

**CITY OF PORT ST. LUCIE
CONTRACT #20130114**

This Contract, executed this _____ day of September, 2024, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City", and JOHNSON, MIRMIRAN & THOMPSON, INC. 3731 Oleander Avenue, Fort Pierce, Florida 34982, Telephone (772) 370-7865, hereinafter called "Engineer," "Consultant," or "Contractor." The City and Engineer may be referred to herein individually as a "party" or collectively as the "parties."

**SECTION I
RECITALS**

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

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

WHEREAS, the City wishes to contract with an engineer to provide Professional Construction, Engineering and Inspection (CEI) and Geotechnical Services for Tom Mackie Boulevard Extension Project based on the terms and subject to the conditions contained herein; and

WHEREAS, Engineer is qualified, willing, and able to provide the CEI & GEO Services for the Tom Mackie Boulevard Extension Project specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Engineer 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: Steven Haines, PE
Johnson, Mirmiran & Thompson, Inc.
3731 Oleander Avenue
Fort Pierce, Florida 34982
Telephone: 772-370-7865
Email: shaines@jmt.com

City Contract Administrator: Robyn Holder, CPPB
Procurement Management Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
772-281-9284 / FAX 772-871-7337
E-mail: rholder@cityofpsl.com

City Project Manager: Frank Knott, Project Manager
Community Redevelopment Agency (CRA)
121 SW Port St. Lucie Blvd.
Port St. Lucie, Florida 34984
Telephone: 772-344-4290
Email: fknot @cityofpsl.com

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

This specific work that the Engineer has agreed to perform pursuant to E-RFP #20230114, **Professional Construction, Engineering and Inspection (CEI) Services for Tom Mackie Boulevard Extension Project** including all Attachments, all Addenda, and all other restrictions and requirements are incorporated by this reference.

The CEI services for Tom Mackie Boulevard Extension including Marshall Parkway shall include:

- Review of construction plans for constructability issues, including pre-construction review for errors and omissions. Include Constructability Review summary.
- Field observations, including daily photos and documentation for compliance.
- Design modifications as needed (*adjustments that can be made with field changes not requiring EOR*)
- Geotechnical Services and Testing, including but not limited to:
 - Density Testing
 - Concrete compressive strength testing
 - Proctor Tests (AASHTO T180)
 - Asphalt cores/densities
 - LBR
- Coordination and meetings, including pre-construction and progress meetings, with the contractor, City, public, utility companies, stakeholders, and testing firms.
- Review and recommend approval or denial for all Contractor's change orders.
- Review and recommend approval or denial for contractor's pay estimates, pay requests, and schedules. Prepare necessary change order documentation for City review and processing.
- Review and recommend approval or denial for contractor's pay estimates, pay requests, and schedules.
- Review and familiarity with CADD files used to ensure accurate survey data with construction plan set.

- Review and approve shop drawings.
- Review of test results.
- Review and tracking of CPM and/or Contractor scheduling software.
- Preparation of project progress reports – must be in compliance with grant reporting, FDOT progress documentation, and submitted in a timely manner.
- Coordination of permit conditions and compliance, including preparation of all required reporting and documents
- Provide City with copies of project records. Project records to be maintained in real-time and accessible to City staff, as needed. Project records to be maintained in compliance with specific Grant obligations.
- Respond to requests for information from the contractor and public, including on-going coordination with Public Information Officer both City and Department of Transportation, as needed.
- Project Closeout and *review of as-builts by others* to ensure compliance with permitting agencies.

The Engineer shall observe work performed and material used to determine if the work has been completed in accordance with the construction contract.

