

**CITY OF PORT ST. LUCIE  
CONTRACT # 20210093**

This Contract is for Continuing Engineering Services for Utility Projects, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City", and AECOM Technical Services, Inc., 2090 Palm Beach Lakes Blvd. Suite 600, West Palm Beach, FL 33409, hereinafter called "Consultant" or "Proposer".

**SECTION I  
RECITALS**

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

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

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

**WHEREAS**, Consultant is qualified, willing, and able to provide the Scope of Services 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: AECOM Technical Services, Inc.  
2090 Palm Beach Lakes Blvd. Suite 600  
West Palm Beach, FL 33409  
Title: Karen Brandon, Project Manager  
E-Mail: [karen.brandon@aecom.com](mailto:karen.brandon@aecom.com)

City Contract Administrator: Jason Bezak, CPPB, NIGP-CPP  
Procurement Agent II - Procurement Management Department  
121 SW Port St. Lucie Boulevard  
Port St. Lucie, FL 34984-5099

772-344-4068  
E-mail: [JBezak@cityofpsl.com](mailto:JBezak@cityofpsl.com)

City Project Manager: On a Per Project Basis

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

**GENERAL SCOPE OF SERVICES:**

CONSULTANT shall provide to CITY professional engineering services in all phases of the work to which this Continuing Engineering Services Agreement ("Agreement") applies. The exact nature and magnitude of the required professional services cannot be defined precisely at the time of entering into this Agreement. The services will be set forth in detail in the scope of services to be issued by CITY from time to time which may include, but is not limited to, the following services to the extent permitted by Florida law:

- Program Management Services (defined and described in detail below)
- Special Services such as Feasibility Studies and Planning
- Construction Design, Contract Administration, Engineering, and Inspection
- Electrical/Electronic system upgrades
- Property, Boundary, Easements, R/W, Topographic, and Utility surveys
- Site Plan Review
- Wastewater Collection and Treatment Evaluation and Design Services
- Vacuum Systems Evaluation and Design Services
- Water Distribution Systems Evaluation and Design Services
- Plans Review and Inspection Services as may be needed by the Building Division
- Civil, Mechanical, Electrical, and Plumbing Engineering Services
- Water and wastewater pump station facility and/or equipment selection, design, testing, evaluation and upgrades
- Water and wastewater treatment and disposal facility and/or equipment selection, design, testing, evaluation and upgrades
- Raw water well facility evaluation, design, testing and upgrades
- Technical specifications
- Testing services
- Consumptive use permitting
- Water and wastewater treatment pilot plant evaluations, designs and studies
- Membrane evaluation and replacement projects
- Electrical systems and motor control center (MCC) evaluation, design and/or upgrades
- Instrumentation evaluation, selection, design and/or upgrades
- SCADA system design, modification and upgrade
- Pump station control panel design
- Coordination and permitting with Florida Power and Light (FPL)
- Utility asset management, information systems and/or data acquisition/processing

- Surveying, mapping, GIS and GPS services
- Structural, civil, mechanical, electrical and plumbing engineering services
- Modeling of hydraulics and/or water quality for water distribution, wastewater collection facilities and utility systems and facilities that may involve open channel flow
- Storm water system evaluations as related to Utility System Department owned and operated facilities for treatment, pumping and administration
- Engineering services related to the testing and evaluation of soils and subsurface conditions
- Utility Systems Department facility access system evaluation, and design
- Assistance and support with City related services including bidding, site plan review and Building Department permitting
- Respond to Utility Systems Department staff inquiries for technical support for contracted projects on an "as needed" basis
- Other miscellaneous professional services that the City may desire.

