



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/13/2021

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Acentria Insurance - Harbor Insurance Agency 6645 South US Highway 1 Port Saint Lucie FL 34952	<b>CONTACT NAME:</b> Carolyn Lombardi <b>PHONE (A/C, No, EXT):</b> 561-623-6408 <b>E-MAIL ADDRESS:</b> Carolyn.Lombardi@Acentria.com <b>FAX (A/C, No):</b> 772-460-2315														
<b>INSURED</b> Nature's Keeper, Inc. 302 S. Brocksmith Road Fort Pierce FL 34945	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Commerce and Industry Insurance Company</td> <td>19410</td> </tr> <tr> <td>INSURER B : Greenwich Insurance Company</td> <td>22322</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty Company of America</td> <td>25674</td> </tr> <tr> <td>INSURER D : Insurance Company of the West</td> <td>27847</td> </tr> <tr> <td>INSURER E : AGCS Marine Insurance Company</td> <td>22837</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Commerce and Industry Insurance Company	19410	INSURER B : Greenwich Insurance Company	22322	INSURER C : Travelers Property Casualty Company of America	25674	INSURER D : Insurance Company of the West	27847	INSURER E : AGCS Marine Insurance Company	22837	INSURER F :	
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**COVERAGES** **CERTIFICATE NUMBER: 1136420086** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B A	<b>COMMERCIAL GENERAL LIABILITY</b>  CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  <input checked="" type="checkbox"/> Contractual Liab  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC  OTHER:	Y Y	1004672-00 FPL004743660	4/26/2021 7/19/2021	4/26/2022 7/19/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Pollution Liability \$ 1,000,000
B	<b>AUTOMOBILE LIABILITY</b>  <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY  SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y Y	1004674-00	4/26/2021	4/26/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR EXCESS LIAB CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTIONS \$ 10,000	Y Y	CUP-2S246141-21-NF	4/26/2021	4/26/2022	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	WFL5060504 00	4/26/2021	4/26/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Package Policy Contractors Equipment AOP Ded 1000/Theft 2500		MXI930798244194	4/26/2021	4/26/2022	Scheduled Equipment \$2,264,660 Equip Rented \$500,000 Equip Ded \$1,000/\$2,500

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 EBlid #: 20210099 Sod Restoration & Small Quantity Installation Projects  
 Certificate holder is included as Additional Insured with respect to General Liability for work being performed for them by the insured per General Liability Blanket Additional Insured form CG2037 12/19 including Products Completed Ops, but only if required by written contract or written agreement. Blankety Additional Insured is also included under CG2010 12/19, but only if required by written contract or written agreement. Primary and Noncontributory is included under form CG2001 12/19. Waiver of Transfer of Rights to Recovery Against Others is included in the General Liability Ext form. Per Project Aggregate Applies regarding the General Liability coverage per General Liability. The Business Auto Policy provides Additional Insured by contract or written agreement on a Primary Noncontributory basis included Waiver of Subrogation. per form XIC 421 10/13. Waiver of Subrogation is included on the Workers Compensation Policy in Favor of Certificate Holder. Executive Officers/Owners are Excluded from Workers Compensation Policy. \*30 Days Notice of Cancellation, Except 10 days notice for non-payment of premium.

<b>CERTIFICATE HOLDER</b>  City of Port St Lucie Procurement Agent II-Procurement Management Dept. 121 SW Port St Lucie Blvd Port St Lucie FL 34984	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**CITY OF PORT ST. LUCIE  
CONTRACT # 20210099**

This Contract is for Sod Restoration & Small Quantity Installation Projects ("Contract") 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 Nature's Keeper, Inc., 302 S. Brocksmith Road, Fort Pierce, FL, 34945 hereinafter called "Contractor".

**SECTION I  
RECITALS**

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

**WHEREAS**, Contractor is licensed and authorized to do business in the State of Florida; and

**WHEREAS**, the City wishes to contract with a Contractor to provide the Scope of Services and products / services 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 / services specified on the terms and conditions set forth herein; and

**WHEREAS**, the City desires to enter into this Contract with Contractor 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.

Contractor: Nature's Keeper, Inc.  
302 S. Brocksmith Road  
Fort Pierce, FL, 34945  
Krysten Bieger  
Telephone: 772-467-1230  
E-Mail: [krysten@natures-keeper.com](mailto:krysten@natures-keeper.com)

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

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

City Project Manager: Pierre Vignier, Project Coordinator  
City of Port St. Lucie Utility Systems Dept  
900 SE Ogden Lane  
City of Port St. Lucie, Florida 34983  
Telephone 772-871-5434  
Email: [PVignier@cityofpsl.com](mailto:PVignier@cityofpsl.com)

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

#### **INTENT**

The City of Port St. Lucie desires to obtain quotations from qualified individuals, firms, and legal entities relative to Sod Restoration & Small Quantity Installation Projects for the City of Port Saint Lucie. It is the intent of the City to enter into a per unit fixed price Contract with one (1) qualified Contractor to provide all labor, supervision, equipment, machinery, tools, materials, permits, transportation, and utilities for Sod Restoration & Small Quantity Installation Projects in accordance with the Contract Documents. Selected Bidder(s) must be qualified and capable of supplying and installing up to 24,000 square feet of sod per month for use on City projects. The estimated number of sod orders is 500 per month, with an order ranging from thirteen (13) square feet to five hundred (500) square feet. The average workorder sod amount is 50 square feet. The Contractor shall complete sod orders from all areas within the City of Port Saint Lucie Utility Systems Department's service area within two (2) weeks after work order are received.

#### **Scope of Work:**

**General:** Sod shall have been mowed at least three (3) times with an approved lawn mower with final mowing not more than seven (7) days before the sod is cut. The typical estimated quantity of sod required each month ranges from 12,000 square feet to 24,000 square feet and is used on City projects including but not limited to utility repairs, utility water & sewer residential installations and projects on City owned properties and right-of-way's. The estimated number of sod orders is five hundred (500) per month, with an order ranging from thirteen (13)-square feet to five hundred (500) square feet. The average number of work orders per batch is seventeen (17). The Contractor shall complete sod orders ranging from all areas within the City of Port Saint Lucie's geographical boundaries. These quantities are approximate only and neither the minimum nor maximum values provided are guaranteed. The City does not assume any responsibility that the actual quantities furnished shall remain in strict accordance with the estimated quantities, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities or of the character, location of the work, or other conditions pertaining thereto.

**Infestation:** All sod shall be free of any detrimental infestation (i.e., mole crickets, mold, army worms, parasites, red ants, etc.). Sod shall also be free from fungus, vermin, and other diseases. Floratam sod and Certified 419 Bermuda sod shall be free from any weeds. Floratam sod or Certified 419 Bermuda Sod delivered or installed with any weeds will be rejected. The Contractor shall be responsible to remove all rejected Sod at their own expense and provide prompt

replacement or punctual credit as desired by the City. Sod found to contain infestations and/or diseases prior to installation shall be rejected and replaced at the Contractor's expense. Sod found to contain infestations during the inspection following installation shall, at City's option, shall be chemically treated or replaced at Contractor's expense.

**Sod Type:** Unless a particular type of sod is called for in the release of desired materials, sod shall be Bahia. It shall be well matted with roots. Where sodding will adjoin, or be in sufficiently close proximity to private lawns, other types of sod may be specified by the City Representative including Floratam, Centipede, or Certified 419 Bermuda.

**Dimensions:** All sod delivered to a location shall be evenly cut and of uniform thickness and size. An acceptable size shall be rectangles measuring 16" x 24" or larger. Grass roots shall be adequately developed and matted, and soil containing grass shall have adequate moisture to allow sod to be handled without objectionable separation during installation. Rolled sod must be at least 16" inches in width and length consistent with the equipment and methods used to handle the rolls and place the sod. Sod shall be a minimum of 1 ¼ inches thick including a ¾ inch thick layer of roots and topsoil. Reducing the width of rolled sod is not permitted after the sod has been taken up from the initial growing location. Any netting contained in the sod shall be certified by the manufacturer to be bio-degradable within a period of three (3) months from installation. Any netting regardless of being bio-degradable will be removed during installation on all sports fields.

**Quality Control:** The City retains the right to reject sod which has grown together, falls apart upon handling, is dry, is inconsistent in thickness/size/density/color, or is deemed unsuitable or unlayable. The Contractor shall be responsible to remove all rejected Sod at their own expense and provide prompt replacement or punctual credit as desired by the City. Floratam sod and Certified 419 Bermuda sod is to be of top quality, preferably from a muck field with no weeds or foreign infestation. Quality complaints will be addressed by the Contractor within three (3) days. The City retains the right to require replacement of poor-quality installed sod or fertilization in approved cases.

