvestment in areas of the City.
 - g. A 20-year thoroughfare/roadway plan.
 - h. Recommendations of ways to improve community health/public health to increase the well-being of our residents.
2. **Public Outreach and Community Engagement:**

The selected Consultant will:

- a. Provide a public participation plan that includes but is not limited to community outreach, engagement and education throughout the project utilizing different forms of outreach methods. The public engagement shall include facilitated workshop(s) scheduled to ensure the broadest civic engagement from the outset of the project including, soliciting participation from disadvantaged groups. This engagement should include public workshops, in person, virtual, or hybrid, at critical points in the process.
- b. Coordinate and conduct in-person individual or group meetings with City Council, City administration, City department representatives, St. Lucie County staff, and other major stakeholder groups such as the business community and major developers, to gather information and feedback.
- c. Provide six (6) one on one virtual meetings at the start of the long-range planning process with the City Manager and each council member.
- d. Provide six (6) one on one virtual meetings prior to presentation of a draft report or plan at the City Council Workshop meeting.
- e. Provide updates to and gather input via individual or workshop meetings with City Council members.
- f. Participate in City scheduled outreach events such as the yearly Citizen Summit, if requested.

3. Update of the Comprehensive Plan:

The Consultant will:

- a. Develop draft goals, objectives and policies which address the needs assessment and meet with City staff to determine the appropriate next steps.
- b. Draft elements to address the existing conditions analysis and the needs assessment, including draft goals, objectives, and policies. This includes clearly identifying what data must be tracked or monitored throughout the planning period and provide a spreadsheet (or other tools) for staff to gather and maintain that material over the upcoming plan period. In addition, the Consultant will identify necessary or recommended revisions to the land development code generally.
- c. Present the draft Comprehensive Plan, including elements, goals, objectives, and policies to the Planning and Zoning Board at a minimum of two public hearings, depending on the extent of the proposed changes to the Plan.
- d. Present the proposed Comprehensive Plan to the City Council at one workshop meeting and two public hearings.
- e. Coordinate with the Florida Department of Commerce (Florida Commerce) as needed and assist in the preparation and transmittal of all required notices, distributions, and transmittals to review agencies and the Florida Commerce to ensure compliance with Chapter 163, Florida Statute.

Deliverables

The Consultant must provide ten (10) color hard copies of the draft Comprehensive Plan for the Planning and Zoning Board hearing process and ten (10) color copies of same for the City Council hearing process. All deliverables must also be provided in electronic format (MW Word & Adobe Acrobat (pdf)) for posting on the project webpage. Upon

completion of the Comprehensive Plan, the Consultant will provide the following deliverables to the City:

- Twenty (20) bound copies of the Comprehensive Plan, including a separate stand-alone Executive Summary with electronic copies of each document in Microsoft Word and pdf format; GIS data files containing shape and data files for maps or graphics prepared for the plan.
- Maps and associated data in ArcGIS Pro and pdf format; ArcGIS Pro layers must be compatible with the City's interactive GIS map of current land uses, future land use (FLU), etc.
- Text and report files in editable MS Word and pdf formats. In addition, spreadsheets will be in MS Excel format for which worksheets will be formatted for printing (including multiple pages) and in a database format from which pivot tables can be quickly developed. Worksheets should include respective headers and footers.
- Reports including but not limited to existing conditions survey based on Census demographic data (including projections).

SECTION IV TIME OF PERFORMANCE

The Contract Period start date will be _____ and will terminate two (2) calendar years thereafter on _____. The Consultant 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 Consultant 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 Consultant feels he 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 Consultant, warrant such an extension with reasons clearly stated and a detailed explanation given as to why the delays are considered to be beyond the Consultant's control.

SECTION V RENEWAL OPTION

In the event the Contractor offers in writing (no less than ninety (90) days prior to the termination of this Contract) to provide the identical services required in this Contract for up to one (1) additional one-year term for a total charge that is acceptable, then the City, without additional bidding or negotiation, may, with the mutual agreement of the Contractor, extend this Contract for such additional one (1) year term.

Economic price adjustments upward or downward may be considered at the time of renewal; however, adjustments must be agreed upon in writing by both parties.

SECTION VI **COMPENSATION**

The total amount to be paid by the City to the Consultant is on a time and materials basis per the fee schedule for a total amount of \$199,815.00. Payments will be disbursed in the following manner:

Progress Payments – Invoices with progress reports shall be submitted once per month, by the tenth (10th) calendar day of each month, and payments shall be made within twenty (20) subsequent business days, unless Consultant has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Further, 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 is required under Section XVI of the Contract.

All invoices and correspondence relative to this Contract must contain the City's Contract number, a unique invoice number. In addition, all invoices are to be sent to the assigned Project Manager for this Contract.