Deliverables

The Engineer shall prepare and submit the following:

1. Construction Completion Package containing the following:
 - a. Dated final as-built schedule, time file and daily work reports.
 - b. Field survey/geotechnical verification data provided to Engineer by the Contractor. Geotechnical verification data records may require FDOT Log Books, pending grant language requirements.
 - c. Final as-built plans provided to Engineer by the Contractor.
 - d. Documentation of progress meetings, public informational meetings, and any other pertinent project meetings with dates and notes.
 - e. Documentation of all field decisions which caused any deviation from the plans and/or specifications.
 - f. Signed and Sealed test results.
 - g. Documentation of progress payments and final payments to the Contractor.
 - h. Copies of all RFIs and responses.
 - i. Copies of all executed changes to the contract.
 - j. Copies of the final inspection punch lists with dates of item resolution.
 - k. All other project records.
2. CD/DVD containing electronic copy of all deliverables noted above in PDF format, or the format elected by the City.
3. Final as-built plans in AutoCAD (2015 version or newer), PDF and hard copy formats as *provided by the contractor*.

**SECTION IV
TIME OF PERFORMANCE**

The Contract Period start date will be _____ and will terminate three hundred and twenty (320) calendar days thereafter on _____. The Consultant will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in the bid specifications has not been completed by the specified date, the Consultant agrees to provide work as authorized by the Project Manager until all work specified in the bid specifications has been rendered and accepted by the City.

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

**SECTION V
RENEWAL OPTION**

No option to renew.

**SECTION VI
COMPENSATION**

The total amount to be paid by the City to the Consultant is on a per unit price basis listed on Schedule "A" for a total amount of **\$927,016.00** . Payments will be disbursed in the following manner:

Manhour & Cost Estimate	Time & Expense Basis				
<u>Gopher Tortoise Survey & Report</u>					
	Hrs/Week	Total Weeks	Total Hours	Lump Sum	Total
Gopher Tortoise Survey & Report	---	---	-	\$ 6,200.00	\$ 6,200.00
				Subtotal	\$ 6,200.00
<u>Plans Review</u>					
	Hrs/Week	Total Weeks	Total Hours	Rate/Hr	Total
Sr. Project Engineer	---	---	10.00	\$ 280.00	\$ 2,800.00

Project Manager	---	---	20.00	\$ 185.00	\$ 3,700.00
Sr. Inspector	---	---	20.00	\$ 120.00	\$ 2,400.00
				Subtotal	\$ 8,900.00
<u>Start-up</u>					
	Hrs/Week	Total Weeks	Total Hours	Rate/Hr	Total
Sr. Project Engineer	2	3.00	6.00	\$ 280.00	\$ 1,680.00
Project Manager	8	3.00	24.00	\$ 185.00	\$ 4,440.00
Sr. Inspector	8	3.00	24.00	\$ 120.00	\$ 2,880.00
				Subtotal	\$ 9,000.00
<u>Construction (45.7 weeks; 320 day construction time)</u>					
	Hrs/Week	Total Weeks	Total Hours	Rate/Hr	Total
Sr. Project Engineer	6	45.70	274.20	\$ 280.00	\$ 76,776.00
Project Manager	20	45.70	914.00	\$ 185.00	\$ 169,090.00
Sr. Inspector	40	45.70	1,828.00	\$ 120.00	\$ 219,360.00
Inspector	40	43.00	1,720.00	\$ 100.00	\$ 172,000.00
Inspector	40	20.00	800.00	\$ 100.00	\$ 80,000.00
CADD Technician/GIS	---	---	60.00	\$ 110.00	\$ 6,600.00
Survey Crew (2 Man)	---	---	80.00	\$ 150.00	\$ 12,000.00
				Subtotal	\$ 735,826.00
<u>Close-out</u>					
	Hrs/Week	Total Weeks	Total Hours	Rate/Hr	Total
Sr. Project Engineer	2	3.00	6.00	\$ 280.00	\$ 1,680.00
Project Manager	8	3.00	24.00	\$ 185.00	\$ 4,440.00

