

**CITY OF PORT ST. LUCIE
CONTRACT #20230107**

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 Godwin's Lawn & Landscape Services, Inc., 1180 SW Bay Hollow Court, Palm City, FL 34990, 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 Mowing & Trimming Services at City Park Lands, 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: Godwin's Lawn & Landscape Services, Inc.
Charles Andrew Godwin
1180 SW Bay Hollow Court
Palm City, FL 34990
Telephone: 772-260-4040
Email: Godwin4040@gmail.com

City Contract Administrator: Nadia Tourjee
Procurement Contracting Officer I – Procurement Management Department

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

City Project Manager: Randy Ellman
Parks and Recreation Dept.
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
Telephone: 772-871-7385
Email: RandyE@cityofpsl.com

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

The scope of work that the Contractor has agreed to perform pursuant to **E-BID #20230107 for Mowing & Trimming Services at City Park Lands** and all addenda.

1. Scope of Work

Work to be performed by the Contractor under this section includes furnishing all labor, supervision, equipment, machinery, tools, materials, transportation, insurance, and all other incidentals necessary to comply with the specifications required to perform the grounds maintenance of the areas specified by the City's Project Managers.

The Contractor will make every reasonable effort to leave the area in an aesthetically pleasing condition.

The Contractor's responsibilities will include, but is not limited to, mowing and grounds maintenance, pruning/hedging all plants so as to remove all dead or diseased, and all parts of plants which present a visual hazard or physical obstacle to the use of traffic way(s); keep litter/debris removed from the required areas listed herein; and weeding/herbicide weed control, at all, and any other future locations as requested by the City.

Locations that have sidewalks, tree wells, or planter beds will be edged and blown during each mowing cycle to include either mechanical and/or herbicide treatment to control/remove weeds/invasive plants. Contractor will be held responsible for any plants/trees inadvertently killed during herbicide treatments in designated planter beds/tree wells, and at no cost to the City. Turf grass weed control will not be included in this contract. All other required licenses for herbicide treatment of planter beds/tree wells, sidewalk expansion joints, pavers, fence lines will apply. No indicator dye will be used on non-permeable surfacing. All designated planters/beds with be trimmed/hedged minimum of twelve (12) times annually and pruning of trees/plants up to 12' in height and less will be included. No IPM or fertilizer applications will be included in this contract for Turf/grass areas.

Locations identified as designated parking lots, walkways may experience higher than normal debris during the year, contractor will be expected to blow and remove debris from hard surfacing and take

to an approved landfill for proper disposal. The City reserves the right to add or delete locations as the city grows and changes.

The Project Manager will furnish maps of all locations. Designated area maps can be found in Attachment A. The Project Manager shall provide an itemized check list to the Contractor. This check list will need to be signed and dated for each occurrence. Frequency of Mowing & Trimming Services at City Park Lands are detailed on Schedule A. The actual frequency of services will be at the discretion of the City's Project Manager.

The following services shall be performed every service date:

- Mowing, trimming, weeding, edging, and cleanup of swales, landscape-berms, open space areas, easements, and right-of-way at each site.
 - Sidewalks and similar hard surface areas having grass established along edges shall be machine blade edged.
 - Planter and tree bed borders edged.
 - Power string trimming in all areas.
 - All walks, slabs and similar surface areas shall be blown clean (or hand swept) upon completion of each service.
 - All trimmings shall be removed from site
2. **Trash Removal** - Prior to each mowing, any trash and/or debris on areas to be mowed shall be picked up by the Contractor and deposited in the nearest trash receptacle or removed from the site. Mowing such materials is not acceptable. If no receptacle is available at that site Contractor must take trash and/or debris to the nearest park site with an available receptacle.

At all locations the Contractor will be responsible to inspect and remove all trash prior to the commencement of mowing and maintenance. The Contractor will supply the number of 55-gallon trash bags removed at the conclusion of each cycle. The Project Manager will require the Contractor to remove all trash within the residential streets. Nothing larger than a tire will be removed. The City will address this issue on a case-by-case basis.