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. 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 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 reasonable 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, to the extent caused by 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. 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. This indemnification shall comply with Florida Statute section 725.08, Florida Statutes, but only to the extent the statute applies to the project.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, THE CONSULTANT'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO PROVIDE UNDER THIS AGREEMENT CONTRACT. NO INDIVIDUAL PROFESSIONAL EMPLOYEE OR, AGENT, DIRECTOR, OFFICER, OR PRINCIPAL SHALL BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT 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 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 the 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, 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 Consultant 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, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by the Consultant 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 Consultant 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 (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 and Employers' Liability and Professional Liability Insurance, 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 Liability policies. 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 #20240053 – Consulting Services for 2026 EAR.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. 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. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. 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. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

4. Business 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.
5. 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 in Aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, the City reserves the right, but is not obligated, 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, Consultant warrants that 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 the policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.
6. Waiver of Subrogation: By entering into this Contract, the Consultant 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 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.

7. **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 reserves the right, but is not obligated, to review and request a copy of the Consultant's most recent annual report or audited financial statement.

It shall be the responsibility of the Consultant to ensure that all independent consultants and/or subconsultants 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 the Consultant, any independent consultants and/or any subconsultants maintain higher limits than the minimums listed above, the City requires and shall be entitled to coverage for the higher limits maintained by the 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 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 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 **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. Consultant and any subcontractors shall comply with section 119.0701, Florida Statutes. The Consultant and any subcontractors 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 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 Ch. 119, Laws of Fla., 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 Consultant shall comply with Florida's Public Records Law. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes,

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 Contract.
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**

**SECTION XIII
E-VERIFY**

In accordance with section 448.095, Florida Statutes, the Consultant agrees to comply with the following:

1. Consultant must register with and use the E-Verify system to verify the work authorization status of all new employees of the Consultant. Consultant must provide City with sufficient proof of compliance with this provision before beginning work under this Contract.
2. If Consultant enters into a contract with a subconsultant, Consultant must require each and every subconsultant to provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subconsult with an unauthorized alien. The Consultant shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.
3. 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.
4. Consultant shall immediately terminate any contract with any subconsultant if Consultant has, or develops, a good faith belief that the subconsultant has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subconsultant of Consultant knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Consultant and order the Consultant to immediately terminate the contract with the subconsultant.
5. 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 Consultant may not be awarded a public contract for a 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 a contract.
6. The City, Consultant, or any subconsultant 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 such a cause of action must be filed in St. Lucie County, Florida, in accordance with the Venue provision otherwise provided herein.
- 7.

SECTION XIV **SCRUTINIZED COMPANIES**

By entering into this Contract with the City, Consultant certifies that it and those related entities of Consultant, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to § 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The City may terminate this Contract if Consultant or any of those related entities of Consultant, 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 § 287.135(4), Florida Statutes, are met.

SECTION XV **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 express 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 1st through September 30th.

Joint Venture - Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership or 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.

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 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 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 XVI 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.

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 himself in an unacceptable manner shall be removed from the project at the request of the City Manager.

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 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.

SECTION XVII **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. If Consultant 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.

SECTION XVIII **TERMINATION**

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; and
- 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. Any such charge, in the City's option, may be invoiced to Consultant or deducted from sums due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

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 thirty (30) days written notice to 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 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 XIX **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 from 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 XX **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 City determines the Contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

SECTION XXI
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(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 Consultant shall disclose all its Treasure Coast clients and related Scope of Work.

SECTION XXII
PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that he 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 XXIII
ATTORNEY'S FEES

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

SECTION XXIV
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 XXV
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 XXVI
SEVERABILITY

The provisions of this Contract shall be deemed severable and if any portion of the Contract is found invalid or unenforceable, it shall not affect the validity or enforceability of the other provisions herein.

SECTION XXVII
AUDITS

The Consultant shall establish and maintain a reasonable accounting system that enables the City to readily identify the Consultant'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; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Consultant 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 Consultant, including, but not limited to, those kept by the Consultant, its employees, agents, assigns, successors, and subconsultants. Such records shall be made available to the City during normal business hours at the Consultant's office or place of business. The Consultant shall not impose a charge for audit or examination of the Consultant's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Consultant 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 Consultant'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 Consultant. Evidence of criminal conduct will be turned over to the proper authorities.

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

SECTION XXVIII
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 E-Bid (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 E-Bid.
- (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 XXIX **ACTS OF GOD**

The Contractor 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 Contractor 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 Contractor, or their 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 Contractor 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 XXX **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 and that no charges, penalties or other costs shall be assessed.

SECTION XXXI **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 XXXII
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 XXXIII
NON-EXCLUSIVITY

Consultant acknowledges and agrees that this Contract is non-exclusive.

SECTION XXXIV
FORCE MAJEURE

Any deadline provided for in this Contract may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God. When one of the foregoing conditions interferes with Contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

SECTION XXXV
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 shall mean 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 XXXVI
ENTIRE AGREEMENT

This Contract sets forth the entire agreement between Consultant 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.

[This area is left blank intentionally]

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: _____
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by [] physical presence or [] online notarization, this _____ day of _____, 20____, by _____ who is [] personally known to me, or who has [] produced the following identification:

_____.

Signature of Notary Public

Print Name of Notary Public
Notary Public, State of Florida
My Commission expires:

NOTARY SEAL/STAMP