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City Project Manager: Roger Jacobs  
Director of Facilities  
City of Port St. Lucie  
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Port St. Lucie, FL 34952  
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Email: [Roger.Jacob@cityofpsl.com](mailto:Roger.Jacob@cityofpsl.com)

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

Contractor shall perform all duties as described throughout City published solicitation documentation, Contractor supplied responses, and any dually executed amendments.

Attached Documents: Posted Solicitation Documents  
Appendix A  
Appendix B  
Contractor Supplied Documents

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

The Contract Period start date will be \_\_\_\_\_ and will terminate two hundred seventy (270) calendar days 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 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 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  
RENWAL OPTION**

Not applicable

**SECTION VI  
Financial Arrangements**

The total amount to be paid by the City to the Contractor is **\$499,868.00**. Payments will be disbursed in the following manner:

**Progress Payments**- Within twenty (20) business days, the City shall pay the Contractor, the sum of money due each Progress Payment that is properly allocated to labor, materials and equipment incorporated in the work for the period covered in the application for progress payment. Retainage will be held at 5% from each progress payment. Partial Release of Liens from all Contractors, subcontractors, and suppliers for materials which were identified in the previous month's invoices for progress payment will be required. If all such releases are not timely provided to the City as set forth herein, this shall provide basis, at the City's sole discretion, to withhold payment for any future invoiced progress payment and declare the Contractor in default, at which time the City may pursue all available legal and equitable remedies available to it under the Contract, Bond(s), or Florida Law.

**Acceptance and Final Payment** - Upon receipt of written notice that the work is ready for final inspection and acceptance, the City will promptly make such inspection. When City finds the work acceptable under the terms of the Contract and the Contract is fully performed the entire balance will be due the Contractor and will be paid to the Contractor within twenty (20) business days. Such final payment to the Contractor shall be subject to the covenants in the Contract's Standard Specifications and any liquidated damages will be assessed against the Contractor at that time.

Before issuance of final payment, the Contractor shall submit evidence that all payrolls, material bills and other indebtedness connected with the work have been satisfied and paid in full. Final Release of Liens from all contractors, subcontractors, suppliers for materials and sub-subcontractors are to be attached to the final invoice. All manufacturer's warranty documents must be provided in the format requested by the City prior to final payment.

Invoices for services shall be submitted once a month, by the tenth (10th) day of each month, and payments shall be made within twenty (20) business days unless Contractor has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Payments shall be made within twenty (20) business days of receipt of Contractor's valid invoice, provided that the invoice is accompanied by adequate supporting documentation, including any necessary partial release of liens as described above, and is approved by the City Project Manager

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 on his 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, Purchase Order number (If Applicable), detail of items with prices that correspond to the Contract, a unique invoice number and partial and final release of liens.

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

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

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

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

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

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 control in connection with the Contractor's performance of services under this Contract and 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 Contract 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, 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, 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 maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$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 for benefits under Federal Workers' Compensation Statute (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 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 interest's 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, Business Auto Liability, and Pollution 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 and shall include "Contract # 20210027 Renovation of Police Department First Floor" is listed as additionally insured.**". The Policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the 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. Automobile Liability Insurance: The Contractor shall 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 maintain in full force during the term of this Agreement, Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for any operations relating to the handling, storage, and transportation of hazardous materials and/or waste. 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:** The Contractor shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then 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 not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and/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, independent contractor or subcontractor 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 not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

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.

The City, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A: VII or better.

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 contract.

**SECTION XII**  
**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 his designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. In the event such actions are taken, the 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 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 Sub-Contractor supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

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

The 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](#). Contractors and Sub-Contractor, shall comply with [§ 119.0701, Fla. Stat.](#) The Contractor and Sub-Contractor, 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 [Art. I, § 24\(a\), Fla. Const.](#) and [§ 119.07\(1\)\(a\), Fla. Stat. \(2013\)](#). Pursuant to [§ 119.10\(2\)\(a\), Fla. Stat.](#), any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in [§ 775.082](#) and [§ 775.083 Fla. Stat.](#)

**RECORDS**

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

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;

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 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.
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. 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 Agreement.
4. The Contractor agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
5. 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 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 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**

**SECTION XV**  
**INSPECTION AND CORRECTION OF DEFECTS**

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

**SECTION XVI**  
**SCRUTINIZED COMPANIES**

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to Section 215.473, Florida Statutes <https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/GlobalGovernanceMandatesandFlorida%20Statutes20190129.pdf?ver=2019-01-29-130006-790>.

**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 1<sup>st</sup> through September 30<sup>th</sup>.

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

**Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the

vested parties. Each party shall be deemed to be an independent 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.

**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 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 Liquor license shall be co-held by the City and Contractor. The Contractor must obtain and pay for all fees associated with the liquor license; furthermore, the City must be listed as the co-holder on the required license. 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.

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

**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 expressed prior written consent of the City.

**Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the City and the 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.

**Background Check.** The City requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide Services to the City. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Contract if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the City.

**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 him/herself in an unacceptable manner shall be removed from the project at the request of the City Manager.

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

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

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

**Patent Fees, Royalties, and Licenses.** If the 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

**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.

### **SECTION XIX** **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.

### **SECTION XX** **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 law;
- 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. If the City determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
- VII. The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
- VIII. The Contractor 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 Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. 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 Contractor

**Termination for Convenience.** The City, in its sole discretion, may terminate this contract at any time without cause, by providing at least sixty (60) days' prior written notice to Contractor. Any such termination shall be accomplished by delivery in writing of a 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.

**Liquidated Damages.** 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, (it being impossible to determine the actual damages occasioned by the delay) the Contractor shall provide to the City one thousand two hundred forty-one dollars (\$1,241.00) as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed. The Contractor and their sureties shall be jointly and severally liable to the City for the amount thereof.

**Excusable Delays.** Excusable Delays. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work or delivery of materials due to: (1) any acts of the Federal Government, including controls or restrictions or requisitioning of materials, equipment, tools or labor by reason of war, national defense or any other national emergency, (2) any adverse acts of the City, (3) causes not reasonably foreseeable by the parties at the time of the execution of the Contract that are beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of another Contractor in the performance of some other Contract with the City, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions, and (4) any delay of any Subcontractor occasioned by any of the above mentioned causes. However, the Contractor must promptly notify the City in writing within two (2) days of official notice of scheduled delivery or scheduled work of the cause of delay. If, on the basis of the facts and the terms of this Contract, the delay is properly excusable the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

## **SECTION XXI** **Bond Requirements**

**Payment & Performance Bonds.** The Contractor shall furnish an acceptable recorded Performance and Payment Bond complying with the statutory requirements set forth in Section 255.05, Florida Statutes, in the amount of one hundred (100%) percent of the Contract price. A fully authorized Surety, licensed by the State

of Florida shall execute the Performance and Payment Bond. The Performance and Payment Bond shall remain in full force and effect a minimum of one (1) year after the work has been completed and final acceptance of the work is issued by the City.

Should the Surety become non-responsive during the time the Contract is in force, the City may require additional and sufficient sureties and the Contractor shall furnish same to the satisfaction of the City within ten (10) days after written notice to do so. If in default, the City may suspend and/or terminate per the terms of the contract.

The failure on the part of the Contractor to execute the Contract and/or punctually deliver the required bonds may be cause for the withdrawal of the award.

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

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

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

**SECTION XXIII**  
**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 XXIV**  
**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 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 of its Treasure Coast clients and related Scope of Work.

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

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

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

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

#### **SECTION XXVI** **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 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 Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

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

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

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

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 XXIX**  
**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 XXX**  
**SEVERABILITY**

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

**SECTION XXXI**  
**ORDER OF PREFERENCE**

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

- (i) First, by giving preference to the specific provisions of this Contract.
- (ii) Second, by giving preference to the specific provisions of the eRFP.
- (iii) Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a contractor 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 XXXII**  
**ENTIRE AGREEMENT**

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