Sr. Inspector	8			\$ 120.00	\$ 2,880.00
		3.00	24.00		
				Subtotal	\$ 9,000.00
<u>Geotech/Testing</u>					
			Total Hours/Unit	Rate	Total
Project Engineer (Geo)			72.00	\$ 150.00	\$ 10,800.00
Engineering Technician			1,800.00	\$ 76.00	\$ 136,800.00
Admin./Tech Secretary			72.00	\$ 60.00	\$ 4,320.00
			Est. Qty.	Unit Price	
Density Tests			-	\$ 28.00	\$ -
Proctor Tests			12.00	\$ 110.00	\$ 1,320.00
LBR			10.00	\$ 325.00	\$ 3,250.00
Miscellaneous Lab Tests (organic content, percent fines)			1.00	\$ 500.00	\$ 500.00
Concrete Cylinders (sets)			10.00	\$ 110.00	\$ 1,100.00
				Geo./Testing Sub-total =	\$ 158,090.00
<u>Field Office & Utilities</u>					
	Budget of \$0/mo for 12 mos.				\$ -
<u>Direct Expense</u>					
Direct Expense					\$ -
				TOTAL =	\$ 927,016.00

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 – Invoices for services shall be submitted once per month, by the tenth (10th) day of each month, and payments shall be made within twenty (20) business days, unless 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 and is approved by the Project Manager is required under Section XVI 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 pwprojectinvoices@cityofpsl.com and CC the Project Manager for this Contract.

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

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

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

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

SECTION VII WORK CHANGES

The City reserves the right to order work changes in the nature of additions, deletions, or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the Contract price and time for completion. Any and all changes must be authorized by a written change order signed by the City's Purchasing Agent or his designee as representing the City. Work shall be changed and the Contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the Contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change. Any dispute concerning work changes which is not

resolved by mutual agreement shall be decided by the City Manager who shall reduce the decision to writing. The decision of the City Manager shall be final and conclusive.

SECTION VIII
CONFORMANCE WITH PROPOSAL

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

SECTION IX
INDEMNIFICATION/HOLD HARMLESS

Consultant agrees to indemnify, 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 Consultant, agents, laborers, subconsultants or other personnel entity acting under Consultant control in connection with the Consultant's performance of services under this Contract. To that extent, Consultant shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses, including appeals. That the aforesaid hold-harmless agreement by Consultant 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 Consultant or any agent laborers, subconsultants, or employees of Consultant regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. 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.

SECTION X
SOVEREIGN IMMUNITY

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

SECTION XI
INSURANCE

The Consultant shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained

by the Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

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

1. Workers' Compensation Insurance & Employer's Liability: The Consultant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by the Consultant qualify its employee(s) for benefits under Federal Workers' Compensation Statute (for example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.
2. Commercial General Liability Insurance: The Consultant shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

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

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read: "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract #20230114 – Professional CEI & GEO Services for Tom Mackie Boulevard Extension Project.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice

to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

4. Business Automobile Liability Insurance: The Consultant shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Consultant does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Consultant to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.
5. Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, the City reserves the right, but is not obligated, to review and request a copy of Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Consultant warrants that the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Consultant shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If the policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.
6. Waiver of Subrogation: By entering into this Contract, the Consultant agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss contract to waive subrogation without an endorsement, then Consultant shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.
7. Deductibles: All deductible amounts shall be paid for and be the responsibility of the Consultant for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City reserves the right, but is not obligated, to review and request a copy of the Consultant's most recent annual report or audited financial statement.

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

The Consultant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella

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

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

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

SECTION XII **ACTS OF GOD**

The Consultant 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 Consultant 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 Consultant, 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 Consultant 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 Consultant nor any subconsultant, 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](#). Consultant and any subconsultants, shall comply with [§ 119.0701, Fla. Stat.](#) The Consultant and any subconsultants, 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. (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 Consultant shall comply with Florida's Public Records Law. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes

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

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

1. The timeframes and classifications for records retention requirements must be in accordance with the [General Records Schedule GS1-SL for State and Local Government Agencies](#).
2. During the term of the Contract, the Consultant shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Contract. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Consultant's records under this Contract include, but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Contract.
4. The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this Contract.
5. A Consultant who fails to provide the public records to the City within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

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

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

Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of the Consultant, or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the

Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

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

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

**SECTION XV
E-VERIFY**

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

1. Consultant must register with and use the E-Verify system to verify the work authorization status of all new employees of the Consultant. Consultant must provide City with sufficient proof of compliance with this provision before beginning work under this Contract.
2. If Consultant enters into a contract with a subconsultant, Consultant must require each and every subconsultant to provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subconsult with an unauthorized alien. The Consultant shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.
3. The City shall terminate this Contract if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. Consultant shall immediately terminate any contract with any subconsultant if Consultant has, or develops, a good faith belief that the subconsultant has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subconsultant of Consultant knowingly violated section 448.09(1), Florida Statutes or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Consultant and order the Consultant to immediately terminate the Contract with the subconsultant.
5. The City shall terminate this Contract for violation of any provision in this section. If the Contract is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Contract under this section, the Consultant may not be awarded a public contract for a least one (1) year after the date on which the Contract was terminated. A consultant is liable for any additional costs incurred by the City as a result of the termination of a contract.
6. The City, Consultant, or any subconsultant may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20)

calendar days after the date on which the Contract was terminated. Such a cause of action must be filed in accordance with the Venue provision otherwise provided herein.

SECTION XVI **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 VI. If upon such inspection the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. 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.

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 his 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 XVII **SCRUTINIZED COMPANIES**

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

SECTION XVIII **CONTRACT ADMINISTRATION**

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

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

Joint Venture - Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership or joint venture, (or other association of any kind or agent and principal relationship) between the vested parties. Each party shall be deemed to be an independent consultant contracting for the services and acting toward the mutual benefits expected to be derived from the mutually agreed upon Contract. Neither Consultant nor any of Consultant's agents, employees, subconsultants or consultants shall become or be

deemed to become agents or employees of the City. Consultant shall therefore be responsible for compliance with all laws, rules, and regulations involving its employees and any subconsultants, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

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

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

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

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

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

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

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

SECTION XIX **ADDITIONAL REQUIREMENTS**

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply.

City's Public Relations Image - The Consultant's personnel shall at all times handle complaints and any public contact with due regard to the City's relationship with the public. Any personnel in the employ of the Consultant involved in the execution of work that is deemed to be conducting himself in an unacceptable manner shall be removed from the project at the request of the City Manager.

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

SECTION XX **ASSIGNMENT**

Consultant shall not delegate, assign, or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City. If Consultant sells all or a majority of its shares, merges with, or otherwise is acquired by or unifies with a third party, it shall notify the City within ten (10) days. If after such notice, the City determines in its sole discretion, it may terminate the Contract, without penalty.

SECTION XXI **TERMINATION**

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

- I. The Consultant fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Consultant;
- II. The Consultant fails to make substantial and timely progress toward performance of the Contract;
- III. In the event the Consultant is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- IV. The Consultant becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Consultant terminates or suspends its business; or the City reasonably believes that the Consultant has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- V. The Consultant has failed to comply with applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing within the scope of the Contract;
- VI. If the City determines that the actions, or failure to act, of the Consultant, its agents, employees or subconsultants have caused, or reasonably could cause, life, health or safety to be jeopardized;

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

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

- I. Immediately terminate the Contract without additional written notice(s); and/or
- II. Enforce the terms and conditions of the Contract and seek any legal or reasonable remedies; and/or
- III. Procure substitute services from another source and charge the difference between the Contract and the substitute contract to the defaulting Consultant. Any such charge, in the City's option, may be invoiced to Consultant or deducted from sums due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

Termination for Convenience - The City may, at any time, with or without cause, or for its convenience, terminate all or a portion of the Contract upon thirty (30) days written notice to Consultant. Any such termination shall be accomplished by delivery in writing of a notice to Consultant. Following termination without cause, the Consultant shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the Contract to the City up to the time of termination, pursuant to Florida law.

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

SECTION 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, arising from this Contract, or related to this Contract, shall be in St. Lucie County, Florida.

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

SECTION 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 City determines 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(s) to resolve the conflict of interest. The City Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal the Consultant shall disclose all its Treasure Coast clients and related Scope of Work.

SECTION 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, [section 119.07 Florida Statutes](#) ("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 the Public Records Law.