### **Program Management Services**

- Assist the City with program and project prioritization including benefit/cost analysis, preparation of business cases and related financial analysis such as utility rate assessments.
- Provide support of scope management, cost management (including earned value management), schedule management, risk analysis, communications management, stakeholder management, and other related duties.
- Perform quality control, including constructability reviews, for design document submittals, including work performed by other Consultants.
- Assist in proposed scope changes, additional budget requests, consultant additional fee requests, etc.
- Assist in the management of the existing Purchasing Contracts including analysis and reporting of proper contract usage.
- Assist in the creation of Scope documents, special Contract Provisions, Project Concept Reports, Request for Proposal (RFP) documents and other related documents for new Professional Services Contracts.
- Assist in the creation of documents required for Purchasing Construction Projects.
- Assist in the tracking of work orders and contract expirations and required financial related amendments.
- Prepare project schedules, cost estimates and value engineering analysis and/or review this information that is provided to the CITY by others as needed.
- Present/ provide public meeting support.
- Preparing official minutes for project related meetings for the City's approval and dissemination.
- Assist with conducting man-hour costs and project schedule negotiations with Consultants.
- Provide Value Engineering services as requested.
- Provide Structural Engineering review services and expertise as needed.
- Research Engineering related topics as needed and provide related technical summaries of requested information.
- Provide expertise in a variety of other Engineering topics as requested.

- Provide Utility Coordination and support, including pre-construction coordination, related to all Capital Projects.
- Serve as a liaison for FDOT or St. Lucie County projects within the City of Port St. Lucie as needed.
- Provide temporary in-house program management staff, if requested, on a part-time or full-time basis.

### **Planning Support**

- Prepare various concept and feasibility studies for Capital Projects as needed.
- Prepare various facility plan and evaluation studies for Capital Projects as needed.
- Analyze alternative design concepts and prepare technical reports as needed.

### **Design Support**

- As requested, furnish expertise, labor and resources in preparing complete code compliant sets of construction contract documents, plans, specifications and special provisions as needed for Capital Projects. These projects include, but are not limited to, roadway, sidewalk, storm water and/or water quality, buildings, landscaping/irrigation, wastewater treatment plant projects, sewer collection systems, reuse distribution projects, and water distribution projects.
- Provide Survey and Mapping services as needed to complete the required design services, including GIS and GPS services.
- Provide any post design services and/or plan update services as needed to include record drawings and as-built drawings.
- Attend meetings as necessary and provide any related Public Information support.
- Prepare Maintenance of Traffic (MOT) plans as needed and/or provide the review of MOT plans prepared by others.
- Prepare Landscape Design plans as needed and/or review Landscape Plans prepared by others (requires licensed landscape architect).
- Provide Geotechnical Engineering support as needed.
- Provide other services as needed related to the Design elements of related Capital Projects.

### **Construction Engineering and Inspection (“CEI”) Services**

- Conducting and/or attending preconstruction meetings.
- Review and approval of shop drawings, products, etc.
- Preparation of change orders.
- Construction contract administration.
- Construction engineering and inspection services.
- Coordination/provision of record drawings and as-built drawings.
- Additional engineering services as may be required during the course of construction.

### **Grant & Loan Funding Support**

- Assist in preparation of grant applications for various grant agencies including, but not limited to South Florida Water Management District (SFWMD), and the Florida Department of Environmental Protection (FDEP).

- Assist in State Revolving Fund (SRF) Loan agreements and with all supporting documentation required.
- Provide other related grant funding support as needed.