3. **Grass Uniformity** - Grass in specified areas shall be uniformly cut to achieve a height of not less than 3" or more than 4" at all locations. Project Manager will advise when/if cutting height(s) must be altered. It is the Contractor responsibility to maintain a uniform height of cut consistent with the terrain. Contractor will take all precautionary measures to keep grass clippings/debris from entering all mulch areas, planter beds, and tree wells. Cutting blades shall be sharpened as needed, to maintain a good cutting characteristic. Blades shall be set to cut grass at three (3) inches in height after being cut. All mowing is to be tied into private property. The Contractor shall agree at any time deemed necessary by the Project Manager to allow the Project Manager, or his/her designee, the right to inspect the mowing blades of any machine being used.
4. **Trimming** - Trimming shall be performed in conjunction with each mowing. Trimming shall be done around buildings, fences, walls, posts, poles, boxes, trees, planting beds, lots, driveways, and other similar areas. Trimming shall be done in a manner that will provide a uniform finished appearance. The use of a chemical herbicide such as Roundup® is permitted provided it is applied per approval of the Project Manager for specified areas, and the appropriate Florida license/certification is

possessed by the Contractor or his/her employees. Work shall be completed in a professional manner.

When work is in progress, Contractor shall make a reasonable effort to ensure that cuttings will not be discharged into the street, onto private property or in the drainage “black swale liner”. The Contractor shall also make every reasonable effort to ensure that cuttings will be discharged onto the uncut area. Any debris as a result of the mowing operation discharged in these locations may be required to be moved by the Contractor at the discretion of the Project Manager before work continues.

The back side of the swale liners and sidewalks, if present, must always be cut, regardless if it’s wet or not. The Contractor shall weed-eat, use a walk behind mower, or boom mower if conditions are too wet.

5. **Damages** - Any damage occurring during mowing operations is to be immediately reported before the end of the daily shift by the Contractor to the Project Manager. The Project Manager will determine what corrective action is required and inform the Contractor. The Contractor will punctually perform the required corrective action at the Contractor’s expense no later than twenty-four (24) hours from the time it is reported.

Contractor will be responsible for all Chemical Spill Clean-Up and removal at Contractor's expense.

6. **Reporting** - The Contractor shall deliver bi-weekly reports via email, facsimile, or in person, a detailed work schedule to identify the specific work in progress, the name and number of personnel, street names, or sections being performed to the Project Manager or his/her designee.

7. **Frequency of Service**

- 7.1. **Weekly** - The following locations shall be serviced weekly during the contract on Wednesday, Thursday and/or Friday in order to prepare them for weekend public use and reservation uses that are frequent. Notice is given that work on the specified days is important as weekend usage of these Lands will deter being able to perform services that could injure users. Work at these locations must be done between the hours of 7:00 am and 5:00 pm.

Locations	Address	Map Location	# of Total Acres	# of Service Acres	# of Mows per Year
Apache Park	1449 Apache Ave.	1	13.9	13.9	42
C-24 Canal Park	500 SE Oakridge Dr.	3	9	8	42
Charles E. Ray Park	5626 NW Manville Dr.	4	8.7	8.7	42
Duck Court Park	452 SW Rad Ct.	N/A	0.89	0.89	42
Fred Cook Park	400 SE Glenwood Ave.	9	5.5	5	42
Girl Scout Friendship Park	315 NW Heather St.	10	8.4	8.3	42
Jaycee Park	1301 SW Bayshore Blvd.	14	6.2	4.5	42

Mowing & Trimming Services at City Park Lands

Kiwanis Park	1320 SE Floresta Dr.	16	3.8	3.5	42
Oak Hammock Park*	1982 SW Villanova Rd.	28	48.7	2.7	42
PSL Elks Lodge Park	2264 SE Blackwell Dr.	30	3.5	3.5	42
River Place Park	690 NE Bayou Country Rd.	32	7.75	3.5	42
Rotary Park**	2101 SE Tiffany Ave.	33	8.5	8.5	42
Turtle Run Park	1945 SW Cameo Blvd.	43	10	8	42
Whitmore Park	474 SE Whitmore Dr.	48	4.4	4	42
Woodlands Trail Park	1485 SW Calmar Ave.	51	13	12	42

*Oak Hammock Park – Partially developed park with open space located a Villanova Rd. Exterior of park on Leafy Rd. & Ruiz Terr. 200ft X 50ft (10,000 sq. ft) as also part of this park.