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

SECTION XXVII
ATTORNEY'S FEES

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

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

SECTION XXXI
AUDITS

The Consultant shall establish and maintain a reasonable accounting system that enables the City to readily identify the Consultant's assets, expenses, costs of goods, and use of funds throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Consultant shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies

of all books, documents, papers, electronic or optically stored and created records or other records relating or pertaining to this Contract kept by or under the control of the Consultant, including, but not limited to, those kept by the Consultant, its employees, agents, assigns, successors, and subconsultants. Such records shall be made available to the City during normal business hours at the Consultant's office or place of business. The Consultant shall not impose a charge for audit or examination of the Consultant's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Consultant for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Consultant. Evidence of criminal conduct will be turned over to the proper authorities.

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

SECTION XXXII **ORDER OF PREFERENCE**

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

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

SECTION XXIII **CONSTRUCTION**

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

The parties have participated jointly in the negotiation and drafting of this Contract and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Contract. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Contract shall

be construed as if drafted jointly by the parties, and there shall be no presumption or burden of proof or persuasion based on which party drafted a provision of the Contract.

SECTION XXXIV
NON-EXCLUSIVITY

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

SECTION XXXV
FORCE MAJEURE

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

SECTION XXXVI
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 XXXVII
FEDERAL TERMS AND CONDITIONS

For projects where federal and/or state funding may be used to fund the project in full or in part, there may be additional terms required for the contract executed related to the project. Below, please find a sample of the provisions that may be required in such instances. Additionally, there may be terms required by individual grants, which the City reserves the right to include in any contracts entered related to or stemming from this Contract.

Pursuant to 2 CFR 200.327 and Appendix II of 2 CFR 200, the following federal requirements and contract provisions are incorporated herein, where applicable.

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

All contracts in excess of \$10,000 must address termination for cause and for convenience by the City of Port St. Lucie including the manner by which it will be affected and the basis for settlement.

TERMINATION FOR CAUSE

Default Event. The occurrence of any one or more of the following events shall constitute cause for the City of Port St. Lucie, FL 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 of Port St. Lucie, FL'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 under this Contract, 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 of Port St. Lucie, FL 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. The contractor has engaged in conduct that has or may expose the City of Port St. Lucie, FL to liability, as determined in the City of Port St. Lucie, FL's sole discretion;
- VII. The contractor furnished any statement, representation, or certification in connection with the Contract, which is materially false, deceptive, incorrect, or incomplete.

Notice of Default. If there is a default event caused by the Contractor, the City of Port St. Lucie, FL, shall provide written notice to the contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City of Port St. Lucie, FL's written notice to the contractor.

Remedies. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City of Port St. Lucie, FL, may:

- I. Immediately terminate the Contract without additional written notice(s); and/or
- II. Enforce the terms and conditions of the Contract and seek any legal or reasonable remedies; and/or
- III. Procure substitute services from another source and charge the difference between the Contract and the substitute contract to the defaulting contractor. Such a charge, in the City of Port St. Lucie, FL's option, may be invoiced to the contractor and/or may be deducted from payments due to the contractor. Deductions thus made will not excuse the contractor from other penalties and conditions contained in the Contract.

TERMINATION FOR CONVENIENCE

The City of Port St. Lucie, FL, 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 of Port St. Lucie, FL, up to the time of termination, pursuant to Florida law.

The following Items (1) through (12) are "MANDATED CONDITIONS" that will be incorporated into this Contract, where applicable.

(1) EQUAL OPPORTUNITY EMPLOYMENT

In accordance with 41 C.F.R. §60-1.4(b), the sub-recipient/contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this Contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions

discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal

opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

(2) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient/contractor hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the U.S. Department of the Treasury may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(3) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the

work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

For contracts to be in compliance with the Contract Work Hours and Safety Standards Act the following are required:

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The U.S. Department of Treasury shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(4) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q).

The contractor agrees to report each violation to the City of Port St. Lucie and understands and agrees that the City of Port St. Lucie will, in turn, report each violation as required to assure notification to the U.S. Department of the Treasury, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by U.S. Department of the Treasury.

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387).

The contractor agrees to report each violation to the City of Port St. Lucie and understands and agrees that the City of Port St. Lucie will, in turn, report each violation as required to assure notification to the U.S. Department of the Treasury, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by U.S. Department of the Treasury.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by U.S. Department of Treasury.

(5) SUSPENSION AND DEBARMENT

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Port St. Lucie. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Port St. Lucie, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring

such compliance in its lower tier covered transactions.

(6) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(7) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- a. If the Sub-Recipient/contractor, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient/contractor shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:
 - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 1 through 5 of this subparagraph.
- b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

- c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
- d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(8) DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141–3148)

As required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The Wage Decision to use for this Contract *is not* applicable to this contract.

(9) PROCUREMENT OF RECOVERED MATERIALS

Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certification to City of Port St. Lucie. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage for recovered material practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand (\$10,000) dollars or the value of the quantity acquired during the preceding fiscal year exceeds ten thousand (\$10,000) dollars; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

In the performance of this Contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Contract

performance schedule; meeting Contract performance requirements; or at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(10) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in Title 2 CFR §200.216 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and as adopted by the U.S. Department of Treasury, as used in this clause—

(b) *Prohibitions.*

(1) Section 889(F)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the ARPA to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of

Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions

undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

(11) RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Contractor agrees to comply with the above requirements when applicable.

(12) DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(13) ACCESS TO RECORDS

The contractor agrees to provide the City of Port St. Lucie, the U.S. Department of the Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the contractor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall maintain records for a period of five (5) years after all funds have been expended or returned to the City of Port St. Lucie, whichever is later.

The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The contractor agrees to permit the U.S. Department of the Treasury or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the Contract.

In compliance with the Disaster Recovery Act of 2018, the City of Port St. Lucie and the contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the U.S. Department of the Treasury or the Comptroller General of the United States.

(14) CHANGES

To be allowable under the ARPA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

(15) DHS SEAL, LOGO, AND FLAGS

The Contractor must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.

(16) COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that ARPA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders and FEMA policies, procedures and directives.

(17) NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

(18) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this Contract.

Any procurement involving funds authorized by Hazard Mitigation Grant Program (HMGP) must comply with all applicable federal and state laws and regulations, to include [2 C.F.R. 200.318 through 200.326 as well as Appendix II to C.F.R. Part 200](#).

(19) INCREASING SEAT BELT USE IN THE UNITED STATES

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), contractor should adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

(20) REDUCING TEXT MESSAGING WHILE DRIVING

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor should adopt and enforce policies that ban text messaging while driving and should establish workplace safety policies to decrease accidents caused by distracted drivers.

(21) PUBLICATIONS

Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient/Contractor] by the U.S. Department of the Treasury."

(22) COPYRIGHT AND DATA RIGHTS (If applicable)

License and Delivery of Works Subject to Copyright and Data Rights

The contractor grants to the City of Port St. Lucie, FL, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City of Port St. Lucie, FL or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the contractor will deliver to the City of Port St. Lucie, FL data first produced in the performance of this Contract and data required by the Contract but not first produced in the performance of this Contract in formats acceptable by the City of Port St. Lucie, FL.

SECTION XXXIX
STATE FUNDING REQUIREMENTS

The City anticipates a future contractual agreement for funding from the Florida Department of Transportation ("FDOT"). Once an agreement is executed, Contractor agrees to comply with the requirements contained therein. Any future agreement will also be added to this Contract as an exhibit or contract amendment. Conflicts between this Contract and any funding agreements with FDOT shall be resolved in favor of the funding agreements.

**SECTION XXXX
ENTIRE AGREEMENT**

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

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

CITY OF PORT ST. LUCIE FLORIDA

JOHNSON, MIRMIRAN & THOMPSON, INC.

By: _____
Purchasing Agent

By: _____
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA)
) ss
COUNTY OF _____)

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

_____.

Signature of Notary Public

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

NOTARY SEAL/STAMP