### **Miscellaneous Support**

- Provide assistance to obtain all permits for Capital Projects or others as required for the Utility Services Department.
- Consumptive use permitting, DEP operating and/or construction permits.
- NPDES wastewater permitting, reuse permitting, injection well permitting, including Administration Orders and Consent Orders.
- Assist in Capacity management operation maintenance plans (CMOM).
- Assist in Sanitary Sewer Overflow response plans (SORP).
- Assist in Reuse, TMDL, Biosolids feasibility reports etc.
- SFWMD permitting, NPDES MS4 permitting support, Corp of Engineers permitting, etc.
- Provide assistance for property acquisitions related to hearings, condemnations proceedings, and other litigation including the preparation of trial exhibits.
- Site plan review services.
- Provide appraisals and other property acquisition support as needed.
- Preparation of applicable easements, R/W acquisition documents.
- Provide environmental research and support, including, but not limited to, contamination analysis, wetland research and analysis, threatened and endangered species and archeological and historical research.
- Assist with necessary duties as required related to disaster storm/recovery. Coordinate with FEMA, NRCS and FHWA for reimbursements and potential funding to repair storm related damage to the Transportation and Storm water system.
- Provide assistance with the City's Asset Management & data acquisition/processing system including review and prioritization of asset management data of wastewater treatment plant equipment life expectancy.
- Preparation or procurement of operation and maintenance manuals
- Perform other duties as needed; services dictated by the needs of the Capital Improvement Projects ("CIP") and other specific projects.
- Estimating Services – Estimates, opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by Consultant will represent its best judgment based on its experience and available information. The City recognizes that the Consultant has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or Consultants' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, Consultant does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by Consultant."

### **PROJECT ASSIGNMENTS:**

The City shall make requests of the Consultant to perform engineering and surveying services on a strict rotation basis. The City will communicate with the Consultant, verbally or in writing, a

general description of the task to be performed. If a site visit by the Consultant is needed to generate the scope of work, the Consultant shall request approval prior to the visiting the site. The Consultant will generate a detailed Scope of Work document, prepare a Schedule, and a Not-to-Exceed Budget or Lump Sum Fee to accomplish the task with a detailed cost breakdown based on the hourly schedule and send them to the City. The detailed cost breakdown of the lump sum fee or not-to-exceed budget shall consist of the major sub-tasks and man-hour breakdown for the work to be performed. The cost breakdown shall include all sub-consultant work and the Proposal shall include the written price from all sub-consultants.

The City will review the Proposal and if the description, cost, and other details of the Proposal are deemed by the City to be in the City's best interests, the parties will enter into a mutually agreeable written "CONTRACT". The Scope of Services generally to be provided by the Consultant through a Purchase Order may include engineering and surveying services for any City project and may contain written terms and conditions which are deemed supplemental to this Contract.

The City will issue a notice to proceed to the Consultant in the form of a Contract and an executed City purchase order. Upon receipt of the project specific contract and the written notice to proceed from the City, the Consultant shall perform the services set forth in the project specific contract.

Consultant shall be entitled to rely upon the accuracy of data and information provided by the City without independent review or evaluation.

Any reuse of Consultant prepared documents, except for the specific purpose intended hereunder, will be at the City's sole risk and without liability or legal exposure to Consultant or its subconsultants.

Consultant's decision to decline any services outside the scope of work shall be at its exclusive discretion and shall not be construed as a breach of the Agreement.

**Additional Terms:** To the extent the City requires additional terms to the resultant agreement used as the basis for contract negotiations, we believe those changes should be subject to the parties' mutual agreement and shall be achieved via a written amendment.

**Standard of Care:** Consultant shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. CONSULTANT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT OR OTHERWISE.

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

The term of the contract is for five (5) calendar year(s). The Start Date for this contract is **February 15, 2022**. The End Date shall be **February 15, 2027**. Unless indicated otherwise, the Consultant shall commence work within ten (10) days after receiving the fully executed contract.

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

N/A.

**SECTION VI**  
**Compensation**

LINE ITEMS	NEGOTIATED RATES
Principal Engineer P.E.	\$270.00
Senior Engineer P.E.	\$220.00
Project Engineer P.E.	\$180.00
Engineering Intern	\$120.00
Senior Project Manager	\$240.00
Project Manager	\$190.00
Project Engineer/Manager/Design	\$145.00
Senior CAD Designer	\$130.00
Civil Design Technician/Senior Design Technician	\$110.00
Assistant Project Designer	\$100.00
CADD Operator/Technician	\$100.00
Funding Administrator	\$190.00
Senior Inspector	\$155.00
Inspector 2	\$110.00
Inspector 1	\$85.00
Administration Services	\$80.00
Professional Hydrogeologist or Senior Scientist	\$280.00
<b>Items not listed shall be negotiated for the specific projects.</b>	
<b>SUB-CONSULTANTS</b>	
<b>Based on each specific project, sub-consultants shall be paid as a lump sum with a maximum 10% markup. This may include surveying, soils testing/reports, structural engineering, electrical engineering, and any other specialty services required for the specific project.</b>	
<b>RATES EFFECTIVE JANUARY 1, 2022</b>	
Rate changes shall be by written contract amendment only.	

