

**CITY OF PORT ST. LUCIE  
CONTRACT #20240011**

This Contract executed this \_\_\_\_\_ day of \_\_\_\_\_, 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 DataWorks Plus hereinafter called "Contractor" or "Proposer." City and Contractor 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**, Contractor is licensed in the State of Florida; and

**WHEREAS**, the City wishes to contract with a contractor to provide FDLE Falcon RapidID Edge Devise Software and fingerprint scanners and related subscription, based on the terms and subject to the conditions contained herein; and

**WHEREAS**, Contractor is qualified, willing, and able to provide the Scope of Services and products and services specified on the terms and conditions set forth herein (Exhibit A); and

**WHEREAS**, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product and services specified and, purchase and subscription amount 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.

Contractor: *DataWorks Plus  
728 North Pleasantburg Dr.  
Greenville, SC 29607  
Telephone: 864-672-2780  
Email:*

City Contract Administrator: *David Harris  
Procurement Manager – Procurement Management Department  
121 SW Port St. Lucie Boulevard*

Port St. Lucie, FL 34984-5099  
772-871-5224 / FAX 772-871-7337  
E-mail: dharris@cityofpsl.com

City Project Manager:

*Lisa Smith*  
*Port St. Lucie Police Department*  
City of Port St. Lucie  
121 SW Port St. Lucie Blvd  
Port St. Lucie, FL 34984  
Telephone: 772-871-5183  
Email: lwsmith@cityofpsl.com

### **SECTION III**

#### **DESCRIPTION OF SERVICES TO BE PROVIDED**

The scope of work that the Contractor has agreed to perform pursuant to **DataWorks Plus Proposal #23-1026-01**, and all addenda.

#### **1. Scope of Work**

##### **Specific Duties to be Performed:**

1.1 Contractor will provide goods and services as described in Proposal #23-01026-01, attached hereto as Schedule 1.

### **SECTION IV**

#### **TIME OF PERFORMANCE**

The Contract Period start date will be **October 26, 2023** and will terminate one (1) year thereafter on **September 30, 2024**. The Contractor will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in the bid specifications has not been completed by the specified date, the Contractor agrees to provide work as authorized by the Project Manager until all work specified in the bid specifications has been rendered and accepted by the City.

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

### **SECTION V**

#### **RENEWAL OPTION**

In the event the Contractor offers in writing, prior to the termination of this Contract, to provide the identical materials required in this Contract for three (4) additional twelve (12) month terms for a total charge that is

acceptable, then the City, without additional bidding or negotiation, may, with the mutual agreement of the Contractor, extend this Contract for three (3) additional twelve (12) month terms.

Economic price adjustments upward or downward may be considered at the time of renewal; adjustments must be agreed upon in writing by both parties.

## **SECTION VI** **COMPENSATION**

The total amount to be paid by the City to the Contractor is on a per unit price basis listed on Schedule "A" for a total amount of **\$103,600.00**.

Payments will be disbursed in the following manner:

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

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 Contractor has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. However, payments shall be made within twenty (20) business days of receipt of Contractor's valid invoice if and only if the invoice is accompanied by adequate supporting documentation, including any necessary partial release of liens as described herein, 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 Contractor delivers to City a complete release of all claims arising out of the Contract or receipts in full in lieu thereof, and an affidavit based on Contractor's affiant's 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 the assigned Project Manager for this Contract.

The Contractor 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 Contractor as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Contractor as required in these Specifications, all expenses thus incurred by the City, at the City's option, will be invoiced to the Contractor and/or deducted from payments due to the Contractor.

Deductions thus made will not excuse the Contractor 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** - Contractor is responsible for all federal, state, and local taxes and other charges related to the performance of this Contract.

This Contract allows for a price redetermination based on the U.S. Department of Labor, Bureau of Labor Statistics, and Consumer Price Index – All Urban Consumers - U.S. City Average-All Items. See link provided for more information.

[https://data.bls.gov/timeseries/CUUR0000SA0?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/CUUR0000SA0?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)

After the first twelve (12) months of the Contract, this Contract allows for an annual price redetermination. The Contractor must request such an order renewal in writing no later than sixty (60) calendar days prior to the anniversary of the Effective Date and must include in the written request documentation that the Contractor has incurred bona fide cost increases providing services under this Contract during the year in which the request was made. The City will not allow Contract adjustments up or down to exceed five (5%) combined total in any one (1) year. Any increases/decreases will be effective on the Contract anniversary date. The prices will be held firm for that period.

Price adjustment will be based on the annual index (Un-Adjusted) using the published figures two (2) months prior to the renewal date. The price adjustment will be calculated on a simple percentage method.

## **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 or her 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, memorialized in a signed writing, 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 Contractor pursuant to the Solicitation and Specifications on file in the Procurement Management Department of the City. All documents submitted by the Contractor in relation to said proposal, and all documents promulgated by the City for inviting proposals are, by reference, made a part hereof as if set forth herein in full.