**Rotary Park - Developed site. The rear section of this site has very thick grass that grows much faster than the rest of the park and other locations. Due to this growth a heavy-duty mulching type unit is recommended for use. When excessive cuttings are noticed it will be the Contractor's responsibility to re-cut and/or remove the cuttings as directed as part of the contract at the regular proposal price. The rear entrance gate is to be mowed to the swale on both sides.

7.2. Bi-Weekly - The following locations shall be serviced twice monthly during the contract period on any day(s) between Monday and Friday. These locations do not have facilities for scheduled public use. Work must be done between the hours of 7:00 am and 6:00 pm.

Locations	Address	Map Location	# of Total Acres	# of Service Acres	# of Mows per Year
Doat Street Park*	425 SE Doat St.	8	2.4	2.4	24
Harborview Park	624 SE Harborview Dr.	12	4.8	4.8	24
O.L. Peacock Park**	1950 SW Dreyfuss Blvd.	27	100	13.7	24
Sandpiper Bay Park	1878 SE Westmoreland Blvd.	34	11.5	3.75	24
SW Cycle Street	3073 SE Bur St.	N/A	15.69	15.69	24
Wilderness Park***	2701 SE Westmoreland Blvd.	49	85	65.29	34
Woodstork Trail****	1957 SE Hillmoor Dr.	52	56.4	33	24

*Doat Street Park - This park is an undeveloped site with a pond. Port St. Lucie - Section #13 (Map 44/045)

**O.L. Peacock Park - This park is an undeveloped open space lake area.
 - Twice per month mowing and trimming or approved chemical treating of fence line. Twice a month mowing with trimming "along fence lines ONLY" and will periodically chemical treat fence line upon request and approval of the Contract Supervisor. Areas of mowing: 1) Northern open space area from lake edge to roadway. 2) Berm area western from open space towards I-95 ending at the existing woods line. 3) Eastern berm from north to south end lake from fence line to native growth at edge of lake.

- City will provide lock combination for access, or contractor directed to supply own locks for "double locking with City's lock".

***Wilderness Park - This is an undeveloped area with open space approximately 39.8 acres. To be serviced thirty-four (34) times a year on any day(s) between Monday and Friday. Frequency from May – September at four (4) times per month.

****Woodstork Trail - Twice per month mowing with trimming & edging once per month. Underdeveloped area with 15.1 acres open space natural trail with accessible sidewalks located between Tiffany Ave. & Hillmoor Dr. The west side of the lake approximate length is 478 ft from the corner of Hillmoor Dr. to the Bridge is to be mowed.

- Port St Lucie-Section 50- Tract G (7.80 AC) (MAP 44/01N)
- Port St Lucie-Section 50- Tract G-1 (9.89 AC) (MAP 44/01N)
- Port St Lucie-Section 50- Tract G-2 (24.68 AC) (MAP 44/01N)
- Port St Lucie-Section 50- Tract G-3 (14.12 AC) (MAP 44/01N)
- East Lake Village (PB 43-26) Tract GW1 (Greenway Tract) (7.09 AC) (as per plat dedication dated 11-26-03)

8. **Equipment** - Contractor's equipment shall have cutting blades maintained in optimal condition to ensure that grass is evenly cut and that a "tearing" effect and/or other damage that would negatively affect growth or health of grass is avoided.

Mowers - all mowers must be equipped with enclosed mulching decks and blades.

Only equipment designed for performance of work described herein will be acceptable for operation. The equipment used must be in good operating condition at all times. All equipment used must have company identification signs including, but not limited to, trucks, boats, etc.

The City may inspect the equipment anytime during the course of the contract. Safety devices shall be properly installed and maintained at all times the equipment is in use.

8.1. **Equipment Storage** - The Contractor shall be responsible for to ensure that all equipment and supplies shall not be stored on City property without written permission from the Project Manager.

9. **Inspections** - During the contract period, the Project Manager, Operations Supervisor, or their designee, shall continually inspect work that has been performed and notify the Contractor of any deficiencies that require correction. The Contractor shall be responsible to remedy all deficiencies within two (2) days after notification to be eligible for payment for that week's service.

Contractor will use treatments for weed and growth control as approved by Project Manager.