Payments will be disbursed in the following manner:

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

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

**Payment Terms:** City shall notify Consultant within ten (10) days of the receipt of the invoice of any disputed items. Such notice must be accompanied by a detailed description of any disputed items and include supporting documentation.

As-builts and an updated construction schedule to reflect actual progress, weather days, and Holidays shall be provided monthly with each progress payment submittal. As-Builts will be required with each request for payment to include all items identified in the pay request. The monthly request for payment may be rejected until the revised schedule and as-builts has been reviewed and/or approved by the City.

**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 Consultant and will be paid to the Consultant within twenty (20) business days. Such final payment to the Consultant shall be subject to the covenants in the Contract's Standard Specifications.

Before issuance of final payment, the Consultant 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 Consultants, subconsultants, suppliers for materials and subconsultants are to be attached to the final invoice.

Before issuance of final payment, the Consultant shall submit a written Consent of Surety with the final invoice.

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

No payment for projects involving improvements to real property shall be due until Consultant 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 and Purchase Order number, detail of items with prices that correspond to the Contract, a unique invoice number and partial and final release of liens.



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

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

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

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

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

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

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

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

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

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

Consultant agrees to indemnify City, its officers, agents, directors and employees, from third party claims, actions, liabilities, expenses, loss or damage, exclusive of defense obligations ("Claims") to the proportional extent caused by Consultant's negligence, errors, omissions or other wrongful conduct of or willful misconduct. 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.

IN ACCORDANCE WITH SECTION 558 ET SEQ OF THE FLORIDA STATUTES AND TO THE FULLEST EXTENT PERMITTED BY LAW, CITY ACKNOWLEDGES AND AGREES THAT NO INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT SHALL BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE SCOPE AND COURSE OF THIS AGREEMENT.

**Other Consultant Responsibilities:** Consultant agrees to assist the City in Consultant claims/litigation; however, it is assumed that does not include expert testimony unless related to Consultant's legal obligation to assist the City in defending a claim that arises out of Consultant's work product.

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

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

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

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

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

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

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

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

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$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 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, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents for Contract # 20210093 Continuing Engineering Services for Utility Projects shall listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

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

Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured

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

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

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

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

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

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

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

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

The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

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

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

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

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

**RECORDS**

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

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

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

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

4. The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
5. A Consultant who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

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

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

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

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

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

**SECTION XV  
INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Project Manager shall make inspection as soon as practicable after receipt from the Consultant of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Project Manager shall approve the invoice when it is received. Thereafter the Consultant shall be entitled to payment, as described in Section V. If, on such inspection the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Consultant shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Project Manager. Upon failure of the Consultant to perform the work in accordance with the

Contract Documents, including any requirements with respect to the Schedule of Completion, and after five (5) days written notice to the Consultant, the City may, without prejudice to any other remedy he may have, correct such deficiencies. The Consultant shall be charged all costs incurred to correct deficiencies. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Consultant of his responsibility to remedy any deviation, deficiency, or defect.

The full extent of Consultant's responsibility with respect to the Services shall be to perform in accordance with the Standard of Care and to remedy any material deficiencies or defects in the Deliverables at Consultant's own expense, provided that Consultant is notified by City, in writing, of any such material deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after Consultant's completion of the Services.