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

Contractor agrees to indemnify, defend, and hold harmless, the City, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses, and expenses including, but not limited to, attorney's fees for personal, economic, or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions, or other wrongful conduct of Contractor, agents, laborers, subcontractors, or other personnel entity acting under Contractor control in connection with the Contractor's performance of services under this Contract. To that extent Contractor shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses, including appeals. That the aforesaid hold-harmless Contract by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any agent laborers, subcontractors, or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Contractor shall be held responsible for any violation of laws, rules, regulations, or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by Contractor on the work. This indemnification shall survive the termination of this Contract.

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

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

**SECTION XI**  
**INSURANCE**

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

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, and as may be amended from time to time, 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.

Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, and as may be amended from time to time. 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. Should scope of work performed by Contractor qualify its employee 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.

Commercial General Liability Insurance: The Contractor 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 person
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 Contractors 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 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 policy. 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 #20240011 (FDLE Falcon RapidID Edge Device Software and fingerprint scanners).**" 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 Contractor shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

Waiver of Subrogation: By entering into this Contract, Contractor 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 Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

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

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

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, , 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, , 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. When a self-insured retention or deductible exceeds \$5,000, the City reserves the right, but is not obligated, to review and request a copy of Contractor's most recent annual report or audited financial statement.

A failure on the part of the Contractor 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 Contractor shall be responsible for all preparation of the site for Acts of God, including but not limited to: earthquake, flood, tropical storm, hurricane or other cataclysmic phenomenon of nature, rain, wind, or other natural phenomenon of normal intensity, including extreme rainfall. No reparation shall be made to the Contractor for damages to the work resulting from these Acts. The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

**Emergencies** – In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the Contractor, or their designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury, or loss. In the event such actions are taken, the

Contractor shall promptly give to the City written notice and contact immediately by phone, of any significant changes in work or deviations from the Contract documents caused thereby, and if such action is deemed appropriate by the City a written authorization signed by the City covering the approved changes and deviations will be issued.

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

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

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

The Contractor shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. Contractor will comply with all requirements of 28 C.F.R. § 35.151. Contractor and any subcontractors shall comply with section 119.0701, Florida Statutes. The Contractor and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Contract, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, 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 sections 775.082 and 775.083, Florida Statutes.

**RECORDS**

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

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

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

1. The timeframes and classifications for records retention requirements must be in accordance with the [General Records Schedule GS1-SL for State and Local Government Agencies](#).
2. During the term of the Contract, the Contractor shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form,



characteristics, or means of transmission, made, or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Contract include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Contract.

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

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

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

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

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

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

**TRADE SECRETS**

Any material submitted to the City that Contractor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including chapter 119, Florida Statutes) ("Trade Secret Materials"), must be separately submitted and conspicuously labeled: "EXEMPT FROM

PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, simultaneous with the submission of any Trade Secret Materials, the Contractor shall provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under section 688.002, Florida Statutes, and stating the factual basis to support the attestation. If a third party submits a request to the City of records designated by the Contract as Trade Secret Materials, the City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by the Contractor. Contractor shall indemnify and defend the City, its employees, agents, assigns, successors, and subcontractors from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorney’s fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

## **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 Contractor 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 Contractor’s invoice in accordance with Section VI. Thereafter the Contractor shall be entitled to payment, as described in Section VI. If, on such inspection the Project Manager is not satisfied, he or she shall as promptly as practicable inform the parties hereto of the specific respects in which their findings are not favorable. Contractor shall then be afforded an opportunity if desired by it, 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 Contractor 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 Contractor, the City may, without prejudice to any other remedy they may have, correct such deficiencies. The Contractor shall be charged all costs incurred to correct deficiencies. All such costs incurred by the City, in the City’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. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Contractor of their responsibility to remedy any deviation, deficiency, or defect.

**Authority** - The Contractor 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 Contractor 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 Contractor. 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 Contractor 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 Contractor and may be deducted from any moneys due to the Contractor or their Surety.

**Repair or Replacement** - Should any defect appear during the warranty period, the Contractor 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 Contractor as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Contractor as required in these Specifications, all expenses thus incurred by the City, in the City's option, will 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.

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

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

## **SECTION XVII** **CONTRACT ADMINISTRATION**

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

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

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

**Notices** - Any and all notices, designations, consents, offers, acceptances, or any other communication provided for herein shall be given in writing as required in Section II. 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 FedEx or UPS with guaranteed next day delivery; or,
- II. Within seven (7) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

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

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

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

**Use of Name or Intellectual Property** - Contractor agrees it will not use the name or any intellectual property, including but not limited to, City trademarks or logos in any manner, including commercial advertising or as a business reference, without the 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 Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach. Each waiver, if mutually agreed upon, shall be published as a Contract amendment.

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

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

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

**Contractual Relations** - The Contractor is advised that nothing contained in the Contract or specifications shall create any contractual relations between the City and any subcontractors of the Contractor.

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

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

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

**Cleaning Up** – The Contractor shall, during the performance of this Contract, remove and properly dispose of resulting dirt and debris, and keep the work area reasonably clear. Contractor shall remove equipment, materials, excess debris, and put the work area in a neat, clean, sanitary, and safe condition by the end of each shift. All disturbed areas shall be restored to existing or better conditions. The Contractor shall only be entitled for payment of authorized areas within the project work limits. Contractor shall make every effort to

minimize unnecessary damage. All damaged areas outside the project work limits must be repaired to existing conditions or better, at the cost of the Contractor, prior to payment of invoices. Contractor shall also take care to avoid sprinkler heads and irrigation lines, unless the aforementioned cannot be avoided, in which case irrigation lines will be relocated to cover all grassed areas. This cost is incidental to the clearing and grubbing cost.

### **SECTION XIX** **ASSIGNMENT**

Contractor shall not delegate, assign, or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City. If Contractor 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 XX** **TERMINATION, DELAYS, AND LIQUIDATED DAMAGES**

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

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

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

- I. Immediately terminate the Contract without additional written notice(s); and/or
- II. Enforce the terms and conditions of the Contract and seek any legal or reasonable remedies; and/or
- III. Procure substitute services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor. Such a charge, in the City'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 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 Contractor. Any such termination shall be accomplished by delivery in writing of a notice to Contractor. Following termination without cause, the Contractor shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the Contract to the City up to the time of termination, pursuant to Florida law.

**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.

**Liquidated Damages for Delays** - If material is not provided or work is not completed within the time stipulated in this Contract, including any extensions of time for excusable delays as herein provided, (it being impossible to determine the actual damages occasioned by the delay) the Contractor shall provide to the City one hundred (\$100.00) dollars as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed. The Contractor and their sureties shall be jointly and severally liable to the City for the total amount thereof.

**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, 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 XXII**  
**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 XXIII**  
**CONFLICT OF INTEREST**

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

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

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

**SECTION XXV**  
**ATTORNEY'S FEES**

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

**SECTION XXVI**  
**CODE OF ETHICS**

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

**SECTION XXVII**  
**POLICY OF NON-DISCRIMINATION**

Contractor shall not discriminate against any person in its operations, activities, or delivery of services under this Contract. Contractor shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person



based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

**SECTION XXVIII**  
**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 XXIX**  
**AUDITS**

The Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify the Contractor'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 contractors, 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 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 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 Contractor, including, but not limited to, those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Contractor's office or place of business. 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. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor'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 Contractor. Evidence of criminal conduct will be turned over to the proper authorities.

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

**SECTION XXX**  
**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 Contractor, attached hereto), the E-Bid (including any

subsequent addenda and written responses to Contractors' questions), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:

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

**SECTION XXXI**  
**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 XXXII**  
**E-VERIFY**

In accordance with section 448.095, Florida Statutes, the Contractor agrees to comply with the following:

1. Contractor must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor. Contractor must provide City with sufficient proof of compliance with this provision before beginning work under this Contract.
2. If Contractor enters into a contract with a subcontractor, Contractor must require each and every subcontractor to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor 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. Contractor shall immediately terminate any contract with any subcontractor if Contractor has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.
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 Contractor may not be awarded a public contract for at least one (1) year after the date on which the Contract was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.

6. The City, Contractor, or any subcontractor 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. The parties agree that such a cause of action must be filed in St. Lucie County, Florida, in accordance with the Venue provision herein.

**SECTION XXXIII**  
**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 section 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 shall mean 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**

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

**SECTION XXXV**  
**DISCRIMINATORY, CONVICTED, AND ANTITRUST VIOLATOR VENDOR LISTS**

Contractor certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

**SECTION XXXVI**  
**COOPERATION WITH INSPECTOR GENERAL**

Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Contractor understands and will comply with this statute.

**SECTION XXXVII**  
**ENTIRE AGREEMENT**

This Contract sets forth the entire agreement between Contractor 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. The parties shall not rely on any representation that may have been made by either party which is not included in this Contract. This Contract may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

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Falcon Fingerprint Scanners

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

CITY OF PORT ST. LUCIE, FLORIDA

CONTRACTOR

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

By: Rick Johnson  
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF SOUTH CAROLINA)

) ss

COUNTY OF GREENVILLE)

The foregoing instrument was acknowledged before me by  physical presence or  online notarization, this 9th day of February, 2024, by Rick Johnson who is  personally known to me, or who has  produced the following identification:

\_\_\_\_\_

Lisa M Cole  
Signature of Notary Public

**LISA M COLE**  
Notary Public, State of South Carolina  
My Commission Expires 09/19/2033

LISA M. COLE  
Print Name of Notary Public  
Notary Public, State of South Carolina  
My Commission expires: 9/19/31

