

**CONTRACT # 20210103
CITY OF PORT ST. LUCIE**

This Contract for Design Services to provide Design Plans for the Hegener Drive Extension Phase 3 Project, executed this _____ day of _____, 2022, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City", and CAPTEC Engineering, Inc., 301 NW Flagler Avenue, Stuart, FL 34994, hereinafter called "Consultant" or "Proposer".

**SECTION I
RECITALS**

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

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

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

WHEREAS, Consultant is qualified, willing, and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Consultant to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein name, the Parties agree as follows:

The Recitals set forth above are hereby incorporated into this Contract and made a part of hereof for reference.

**SECTION II
NOTICES**

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person, sent by certified mail with return receipt request, email or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

Consultant: CAPTEC Engineering, Inc.
Joseph W. Capra P. E.
Title: President
301 NW Flagler Avenue
Stuart, FL 34994
E-Mail: jcapra@gocaptec.com
Telephone: 772-215-0330

City Contract Administrator: Jason Bezak, CPPB, NIGP-CPP
Procurement Agent II - Procurement Management Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
772-344-4068 / FAX 772-871-7337
E-mail: JBezak@cityofpsl.com

City Project Manager: Clyde Cuffy, Professional Engineer
Public Works Dept.
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
Phone #: 772-871-7643
Email: ccuffy@cityofpsl.com

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

PROJECT DESCRIPTION

The City of Port St. Lucie (City) is soliciting the services of CAPTEC Engineering, Inc. (CONSULTANT), registered as a Professional Engineer in the State of Florida, to provide 45% design plans with an option to provide 60% plans for three (3) roadway, potable water distribution, wastewater collection, and stormwater improvement projects (Project) located on the Port St. Lucie Governmental Finance Corporation (GFC) lands.

The Project shall be comprised of three (3) road segments that can be constructed either concurrently or as stand-alone projects. The Consultant shall provide three separate set of plan documents that allows the City to bid the roadway segments independently. The description of the three road segments are as follows:

- E/W Road #2 – Begin at the east side of Village Parkway intersection with E/W Road #2, and extends east approximately 1,700 feet along the southern boundary of Southern Grove Plat No. 26 Lot 2 to connect with the future Tom Mackie Blvd extension.
- Tom Mackie Blvd – Extend Tom Mackie Blvd from approximately 150 feet south of the future intersection of Tom Mackie Blvd and E/W Road #2 south approximately 3,150 feet to the Marshall Parkway right-of-way.
- Marshall Parkway – Extend Marshall Parkway east from the Village Parkway intersection approximately 1,700 feet within the 150-foot-wide road right-of-way to the intersection with Tom Mackie Blvd.

The Scope of Services includes roadway plans, drainage (including lakes), utility plans, irrigation and landscape design, and lake siting for roadway fill material. The drainage design shall be consistent with the South Florida Water Management District (SFWMD) Conceptual Permit for Southern Grove. The drainage plan shall include an equalizer pipe between lakes L22B and L24A. Utility design shall include water mains, gravity sewer mains, a lift station, water, and sewer services to future parcel(s) and force mains as needed. It is anticipated that the parcels located to the north of the proposed E/W Road #2 will be served by the existing lift station at the intersection of Tom Mackie Blvd. and Trade Center Dr. A lift station shall be designed as part of this scope for the properties abutting the proposed portion of roadway south of E/W Road #2. A service area analysis for the lift station shall be done to potentially include future land south of Marshall Parkway, if possible. Additionally, coordination with Florida Power and Light (FPL) will be required for the design of power conduits to be included on the plans. The proposed Lift Station will require 460 Volt, 3 phase power. Tom Mackie Blvd extension and E/W Road #2 shall be located within a proposed 100-foot right-of-way. Marshall Parkway shall be located within the existing 150-foot right-of-way. Tom Mackie Blvd and E/W Road #2 shall be designed with 10-foot public utility easements located outside of the right-of-way (ROW) on both sides, 12-foot travel lanes, 6-foot paved shoulders, 8-foot-wide sidewalk on both sides of the ROW, street trees, main trunk-line drainage, and swale drainage. Marshall Parkway shall be designed as a 4-lane median divided with 10-foot public utility easements located outside of the ROW on both sides, 12-foot travel lanes, 4-foot paved shoulders, 10-

foot sidewalk on both sides of the ROW, street trees, and curb and gutter drainage. Irrigation design shall be provided for street trees.

PROJECT SCOPE

The Project Scope of Services includes Survey & Geotechnical services, Construction Plans (including conceptual landscape design), creation, submittal and processing of a Plat through the City's Site Plan Review Committee and City Council, and preparation of drainage and/or utility easements. The Plat shall include the required road rights-of-way, water management tract(s), and create parcels for future development that will be accessed through the proposed roadways. Full lighting design is not included but spare conduits for future lighting, fiber optic and irrigation should be provided. The drainage design shall provide the maximum lake area that is allowed per the SFWMD Conceptual Permit for the Basin-B drainage sub-basin and follow the concept of the Stormwater Master Lake System Diagram illustrated in the Southern Grove Master Plan prepared by the Treasure Coast Regional Planning Council (TCRPC). The Project shall include a mass grading plan with an option to use embankment from the lake excavation to surcharge the roadway in advance of construction. Scope of Services' Tasks are as follows:

Task 1.1 – Survey and Geotechnical

CONSULTANT will retain the services of a Florida licensed professional surveyor. The design survey shall be conducted in conformance with and shall reference the North American Datum of 1983 (NAD83), Florida State Plane, East Zone (US ft.) Coordinate System for horizontal datum and the North American Vertical Datum of 1988 (NAVD88) for vertical datum. Survey shall be provided to the City in AutoCAD Civil 3D 2017 or later. The City will be responsible for providing any title work needed to clarify discrepancies encountered when researching the existing Rights-of-Way and/or any potential property acquisitions that are required.

The Survey Services include:

- Establish horizontal control tied to state plane coordinates.
- Establish vertical control referenced to NAVD 1988 based on a closed level loop.
- Set temporary benchmarks at 600-foot intervals.
- Acquire topography within the proposed right of way of the three road segments at 100-foot intervals and all major grade breaks within the right of way as depicted on the engineering design plan.
- Prepare a topographic survey map using AutoCAD.

Geotech Services include:

- Perform sixty-five (65) auger borings (ASTM D1452) to depths of 7-10 feet (approximately 1 boring per 100LF, alternating sides);
- Perform thirteen (13) Standard Penetration Test (SPT) borings (ASTM D1587) to a depth of 20 feet (approximately one boring per 500LF, center of alignment);
- Perform up to six (6) SPT borings to depths of 40 feet each within proposed stormwater lakes (once sited);
- Perform one (1) SPT boring to a depth of 40 at the location of the proposed lift station;
- Perform manual probes (i.e., "muck probes") within the portions of the existing ditches/canals, wetlands and reservoir (to the extent that they are accessible) which will require reclamation, so as to explore the approximate thickness of silt and muck that have accumulated and that will require removal during construction;

- Obtain soil samples from the borings for laboratory testing. This includes routine testing for AASHTO classification and may include standard sieve analyses, Atterberg Limits testing, organic content testing, etc.;
- Prepare a Roadway Soil Survey report incorporating the data obtained during the laboratory and field programs and provide recommendations relative to soil and groundwater parameters to be used in the roadway design.

Task 1.1 deliverables will include:

- Topographical Survey
- Geotechnical Information

Task 1.1 - Deliverable Date – 60 Days after NTP is Issued

Task 1.2 – Preliminary Plans (15% Line and Grade)

It is anticipated that a single-lane configuration will accommodate existing and future traffic volumes. However, the CONSULTANT shall verify a single lane configuration is appropriate for Marshall parkway and the proposed round-about. If not, the CONSULTANT shall propose the layout to provide an acceptable level of service through a 2045 horizon.

The CONSULTANT shall provide three separate sets of plan documents that allows the City to bid the roadway segments independently. The 15% Plan Sets will include, but shall not be limited to the following sheets:

- Key Sheet – Preliminary
- Typical Section(s) – Preliminary
- Roadway Alignment and Profile – Preliminary
- Round-About Plan (Tom Mackie Blvd.) (Preliminary if warranted)

The CONSULTANT will obtain a Sunshine One Call (SSOC) design ticket for the project (if applicable). All identified utility owners will be notified of the upcoming project and preliminary plans will be sent to them with requests for the owners to identify the location of their respective utilities.

Upon completion, copies of the 15% Plans shall be submitted to the City for review and comment. Any comments received will be addressed with the submittal of the 45% Plans. The City will be allowed thirty (30) calendar days for review and comment. The consultant will hold a 15% percent line and grade meeting 10 calendar days after submitting the preliminary plans.

Task 1.2 - Deliverable Date – 90 Days after NTP is Issued

Task 2.1 – Design Development (45%)

The CONSULTANT shall provide three separate sets of plan documents that allows the City to bid the roadway segments independently. The 45% Plan Sets will include, but shall not be limited to the following sheets:

- Key Sheet – Preliminary
- Typical Section(s) – Preliminary
- Roadway Profile or Grading Plan – Preliminary

- Round-About Plan (Tom Mackie Blvd.) (if warranted)
- Utility Plan and Details – Preliminary
- Lift Station Plan and Details – Preliminary
- Paving, Grading, and Drainage Details – Preliminary
- General Notes – Preliminary

The CONSULTANT will obtain a Sunshine One Call (SSOC) design ticket for the project (if applicable). All identified utility owners will be notified of the upcoming project and preliminary plans will be sent to them with requests for the owners to identify the location of their respective utilities.

Upon completion, copies of the 45% Plans shall be submitted to the City for review and comment. Any comments received will be addressed and plans resubmitted to the City. The City will be allowed fourteen (14) calendar days for review and comment.

- Task 2.1 - Deliverable Date – 60 days after the conclusion of the City's 30-day Review

Task 2.2– Design Development (60%) (Optional)

The CONSULTANT will conduct a Public Involvement Meeting during this task. The CONSULTANT will supply plans and display boards as needed and discuss the project with attendees in a workshop meeting with City Staff in attendance.

The CONSULTANT will prepare a 60% Construction Plan Set for each segment to include, but not limited to the following sheets:

- Key Sheet
- Summary of Pay Items – Preliminary
- Typical Section(s)
- Intersection Plans / Round-About Plan
- Roadway Profile or Grading Plans
- Cross Sections
- Stormwater Pollution Prevention Plan – Preliminary
- Traffic Control Plans
- Lift Station Plan and Details
- Utility Adjustments
- Signing & Marking Plans

Upon completion, the 60% Plan Sets shall be submitted to the City of Port St. Lucie for review and comment. Any comments received will be addressed and resubmitted. The CONSULTANT shall also submit a 60% Cost Estimate with the 60% Plans. The City will be allowed fourteen (14) calendar days for review and comment.

Task 2.2 - Deliverable Date – 120 - Days after Authorization

Task 2.3 – Landscape & Irrigation Plans (45% Optional)

The CONSULTANT shall supply the City with landscape and design/build criteria for the irrigation system for the project limits. The plans shall be based upon the City's landscaping policy. Preliminary plans concurrent with the 45% Design Development Submittal shall be provided for review.

Task 2.3 - Deliverable Date – 120 Days after Authorization

Task 3 – Permitting

CONSULTANT will conduct pre-application meetings, jurisdictional determinations, and make application for permits authorizing activities associated with the construction of Hegener Drive Phase 3 improvements. Anticipated permits include but not limited to: City Public Works Department, City Utility Systems Department, SFWMD, Army Corps of Engineers, and the Southern Grove Community Development District. Permits for Endangered Species and Historic Preservation issues and Undefined Consultant Design/Construction Efforts are not included.

CONSULTANT will prepare the drainage design and report to be used for permitting to the above agencies. The drainage design shall provide the maximum lake area that is allowed per the SFWMD Conceptual Permit for the Basin-B drainage sub-basin and follow the concept of the Stormwater Master Lake System Diagram illustrated in the Southern Grove Master Plan prepared by the Treasure Coast Regional Planning Council (TCRPC).

CONSULTANT will prepare permit applications for the above listed permits for submittal to the permitting agencies. CONSULTANT will submit permits to and respond to requests for information (RFI). The SFWMD ERP Permits will require assistance by the projects' Geotechnical and Environmental Professionals.

CONSULTANT will conduct pre-application meetings, make applications for permits authorizing activities associated with the water main, lift station, and the gravity sanitary sewer main along the Hegener Drive corridor to Port St. Lucie Utilities (PSLU).

CONSULTANT will process the permits on behalf of the City and seek to obtain the permits expeditiously.

The CONSULTANT will process the permits on behalf of the City and seek to obtain the permits expeditiously.

Task 3 - Deliverable Date – 150 Days after NTP is Issued

Task 4 – Lake Siting / Mass Grading Plan (Optional)

CONSULTANT will perform a lake siting analysis and prepare a mass grading plan with an option to use embankment from the lake excavation for the roadway in advance of construction.

Task 4 - Deliverable Date – 120 Days after Authorization

Task 5 – Platting

CONSULTANT's surveyor will Prepare a replat of that portion of Lot 1 of Southern Grove Plat No. 26 lying south of the south line of lot 2 of SOUTHERN GROVE PLAT NOT 26, per Plat Book 84, Page 36 illustrating the roadway segments and lake parcels. The City is to supply all supporting documents as follows:

- Attorney's name, address, bar number and phone number.
- Title Comment with copies of all supporting deeds.
- Warranty deed for the parcel.

- List of any Mortgages – if any on the property.
- Official Record Books and Pages the listed the mortgages.
- Evidence of paid taxes.
- Draft version of the covenants and restrictions for the Property Owners Association.
- President's name of the Property Owners Association. (Needs to be on plat)

In addition, the CONSULTANT's surveyor shall:

- Set the 24 Permanent reference monuments.
- Prepare a plat package and attend two plat meetings.
- Revise plat per county comments and prepare final mylar for recording.

Task 5 - Deliverable Date – 150 Days after NTP is Issued

Task 6: Request For Professional Services (RFQ) (Optional Services)

CONSULTANT will aid the City in preparation of the RFQ for the design build phase of the project. CONSULTANT will provide the City with an RFQ scope necessary to build the project. This will include RFQ language, plans, cost estimates, schedule, bid specifications, and addendums as needed.

Task 6 - Deliverable Date – 180 Days after Authorization

Task 7: Additional Services

CONSULTANT would be pleased to provide any additional services requested by CLIENT in accordance with the enclosed Fee Schedule. Additional services will not be performed unless CLIENT specifically requested by CLIENT, and an addendum to this agreement is executed.

Deliverables

In addition to the deliverables to applicable permitting agencies, the CONSULTANT shall supply the City the following:

- One (1) PDF copy of Survey and Geotechnical Information
- One (1) PDF copy of 45% Construction Drawings and Cost Estimates
- One AutoCAD file of the 45% Construction Drawings (AutoCAD 2017 or newer)
- One (1) Excel copy of 45% Construction Cost Estimates
- Plat Approval package

**SECTION IV
TIME OF PERFORMANCE**

The time to complete this work is two hundred and forty (240) calendar days for design and plat approval. Time spent for completing the plat approval process through City Council approval shall be incidental to this contract.

Unless indicated otherwise, the Consultant shall commence work within ten (10) days after receiving the fully executed contract.

**SECTION V
RENEWAL OPTION**

N/A.

**SECTION VI
Compensation**

BASIC SERVICES	Days	Hours Per Task	Regular Hourly Rates	Sub-Consultant Fee	Project Costs
Task 1.1 - Survey / Geotechnical / Environmental Principle Engineer, PE Senior Engineer, PE Senior Project Manager Project Design Engineer / EI Civil Design Technician Administrative Services (PC) <i>Survey Subconsultant</i> <i>Geotechnical Subconsultant</i> <i>Environmental Subconsultant</i>	60 days from NTP	8 16 37 19 24 17	\$210.00 \$180.00 \$160.00 \$130.00 \$105.00 \$65.00	 <i>\$18,000.00</i> <i>\$32,410.00</i> <i>\$35,000.00</i>	\$1,680.00 \$2,880.00 \$5,920.00 \$2,470.00 \$2,520.00 \$1,105.00 <i>\$18,000.00</i> <i>\$32,410.00</i> <i>\$35,000.00</i>
Task 1.2 - Preliminary Plans (15% Line and Grade) Principle Engineer, PE Senior Engineer, PE Senior Project Manager Project Design Engineer / EI Civil Design Technician Administrative Services (PC)	90 days from NTP	8 12 38 106 110 33	\$210.00 \$180.00 \$160.00 \$130.00 \$105.00 \$65.00		\$1,680.00 \$2,160.00 \$6,080.00 \$13,780.00 \$11,550.00 \$2,145.00
Task 2.1 - Design Development (45% Plans) Principle Engineer, PE Senior Engineer, PE Senior Project Manager Project Design Engineer / EI Civil Design Technician Administrative Services (PC)	150 days from NTP	8 17 58 110 161 33	\$210.00 \$180.00 \$160.00 \$130.00 \$105.00 \$65.00		\$1,680.00 \$3,060.00 \$9,280.00 \$14,300.00 \$16,905.00 \$2,145.00
Task 3 - Permitting Principle Engineer, PE Senior Engineer, PE Senior Project Manager Project Design Engineer / EI Civil Design Technician Administrative Services (PC)	150 days from NTP	24 88 152 298 108 237	\$210.00 \$180.00 \$160.00 \$130.00 \$105.00 \$65.00		\$5,040.00 \$15,840.00 \$24,320.00 \$38,740.00 \$11,340.00 \$15,405.00
Task 5 - Platting Principle Engineer, PE Senior Engineer, PE	150 days from NTP	0 4	\$210.00 \$180.00		\$0.00 \$720.00

Senior Project Manager		8	\$160.00		\$1,280.00
Project Design Engineer / EI		4	\$130.00		\$520.00
Civil Design Technician		4	\$105.00		\$420.00
Administrative Services (PC)		8	\$65.00		\$520.00
<i>Survey Subconsultant</i>				<i>\$17,000.00</i>	<i>\$17,000.00</i>
TOTAL					\$317,895.00
<u>OPTIONAL SERVICES</u>	Days	Hours Per Task	Regular Hourly Rates	Sub-Consultant Fee	Project Costs
Task 2.2 - Design Development (60% Plans Optional)	180 days From Authorization				
Principle Engineer, PE		4	\$210.00		\$840.00
Senior Engineer, PE		16	\$180.00		\$2,880.00
Senior Project Manager		48	\$160.00		\$7,680.00
Project Design Engineer / EI		76	\$130.00		\$9,880.00
Civil Design Technician		121	\$105.00		\$12,705.00
Administrative Services (PC)		33	\$65.00		\$2,145.00
Task 2.3 - Landscaping / Irrigation (45% Plans Optional)	120 days From Authorization				
Principle Engineer, PE		4	\$210.00		\$840.00
Senior Engineer, PE		3	\$180.00		\$540.00
Senior Project Manager		20	\$160.00		\$3,200.00
Project Design Engineer / EI		16	\$130.00		\$2,080.00
Civil Design Technician		3	\$105.00		\$315.00
Administrative Services (PC)		20	\$65.00		\$1,300.00
<i>Landscaping / Irrigation Subconsultant</i>				<i>\$33,995.00</i>	<i>\$33,995.00</i>
Task 4 - Lake Site / Mass Grading Plan (Optional)	120 days From Authorization				
Principle Engineer, PE		0	\$210.00		\$0.00
Senior Engineer, PE		12	\$180.00		\$2,160.00
Senior Project Manager		40	\$160.00		\$6,400.00
Project Design Engineer / EI		48	\$130.00		\$6,240.00
Civil Design Technician		64	\$105.00		\$6,720.00
Administrative Services (PC)		20	\$65.00		\$1,300.00
Task 6 - RFQ Package (Optional)	180 days From Authorization				
Principle Engineer, PE		4	\$210.00		\$840.00
Senior Engineer, PE		10	\$180.00		\$1,800.00
Senior Project Manager		36	\$160.00		\$5,760.00
Project Design Engineer / EI		44	\$130.00		\$5,720.00
Civil Design Technician		36	\$105.00		\$3,780.00
Administrative Services (PC)		26	\$65.00		\$1,690.00
TOTAL					\$120,810.00

The total amount to be paid by the City to the Consultant for the Tasks performed under Basic Services is for a grand total of **\$317,895**. If the City accepts and exercises the Optional Services, the City will send an Authorization to the Consultant to provide the City with the Optional Services it specifies on the Authorization.

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

Progress Payments- Within twenty (20) business days, the City shall pay the Consultant, the sum of money due each Progress Payment that is properly allocated to labor, materials and equipment incorporated in the work for the period covered in the application for progress payment. Retainage will be held at 5% from each progress payment.

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

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

Before issuance of final payment, the Consultant shall submit evidence that all payrolls, material bills and other indebtedness connected with the work have been satisfied and paid in full. Final Release of Liens from all Consultants, subconsultants, suppliers for materials and sub-subconsultants are to be attached to the final invoice.