- **Sod Quality:** The sod shall be sufficiently thick to secure a dense stand of live turf. The sod shall be live, fresh, and uninjured at the time of planting. It shall have a soil mat of sufficient thickness adhering firmly to the roots to withstand all necessary handling.
- It shall be planted within 48 hours after being cut and kept moist from the time it is cut until planted. No sod which has been cut more than 48 hours may be used unless specifically authorized by the City Representative. A letter of certification from the turf contractor as to when the sod was cut and what type shall be provided to the City Representative upon delivery of the sod to the job site.
- **Sod Farm:** Contractors shall be aware the City reserves the right to inspect the sod farm where the Contractor proposes to procure sod. The City also reserves the right to determine if the sod proposed is acceptable and is certified as the correct species.

#### **Project Manager on behalf of the Contractor**

Contractors are advised that they are responsible for designating a Project Manager acceptable to the City for collaboration of all sod installations. Contractors will be required to list their Project Manager's name and years of experience with this type of work.

### **Specifications of Sod Installation**

**Installation:** When installation is required, installation shall be completed in the following manner:

- The setting pieces shall be staggered in such a manner as to avoid continuous seams with no over lapping. Sod shall be carefully placed by hand, edge-to-edge in rows at right angles to the slope, commencing at the base of the area to be sodded and working upward. However, extremely wet areas may require flexibility in this installation method. Sod shall be applied without leaving separations or voids between pieces.
- In addition to providing an attractive finished appearance, sod will be laid in a manner which will minimize erosion.
- Rolling of sodded surfaces will only be done when requested by the City. When Rolling is requested, the following operation shall provide a true and even surface and insure knitting without displacement of sod and/or deformation of the surfaces.
- Contractor shall be responsible to supply a Delivery Ticket to the City Representative if material is delivered for installation by City Personnel.
- Contractor shall be responsible to supply a Daily Installation Report within twenty-four (24) hours after sod is laid, when sod is installed by Contractor's personnel. Each department will assume responsibility for watering sod after documentation is received unless the watering option is specifically requested by the City representative.
- The City reserves the right to terminate any Contract after three (3) written notices of performance deficiency have been issued. Note: Section XXI for further explanation.

**Watering:** Watering of sodded surfaces will only be done when requested by the City. When watering is required as determined by the City, it shall be completed in the following manner:

- Watering shall be done until sod is properly rooted. The water used in the grassing operations may be obtained from any approved source. The water shall be free of any substance which might be harmful to plant growth. Effluent water shall meet all Federal, State, and local requirements. Watering frequency is at the discretion of the Contractor.

**Restorations:** Restoration includes rough hand raking, supplying, and installing sod on residential or public property. Often used for the installation/repair of water and sewer lines but is not limited to utility work, any sod removed in the process must be replaced. Adding or removing fill dirt based on thickness and quality of sod in order to match existing area of excavated area to be replaced. Ensuring area is debris free of excess sod and dirt and roadway sweep of debris.

**HOURS OF SERVICE:** Work shall be performed by the Contractor between the hours of 8:00 am and 5:00 pm Monday thru Saturday. Any work performed by the Contractor outside of the aforementioned time limit requires special authorization by the City and requires that the Contractor obtain a noise permit from the City Police Department. If work occurs outside City limits (in St. Lucie County) the Contractor must obey County approved hours for work and any noise permits needed from the County and/or the St. Lucie County Sheriffs Office. The Contractor will be responsible for obtaining those hours and adhering to them. All equipment operated at night

shall comply with the noise levels established by the City of Port St. Lucie noise ordinance. Any additional costs associated with work outside of the hours of work allowed shall be borne by the Contractor. This shall include, but not be limited to costs of inspection, testing, police assistance, and construction administration.

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

The initial term of the contract(s) is for two (2) years. The Start Date of this Contract is **January 26, 2022** with an end date of **January 26, 2024**.

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

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

The initial term of the contract(s) is for two (2) years. The City shall have one (1), additional (2) year option to renew, which options shall be exercisable at the sole discretion of the City. Renewal will be accomplished through the issuance of a contract amendment from the City's Procurement Management Division. In the event that the contract(s), if any, resulting from the award of this eBid shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, the City may, with the written consent of the awarded Contractor(s), extend the contract(s) for such period of time as may be necessary to permit the City's continued supply of the identified products and/or services. The contract(s) may be amended in writing from time to time by mutual consent of the parties. Unless this eBid states otherwise, the resulting award of the contract(s) does not guarantee volume or a commitment of funds.

**NOTE: For issuance of either of the renewals set forth herein, Contractor shall submit a request in writing no more than 120 days nor less than 90 days prior to termination of the initial contract period (for the first renewal) or the renewed contract period(s).**

**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". Payments will be disbursed in the following manner:

**SCHEDULE A**

<b><u>Line No.</u></b>	<b><u>Description</u></b>	<b><u>Unit</u></b>	<b><u>Unit Price</u></b>
1	Restoration Bahia Sod (including all labor and FOB)	SF	\$0.64
2	Restoration 419 Certified Bermuda Sod (including all labor and FOB)	SF	\$0.99
3	Restoration Floratam Sod (including all labor and FOB)	SF	\$0.84
4	Rolling of sod surfaces	SF	\$0.10

**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 Contractor, 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.

**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 Contractor and will be paid to the Contractor within twenty (20) business days. Such final payment to the Contractor shall be subject to the covenants in the Contract's Standard Specifications and any liquidated damages will be assessed against the Contractor at that time.

Before issuance of final payment, the Contractor shall submit evidence that all payrolls, material bills and other indebtedness connected with the work have been satisfied and paid in full.

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 Contractor 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 Contractor's valid invoice, provided that the invoice is accompanied by adequate supporting documentation 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 on his personal knowledge that the releases and receipts include labor and materials for which a lien could be filed.

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

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

The 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 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. 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 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 and 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, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by 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, 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 Contractor 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: 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 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 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, 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 Contract # 20210099 Sod Restoration & Small Quantity Installation Projects shall be 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 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.

Automobile Liability Insurance: The Contractor 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 Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Contractor 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.

Waiver of Subrogation: The Contractor 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 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 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 Contractor to ensure that all independent Contractors and sub-Contractors 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 shown 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, 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 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 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 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 Sub-Contractor 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. Contractors and Sub-Contractor, shall comply with § 119.0701, Fla. Stat. The Contractor and Sub-Contractor, 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 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 Contractor shall comply with Florida's Public Records Law. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

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 Agreement.
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.

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)**

**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 the invoice when it is received. Thereafter the Contractor 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 practicably inform the parties hereto of the specific respects in which his findings are not favorable. Contractor 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 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 he may have, correct such deficiencies. The Contractor 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 Contractor of his 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 his 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**

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to Section 215.473, Florida Statutes <https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/GlobalGovernanceMandatesandFlorida%20Statutes20190129.pdf?ver=2019-01-29-130006-790>.

## **SECTION XXVII** **CONTRACT ADMINISTRATION**

**Amendments.** The City and the 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>.

**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 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.

**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 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.

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

**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 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 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(s) are advised that nothing contained in the contract or specifications shall create any contractual relations between the City and Sub-Contractor of the Contractor(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. 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(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 Contractor requires or desires to use any design, trademark, device, material, or process covered by letters of patent or copyright, the Contractor 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 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.

**Permits.** - 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

### **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.

### **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

**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 successful 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 his sureties shall be jointly and severally liable to the City for the 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 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  
TRUTH-IN-NEGOTIATIONS**

N/A.

**SECTION XXIV  
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 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 XXVI  
PROHIBITION AGAINST CONTINGENT FEES**

The Contractor warrants that he or she 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 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, Contractor 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**

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 Code of Ethics Ordinances in Section 9.14 of the City of Port St. Lucie Code.

**SECTION XXIX**  
**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 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 this Contract (including any amendments accepted by both the City and the Contractor attached hereto), the eBID (including any

subsequent addenda and written responses to bidders' 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 eBID.
- (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 XXXII**  
**ENTIRE AGREEMENT**

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

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

CITY OF PORT ST. LUCIE FLORIDA

CONTRACTOR

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

By: [Signature]  
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA            )  
                                          ) ss  
COUNTY OF St Lucie        )

The foregoing instrument was acknowledged before me by  physical presence or  online notarization, this 7 day of January, 2022, by Kristen Bieger who is  personally known to me, or who has  produced the following identification:

\_\_\_\_\_

[Signature]  
\_\_\_\_\_  
Signature of Notary Public

Courtney Brown  
\_\_\_\_\_

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

March 19, 2025

NOTARY SEAL/STAMP