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

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

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

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

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

## **SECTION XVI**

## SCRUTINIZED COMPANIES

[Section 287.135, Florida Statutes](#), 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 XXVII CONTRACT ADMINISTRATION

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

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

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

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

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

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



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

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

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

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

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

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

## **SECTION XVIII** **ADDITIONAL REQUIREMENTS**

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

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

**Cooperative Purchasing Agreement.** - This contract may be expanded to include other governmental agencies provided a cooperative purchasing agreement exists or an inter-local agreement for joint purchasing

exists between the City of Port St. Lucie and other public agencies. Consultant(s) may agree to allow other public agencies the same items at the same terms and conditions as this contract, during the period of time that this contract is in effect. Each political entity will be responsible for execution of its own requirements with the Consultant.

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

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

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

## SECTION XIX ASSIGNMENT

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

## SECTION XX TERMINATION AND DELAYS

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

- I. The Consultant fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the contract, including, but without limitation, the express warranties made by the Consultant;
- II. The Consultant fails to make substantial and timely progress toward performance of the contract;
- III. In the event the Consultant is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect;
- IV. The Consultant becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy

- laws; the Consultant terminates or suspends its business; or the City reasonably believes that the Consultant has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- V. The Consultant has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the contract;
  - VI. If the City determines that the actions, or failure to act, of the Consultant, its agents, employees or subconsultants have caused, or reasonably could cause, life, health or safety to be jeopardized;
  - VII. The Consultant has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
  - VIII. The Consultant furnished any statement, representation or certification in connection with the contract, which is materially false, deceptive, incorrect or incomplete.

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

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

In the event the City considers terminating Agreement prior to completion for default, Consultant should not be held liable for the accuracy or reliability of any work not performed by consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

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

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

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

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

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

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

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

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

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

#### **SECTION XXX** **SEVERABILITY**

The Parties to this Contract expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of

this Contract is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Contract) and the remainder of this Contract, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Contract to be inequitable under the circumstances.

### **SECTION XXXI** **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 Consultant attached hereto), the eRFP (including any subsequent addenda and written responses to bidders' questions), and the Consultant's Response, any inconsistency or conflict shall be resolved as follows:

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

### **SECTION XXXII** **FORCE MAJEURE**

Neither Party shall be responsible for a delay or disruption in, or inability to provide its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by events or contingencies, existing or future, beyond the reasonable control of the claiming Party, including "acts of God," abnormal weather conditions or other natural catastrophes, war (whether declared or not), terrorism, sabotage, computer viruses, civil unrest, strikes, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, virus (e.g., SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, discovery of hazardous materials, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other Force Majeure Events), or any other events or circumstances not within the reasonable control of the party affected, whether or not of a similar kind or nature to any of the foregoing (a "Force Majeure Event").

The Party seeking application of this provision shall notify the other Party in writing promptly upon learning of the impact of the Force Majeure Event upon the notifying Party's performance of its obligations under this Agreement. Upon the occurrence of a Force Majeure Event, CONSULTANT shall be entitled to an equitable adjustment to the project schedule and compensation sufficient to compensate CONSULTANT for any increase in the time or costs necessary to perform the Services under this Agreement. Should a Force Majeure Event substantially prevent or be reasonably likely to substantially prevent CONSULTANT's performance of the Services for more than thirty (30) days, then EITHER PARTY shall be entitled to terminate

this Agreement without breach. In case of such termination, CONSULTANT shall be entitled to compensation for those Services performed as of the date of termination.

**SECTION XXXIII  
ENTIRE AGREEMENT**

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

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

CITY OF PORT ST. LUCIE FLORIDA

CONSULTANT

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

By: Karen Brandon  
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA            )  
  ) ss  
COUNTY OF Palm Beach    )

The foregoing instrument was acknowledged before me by [] physical presence or [] online notarization, this 14th day of January, 2022, by Karen Brandon who is [] personally known to me, or who has [] produced the following identification:

\_\_\_\_\_



Deborah L. Williams  
Signature of Notary Public

Deborah L. Williams  
\_\_\_\_\_  
Print Name of Notary Public  
Notary Public, State of Florida  
My Commission expires: