

**AGREEMENT BETWEEN THE
CITY OF PORT ST. LUCIE, FLORIDA
AND
HINTERLAND GROUP, INC.
FOR
STORMWATER COLLECTION SYSTEM REHABILITATION
(PIGGYBACK COMPETITIVE AWARD)**

THIS AGREEMENT is made and entered into as of the date last entered below by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation, whose mailing address is 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34896 (“City” or “Purchaser”) and **HINTERLAND GROUP, INC.**, a Florida Profit Corporation, whose mailing address is 2051 W. Blue Heron Boulevard, Riviera Beach, FL 33404 (“Contractor”). City and Contractor may be referred to herein individually as a “party” or collectively as the “parties.”

WITNESSETH

WHEREAS, the City requires goods and services of Contractor pursuant to RFB 20-497 dated October 1, 2020 with Charlotte County, Florida for use by the Public Works Department, including its amendments and addenda (collectively referred to as “Contract Documents” or as the “Contract”); and

WHEREAS, the parties wish to incorporate the terms and conditions of the Contract Documents between the Contractor and Charlotte County, including any and all contract renewals, amendments and change orders, substituting the “Charlotte County” for the “City of Port St. Lucie” in all places; and

WHEREAS, the City of Port St. Lucie has the authority to enter into this Agreement per the authorization from Charlotte County; and

WHEREAS, the City has determined that the original procurement was lawful, the Contractor acted at all times in accordance with Florida law when bidding and the competitive procurement method used by Charlotte County is consistent with the purchasing policies and requirements of the City,

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree to modify and supplement the Contract Documents with the following terms and conditions:

Section 1. Whereas. The “whereas” clauses are hereby incorporated herein as forming the intent, purpose and scope of this Agreement.

Section 2. Terms. The parties agree as follows:

A. Except where the context requires otherwise, such as for, but not limited to, compliance with City ordinances and regulations, City of Port St. Lucie shall be deemed substituted for Charlotte County with regard to any and all provisions of the Contract and Contract Documents, including by example, and not limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default and ownership of documents. All recitals, representations, and warranties of Contractor made in the Contract are restated as if set forth fully herein, made for the benefit of City, and incorporated herein.

B. Nothing in this Agreement, amendments or any other Contract Documents shall be deemed to affect the rights, privileges, and immunities of the City as set forth in s. 768.28, Florida Statutes, nor shall be a waiver of City's sovereign immunity, whether by contract or by law. This clause shall survive termination of this Agreement.

C. The parties acknowledge and agree that the effectiveness of the Agreement are contingent upon approval and an annual budget appropriation by the City Council.

D. Venue shall be in St. Lucie County, Florida.

E. The parties agree that in all instances the City's liability is limited to the monetary amounts set forth in s. 768.28, Florida Statutes.

Section 3. Notice. Notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the City Manager at the address listed above.

Section 4. Public Records. Contractor understands that City is a public entity whose records are available and open to the public for review and inspection. Contractor agrees to comply with public records laws, specifically to:

- A. Keep and maintain public records required by the CITY to perform the service.
- B. 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. (See <http://dos.myflorida.com/library-archives/records-management/general-records-schedules>)
- C. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Agreement include but are not limited to, supplier/sub engineer invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.

- D. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided for by law. If Contractor does not comply with the CITY's request for records, CITY shall enforce the provisions in accordance with the contract.
- E. Ensure that project 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 CITY.
- F. 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 the completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records kept 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 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
PRR@CITYOFPSL.COM

- G. 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.

Section 5. Insurance. The Service Provider 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 Service Provider are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Service Provider under the Contract.

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

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

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

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent Service Providers 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, 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, Business and Auto 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 20220050 Stormwater Collection System Rehabilitation shall listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.

The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Service Provider shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Automobile Liability Insurance: The Service Provider 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 Service Provider does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Service Provider to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

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

Waiver of Subrogation: The Service Provider 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 Service Provider shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Service Provider 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 Service Provider to ensure that all independent Service Providers and sub-Service Providers comply with the same insurance requirements referenced herein. It will be the responsibility of the Service Provider to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured without the language when required by written contract. If Service Provider, independent contractors or subcontractors maintain higher limits than the minimums shown above, the City requires and shall

be entitled to coverage for the higher limits maintained by Service Provider/independent contractor/subcontractor.

The Service Provider may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

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

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

Section 6. Scrutinized Vendors List. By renewing a contract with the City, a Contractor certifies that it and those related entities of Contractor as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to § 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The City may terminate this Agreement if Contractor or any of those related entities of Contractor as defined by Florida law are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the City reserves the right and may, in its sole discretion, on a case by case basis, to 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.

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

IN WITNESS WHEREOF, the parties are duly authorized to bind their respective entities hereto and have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year entered below.

CITY OF PORT ST. LUCIE FLORIDA

HINTERLAND GROUP, INC.

By: _____
Purchasing Agent

By: _____
Authorized Representative

Date: _____

Date: _____

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