10. **Limitation of Operations** – No equipment, regardless of width, shall be left on the roadway rights-of-way overnight or parked in the median without written approval from the City.

The Contractor shall prevent damage and preserve all property associated with, or located in the vicinity of, or is in any way affected by the work. This applies to public and private property and/or utilities.

Any damages occurring to such properties shall be immediately repaired at the expense of the Contractor to a condition equal to or better than that existing before such damage occurred.

The Contractor shall provide adequate protection for curbs and sidewalks over which trucks and equipment pass to reach the job site.

SECTION IV **TIME OF PERFORMANCE**

The Contract Period start date will be **July 1, 2024** and will terminate three (3) calendar years thereafter on **June 30, 2027**. 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 up to two (2) additional one (1) year periods 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 two (2) additional one (1) year periods.

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/CUUR0000SEHP02>

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 thirty (30) calendar days prior to the renewal 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 renewal date. The prices will be held firm for that period at the published CPI increase/decrease amount at time of renewal.

**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 **\$177,808.88**. Payments will be disbursed in the following manner:

Line #	Locations	# of Service Acres	# of Mows per Year	Rate per Acre	Rate per Mow	Total Amount
1	Apache Park	13.9	42	\$ 22.20	\$ 308.58	\$ 12,960.36
2	C-24 Canal Park	8	42	\$ 22.20	\$ 177.60	\$ 7,459.20
3	Charles E. Ray Park	8.7	42	\$ 22.20	\$ 193.14	\$ 8,111.88
4	Duck Court Park	0.89	42	\$ 22.192	\$ 19.75	\$ 829.54
5	Fred Cook Park	5	42	\$ 22.20	\$ 111.00	\$ 4,662.00
6	Girl Scout Park	8.3	42	\$ 11.63	\$ 96.53	\$ 4,054.22
7	Jaycee Park	4.5	42	\$ 22.20	\$ 99.90	\$ 4,195.80
8	Kiwanis Park	3.5	42	\$ 22.20	\$ 77.70	\$ 3,263.40
9	Oak Hammock Park	2.7	42	\$ 22.20	\$ 59.94	\$ 2,517.48
10	PSL Elks Lodge Park	7	42	\$ 22.20	\$ 155.40	\$ 6,526.80
11	River Place Park	3.5	42	\$ 22.20	\$ 77.70	\$ 3,263.40
12	Rotary Park	10.4	42	\$ 22.20	\$ 230.88	\$ 9,696.96
13	Turtle Run Park	8	42	\$ 22.20	\$ 177.60	\$ 7,459.20
14	Whitemore Park	4	42	\$ 22.20	\$ 88.80	\$ 3,729.60
15	Woodland Trails Expansion	3.5	42	\$ 22.20	\$ 77.70	\$ 3,263.40
16	Woodland Trails Park	8	42	\$ 22.20	\$ 177.60	\$ 7,459.20
17	Doat Street Park	2.4	24	\$ 22.20	\$ 53.28	\$ 1,278.72
18	Harborview Park	4.8	24	\$ 22.20	\$ 106.56	\$ 2,557.44
19	O.L. Peacock Park	13.7	24	\$ 22.20	\$ 304.14	\$ 7,299.36
20	Sandpiper Bay Park	3.75	24	\$ 22.20	\$ 83.25	\$ 1,998.00
21	SW Cycle Street	15.69	24	\$ 22.20	\$ 348.32	\$ 8,359.63
22	Wilderness Park	65.29	34	\$ 22.20	\$ 1,449.44	\$ 49,280.89
23	Woodstork Trail	33	24	\$ 22.20	\$ 732.60	\$ 17,582.40
TOTAL AMOUNT:						\$ 177,808.88

Line #	Additional Services	Unit Price
1	Additional Sites by Acre	\$ 22.20

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 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, including any necessary partial release of liens as described above, and is approved by the Project Manager as required under Section XV of the Contract.

No payment for projects involving improvements to real property shall be due until 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 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 that 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 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](#), and as may be amended from time to time.

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 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 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, Business Auto Liability, and Pollution Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents, and shall include Contract #20230107 Mowing & Trimming Services at City Park Lands 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. 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.

Business 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.

Pollution Insurance: Contractor shall procure and agree to maintain in full force during the term of this Contract, Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, for any operations relating to the handling, storage, and transportation of hazardous materials and/or waste. The City of Port St. Lucie shall be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.

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 subcontractor supplier of materials, laborer, or other person or entity 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 subcontractor, shall comply with [§ 119.0701, Fla. Stat.](#), and as may be amended from time to time. The Contractor and subcontractor, 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. (2013), and as may be amended from time to time. 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, 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 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, AND AS MAY BE AMENDED FROM TIME TO TIME, 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**

**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 VI. If, on such inspection, the Project Manager is not satisfied, he shall as promptly as practicable inform the parties hereto of the specific respects in which his

findings are not favorable. 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 it 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 his responsibility to remedy any deviation, deficiency, or defect.

Contract Performance - It is the intent of the City to ensure that the Contractor provides a quality level of mowing and trimming services. All complaints will be reported to, and promptly resolved by, the Contractor. The Contractor shall have twenty-four (24) hours to resolve any such complaints. The City may levy administrative charges for infractions by the Contractor at \$100.00 per day per incident. Such infractions shall include, but are not limited to: (a) failure to resolve complaints within the twenty-four (24) hour period; (b) failure to provide safe equipment; (c) failure to provide required documentation in a timely and accurate manner; (d) failure to report damage to irrigation system(s); (e) failure to report property damage or personal injury; (f) failure to remove all trash from site(s); (g) failure to perform scheduled service; and/or (h) landscape employees not adhering to uniform/protective clothing requirements. For the purpose of this section, the City, at its discretion, may deduct any charges from payments due the Contractor. The City shall notify the Contractor in writing of any action to be taken. In the event the Contractor wishes to contest such assessment, the Contractor shall submit a written protest within seventy-two (72) hours after receiving such notice for an opportunity to be heard by the City and present a defense to such assessment. The City will notify the Contractor in writing of any action taken with respect to Contractor's claims. The decision of the City shall be final. Based on limited funds, the City may eliminate certain contracted areas or groups in order to stay within the budget. The City may, at its discretion, add or delete similar sized areas as a result of construction or unanticipated impacts.

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 give 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/or 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 its 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 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 1st through September 30th.

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

Joint Venture - Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the vested parties. Each party shall be deemed to be an independent 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.

Traffic Control – The Contractor shall be responsible for traffic control during operations performed by the contractor’s personnel and/or subcontractors. Traffic control shall be in conformance with Federal Highway Administration, Manual on Uniform Traffic Control Devices, latest edition and the Florida Department of Transportation Roadway and Traffic Design Standards, latest edition.

The foregoing requirements are to be considered as a minimum and the Contractor’s compliance shall in no way relieve the Contractor of final responsibility for providing adequate traffic control devices for the protection of the public and employees throughout the work areas.

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.

Discrepancies - If, in the course of performing work resulting from an award under this specification, the Contractor finds any discrepancy between the area defined in these specifications and the actual area where work is being performed, the Contractor shall discontinue work on the subject area and inform the Project Manager of the discrepancy. The Contractor shall thereafter proceed as authorized by the Project Manager who will document any modification to these specifications that he authorized in writing as soon as possible.

Permission to Use - The Contractor shall permit any portion of the new work, which is in suitable condition, to be used by the City for the purpose for which it was intended, provided such use does not hinder or make more expensive the work still to be done by 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. The City prefers long-sleeve buttoned-up shirts. Long pants are required.

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.

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. The project work limits shall be established by the City of Port St. Lucie prior to construction. 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.

Foreman or Superintendent and Workmen – The Contractor shall at all times during progress of the work, have on site a competent foreman or superintendent with authority to act for him and to cooperate with the City. The Contractor shall provide competent, careful, and reliable workmen with sufficient experience in such work to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make do and proper effort to execute the work in the manner prescribed in the Contract Documents.

Labor and Equipment - The Contractor(s) shall utilize experienced personnel who are thoroughly capable of performing the work assigned to them. The Contractor(s) shall utilize proper equipment in good repair to perform assigned work. Failure on the part of the Contractor(s) to furnish such labor or equipment shall be sufficient cause for annulment of any award resulting from these specifications. Only equipment designed for performance of work described herein will be acceptable for operation. The equipment used must be in good operating condition at all times. Include a list of equipment proposed for use (owned and/or leased), with the bid. The City may inspect the equipment prior to awarding the bid, and at any time during the course of the contract. Safety devices shall be properly installed and maintained at all times the equipment is in use.

Storage and Stockpiling – All storage or stockpiling of tools or material (i.e., lumber, pilings, etc.) shall be limited to uplands. Excess lumber, scrap wood, trash, garbage, or other types of debris shall be removed from the project site upon the completion of the work.

Erosion and Sediment Control – The Contractor is responsible for all erosion and sediment control in accordance with all local, State and Federal regulatory agency guidelines.

Water Resources – The Contractor shall not discharge without permit into waters of lakes, rivers, canals, waterways and ditches, any fuel, oils, bitumens, garbage, sewage, or other materials which may be harmful to fish, wildlife, or vegetation, or that may be detrimental to outdoor recreation. The Contractor shall be responsible for investigating and complying with all applicable Federal, State, and local laws and regulations governing pollution of waters. All work under this Contract shall be performed in such manner that objectionable conditions will not be created in waters through or adjacent to the project areas.

Native Vegetation – No Native Vegetation shall be removed without written authorization and prior approval of the City.

Sanitary Conditions - The Contractor(s) shall be responsible to provide and maintain in a neat and sanitary condition such accommodations for the use of employees as may be necessary to comply with the regulations of the County Board of Health or other bodies having jurisdiction. Contractor(s) shall commit no public nuisance.

Access to Work - The Contractor(s) shall be responsible to permit the City, its inspectors, and other authorized representatives of the City to have access to all parts of the work, and to all materials intended for use in the work, and to all factories where such materials are manufactured, at all times. The above designated City personnel shall be permitted during said access to remove materials and make such inspections, as they deem necessary. Materials submitted for approval will be inspected and passed upon as promptly as practical as will work in progress. However, failure to reject defective work at the time it is done and/or failure to reject materials shall in no way prevent rejection at any time prior to final acceptance of the work authorized by the City.

Adjustments - The Contractor(s) shall be responsible to arrange with utility companies for any adjustment necessary. The Contractor(s) shall also be responsible to identify and avoid damage to all utilities (publicly and privately owned) within the area where work is being performed.

Damages - The Contractor(s) shall be responsible for the charge and care of all work from damage by the elements or from any cause whatsoever until contractor has been paid in full.

No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses, or damages, including but not limited to, costs of accidental or inefficiency, arising because of delay, disruption, interference from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable, or avoidable. Contractor shall be entitled only to extensions of the Contract Time as sole and exclusive remedy for such delays, in accordance with and to the extent specifically provided herein.

Damage to Property – The Contractor shall preserve from damage all property along the line of work, or which is in the vicinity of or is in any way affected by the work, the removal, or destruction of which is not called for by the plans. This applies to public and private property, public and private utilities, trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, public highways, etc. Whenever such property is damaged due to the activities of the Contractor, it shall be immediately restored to a condition equal to or better than existing before such damage or injury was done by the Contractor, and

at the Contractor's expense. The Contractor's special attention is directed to protection of any geodetic monument, horizontal, vertical or property corner, located within the limits of construction.

National Geodetic Vertical Datum 1929 (NGVD '29) or North American Vertical Datum 1988 (NAVD '88) monuments shall be protected. If in danger of damage, notify:

Geodetic Information Center
6001 Executive Boulevard
Rockville, MD 20852
Attn: Maintenance Center (301) 443-8319

City of Port St. Lucie vertical or horizontal datum shall also be protected. In case of damage or if relocation is needed, notify:

City of Port St. Lucie
Public Works Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099 (772) 871-5175

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

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
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 XXIV
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 XXV
ATTORNEY'S FEES

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

SECTION 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 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 not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The 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 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 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 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
CONSTRUCTION

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

The parties have participated jointly in the negotiation and drafting of this Contract and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Contract. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the parties, and there shall be no presumption or burden of proof or persuasion based on which party drafted a provision of the Contract.

SECTION XXXII
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 XXXIII
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. Such a cause of action must be filed in accordance with the Venue provision, as provided herein.

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

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