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

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

No payment for projects involving improvements to real property shall be due until Consultant delivers to City a complete release of all claims arising out of the contract or receipts in full in lieu thereof, and an affidavit on his personal knowledge that the releases and receipts include labor and materials for which a lien could be filed.

All invoices and correspondence relative to this Contract must contain the City's Contract number and Purchase Order number, detail of items with prices that correspond to the Contract, a unique invoice number and partial and final release of liens.

All invoices are to be sent to: APNOTIFICATIONS@CITYOFFPSL.COM.

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

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

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

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

SECTION VII **WORK CHANGES**

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

SECTION VIII **CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the proposal made by the 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 and 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 Contract 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 employee 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 agrees to indemnify, defend, and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent act, recklessness, or intentional wrongful misconduct of the Consultant and persons employed or utilized, including any independent consultants or subconsultants by the Consultant in the performance of this contract.

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

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

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

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

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

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

Except as to Workers' Compensation and Employers' Liability, and Professional Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents for Contract # 20210103 Design Services up to 40% for the Hegener Drive Extension Phase 3 Project shall listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

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

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

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

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

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

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

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

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

SECTION XII **ACTS OF GOD**

The 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 Sub-Consultant supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION XIV COMPLIANCE WITH LAWS

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

RECORDS

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

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

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

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

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

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

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

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

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

**SECTION XV
INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Project Manager shall make inspection as soon as practicable after receipt from the Consultant of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Project Manager shall approve the invoice when it is received. Thereafter the Consultant shall be entitled to payment, as described in Section V. If, on such inspection the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his findings are not favorable. Consultant shall then be afforded an opportunity if desired by him, to correct the deficiencies so pointed out at no additional charge to the City, and otherwise on terms and conditions specified by the Project Manager. Upon failure of the Consultant to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five (5) days written notice to the Consultant, the City may, without prejudice to any other remedy he may have, correct such deficiencies. The Consultant shall be charged all costs incurred to correct deficiencies. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Consultant of his responsibility to remedy any deviation, deficiency, or defect.

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

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

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

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

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

SECTION XVI **SCRUTINIZED COMPANIES**

[Section 287.135, Florida Statutes](https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global%20Governance%20Mandates%20Statutes%202019%2001%2029.pdf?ver=2019-01-29-130006-790), prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to [Section 215.473, Florida Statutes](https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global%20Governance%20Mandates%20Statutes%202019%2001%2029.pdf?ver=2019-01-29-130006-790)
<https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global Governance Mandates and Florida%20Statutes 2019 01 29.pdf?ver=2019-01-29-130006-790>.

SECTION XXVII **CONTRACT ADMINISTRATION**

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XVIII
ADDITIONAL REQUIREMENTS

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

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

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

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

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

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

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

SECTION XIX
ASSIGNMENT

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

SECTION XX
TERMINATION AND DELAYS

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

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

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

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

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

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

SECTION XXI
LAW, VENUE AND WAIVER OF JURY TRIAL

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

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

SECTION XXII
APPROPRIATION APPROVAL

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

SECTION XXIII
TRUTH-IN-NEGOTIATIONS

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

SECTION XXIV
CONFLICT OF INTEREST

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

SECTION XXV
PUBLIC RECORDS / TRADE SECRETS / COPYRIGHT

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

Any language contained in the Proposer's response to the Solicitation purporting to require confidentiality of any portion of the Proposer's response to the Solicitation, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is

asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the Solicitation constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

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

SECTION XXIV **PROHIBITION AGAINST CONTINGENT FEES**

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

SECTION XXVII **ATTORNEY'S FEES**

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

SECTION XXVIII **CODE OF ETHICS**

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

SECTION XXIX **POLICY OF NON-DISCRIMINATION**

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

SECTION XXX
SEVERABILITY

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

SECTION XXXI
ORDER OF PREFERENCE

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

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

SECTION XXXII
AUDITS

The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the City 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 to be maintained include both financial records and service records. The Contractor 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 transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

SECTION XXXIII
ENTIRE AGREEMENT

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

(Balance of page left intentionally blank)

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

CITY OF PORT ST. LUCIE FLORIDA

CONSULTANT

By: _____ By: _____
Purchasing Agent 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: