

Design Services for the BMX Racetrack at Tradition Regional Park

**CITY OF PORT ST. LUCIE
CONTRACT #20230085**

This Contract, executed this _____ day of _____, 2023, 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 Action Sports Design, LLC, 12400 W Hwy 71, Suite 350, Bee Cave, TX 78738, Telephone No. 512-387-5827, hereinafter called "Consultant." City and Consultant 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, Consultant is licensed in the State of Florida; and

WHEREAS, the City wishes to contract with Consultant to provide Design Services for the BMX Racetrack at Tradition Regional Park based on the terms and subject to the conditions contained herein; and

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

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

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

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

**SECTION II
NOTICES**

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

Consultant: Mike McIntyre, PLA
12400 W Hwy 71, Suite 350
Bee Cave, TX 78738
Telephone: 512-727-4347 | Cell: 512-535-8824
Email: Mike@actionsportsdesign.com

City Contract Administrator: Nadia Tourjee
Procurement Agent I - Procurement Management Department

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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: Kelly Boatwright
Parks and Recreation Dept.
City of Port St. Lucie
2195 SE Airoso Blvd.
Port St. Lucie, FL 34984
Telephone 772-871-5099
Email: KBoatwright@cityofpsl.com

SECTION III

DESCRIPTION OF SERVICES TO BE PROVIDED

SCOPE OF WORK

The proposed design process to be performed by ACTION Sports Design, LLC (DESIGNER) for City of Port St. Lucie (CLIENT) includes the following:

TASK 1.0 – SCHEMATIC DESIGN-CITY MEETINGS

Objectives:

- Define scope of work, schedule, program, and overall items of coordination.
- Establish the project working relationship with all members of the project design team.
- Review any applicable studies, concepts, existing data sources, and any other work done to date in the interest of this project.
- Prepare conceptual and schematic design providing detailed direction as to the materials, location, and dimensioning of the design elements.
- To develop a preliminary budget/estimate of probable construction cost.
- Coordinate with client team and City.

1.1 Project Kick-off Meeting #1 (Consultant/CLIENT) - Zoom

- Consultant will perform Kick-Off meeting with City and applicable groups determined by the client.
- Meet with Client staff and team consultants to verify work program, schedules, and channels of communication.
- Review project scope, schedule, and budget with design team.
- Project overview and distribution of design team responsibilities.

1.2 Data Collection (Consultant/ CLIENT)

- Data will be collected as it relates to the existing site and proposed development to ensure an understanding of the site and park program. Existing information pertinent to the project scope of work will be gathered and distributed to all design team members during this phase of the work by the Client.
- Geo-technical investigation will be assessed, and Consultant will provide any special

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considerations for future design and construction.

- Site Survey in .DWG format Geo-referenced for all project drawings will be reviewed.

1.3 BMX Racetrack and Bicycle Learning Playground Flow and Skill Level Diagrams (Consultant)

- Develop two (2) alternative bubble diagrams illustrating the layout and program relationships of the BMX Racetrack and Bicycle Learning Playground to the adjacent site amenities proposed in the future park development. Restroom, concession, and registration building size, format, and program will be provided.
- Diagram activity zones, approximate size of amenities, and circulation throughout each transition zone.
- Gain acceptance from client on final program of park amenities and circulation.

1.4 BMX Racetrack and Bicycle Learning Playground Diagrams Meeting #2 - Zoom

- Design progress review meeting with the city to evaluate final program, materials, circulation, and proposed park master plan integration of design.
- Address all City comments, requests, and approval prior to producing conceptual layouts.

1.5 BMX Racetrack and Bicycle Learning Playground Conceptual Layout Plans

- Based upon specific design criteria gathered from the City, Consultant will prepare (2) conceptual design plans that will depict site facilities and relationships. Specific concept to be reviewed under this contract shall be limited to the following items:
 - Develop a maximum of two (2) conceptual BMX Racetrack and Bicycle Learning Playground designs identifying horizontal layout of the park based on the conceptual bubble diagram layout and client approval.
 - Pedestrian access and circulation system.
 - Relationship between BMX Racetrack and Bicycle Learning Playground elements and existing/proposed recreation areas.
 - Landforms and grading concept (BMX Racetrack and Bicycle Learning Playground limit of work only).

1.6 Develop Final BMX Racetrack and Bicycle Learning Playground Schematic Master Plan

- Develop final BMX Racetrack and Bicycle Learning Playground master plans based on conceptual layouts, design team input, and City comments.

1.7 Preliminary BMX Racetrack and Bicycle Learning Playground Cost Estimate

- Determine preliminary cost for the BMX Racetrack and Bicycle Learning Playground elements.
- Cost estimate shall be based upon general square footage prices, based on current market conditions.

1.8 Client Meeting #3 - Present BMX Racetrack and Bicycle Learning Playground Design (Consultant/CLIENT)

- Design Team/Project Consultant Meeting – This meeting will include the Client Staff, City Staff, and any team consultants related to the project.

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1.9 Final Design 3D Renders for City-(Consultant/CLIENT)

- Present BMX Racetrack and Bicycle Learning Playground Design
- Design Team/Project Consultant Meeting – This meeting will include the City Staff, and any team consultants related to the project.

TASK 2.0-DESIGN DEVELOPMENT (60%)

Objectives:

- To refine the schematic design providing detailed direction as to the materials, location, and dimensioning of the design elements.
- To refine the estimate of probable construction cost and budget.
- Upon review by the Client of the Schematic Design plans, Consultant shall prepare the Design Development drawings setting forth, in technical detail, the requirements for construction of the design. Evolutionary adjustments to the Design Development documents will be incorporated into the work prior to the start of Construction Documents.

2.1 Project Meeting #3 – DD Coordination (Consultant/CLIENT)

- Consultant will make available to the Client a copy of the final plan prior to project meeting #3.
- Evaluate BMX Racetrack and Bicycle Learning Playground for security, access, and design guideline compliance.
- Review plan for innovation, value engineering, and update/ review design schedule with client.

2.2 Materials Research (Consultant)

- Identify proposed materials and furnishings to be used within the BMX Racetrack and Bicycle Learning Playground elements.
- Identify all products, materials, and approximate cost.

2.3 Prepare Base Information (consultant)

- Prepare base information for inclusion in all future design documents.
- Consultant will coordinate drawings within our scope of work with Project Design Team members as updates become available.

2.4 Site Plan (Consultant)

- Convey major site features relevant to the BMX Racetrack and Bicycle Learning Playground placement on site. Layout will reflect proposed grades and grading concept.

2.5 Preliminary BMX Racetrack and Bicycle Learning Playground Material Reference Plan (Consultant)

- Identify all major amenities in the Master Plan by keynote description.
- Reference all major details, enlargements, and sections with supporting details.

2.6 Preliminary Layout Plan (Consultant)

- Final location of elements using horizontal coordinates, curve data, & vertical elevations.
- Enlarged layout plan for the facility using horizontal coordinates, curve data, & vertical elevations.

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2.7 Geotechnical Boring Locations (Consultant/CLIENT)

- Provide boring locations for client Geo-technical report and structural calculations needed for start hill, buildings, pump track, element footings, and lighting footings as applicable.

2.8 Preliminary Grading and Drainage Plan & Coordination (Consultant)

- Proposed spot grades at necessary points to convey intended elevations and direction of flow.
- Earthwork calculations for cut and fill.
- Location and sizing of drainage structures, sizing and location of retention basins, invert grades by client. Provide all finish grades and surface drainage for BMX Racetrack and Bicycle Learning Playground and supporting site improvements within scope limit of work line.

2.9 Sections/Profiles Plan (Consultant)

- Vertical sections at appropriate scale conveying the overall BMX Racetrack and Bicycle Learning Playground design intent.

2.10 Construction Details (Consultant)

- Provide sufficient construction detailing for the construction of all elements within this project that falls under this scope of work within the project limit of work lines.

2.11 Specifications (Consultant/PROJECT DESIGN TEAM)

- Provide 60% specifications for all elements within this project that fall under this scope of work within the project limit work lines.

2.12 Preliminary Statement of Probable Construction Costs – 60% (Consultant)

- Prepare cost estimate for the BMX Racetrack and Bicycle Learning Playground within the project's limit of work.

2.13 60% Client Review Submittal (CLIENT/Consultant)

- Submit 60% plan set, specifications, and construction estimate for review by Client.
- It shall be the responsibility of the Client to review all material and respond to Consultant with any comments or questions in a timely manner.
- **Project Meeting #4 – DD Review (Consultant/CLIENT)**
- Client review of 60% submittal.

2.14 Construction Estimate of Probable Construction Costs (Consultant)

- Provide estimate of probable construction costs for all BMX Racetrack and Bicycle Learning Playground elements.
- Coordinate with team on all overlapping areas for clear definition of estimate elements.

TASK 3.0 CONSTRUCTION DOCUMENTS (90%-100%)

Objectives:

- Upon review by the Client of the Design Development documents, Consultant shall finalize the construction contract documents setting forth, in technical detail, the requirements for construction of the design.

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- The construction documents shall include all items necessary to build the entire BMX Bike Track and Bicycle Learning Playground elements.
- Construction documents shall include, but are not limited to, layout, grading, drainage, structural calculations, materials, and other plans as necessary to facilitate the construction of the proposed project.
- Consultant will submit 90% plans to the appropriate agencies for review, revisions, and approval.
- Make required revisions as requested by the Client to present to the Client 100% final, professional sealed plans for construction.

3.1 Project Meeting #5 – CD Overview (Consultant/CLIENT) PHONE CONFERENCE

- Review approved Design Development drawings prior to start of 90% Construction Documents.

3.2 90% Construction Documents (Consultant)

- Consultant will finalize plans to facilitate construction of BMX Racetrack and Bicycle Learning Playground project. These 90% construction documents at a minimum shall include:
 - Site Plan
 - Perspective and Graphic Views
 - Materials Reference Plan
 - Layout Plan
 - Grading and Drainage Plan
 - Cut and Fill Calculations
 - Detailing of all BMX Racetrack and Bicycle Learning Playground features
 - Sections/Profiles Plan
 - Construction Details
 - Fencing and Lighting photometrics
 - Quantity Survey and Cost Estimate
 - Construction Specifications

3.3 Statement of Probable Construction Cost – 90% (Consultant)

- Develop spreadsheet of all BMX Racetrack and Bicycle Learning Playground, and bike skills improvement quantities and unit rates for probable construction cost.
- If necessary, Consultant will identify acceptable alternatives to align the probable construction cost with the available construction budget. The cost estimate will be submitted with the 90% plan set to allow for any necessary design adjustments prior to 100% plan submittal and acceptance.
- A final cost estimate based on a current market value that falls within budget will be submitted with the 100% final construction documents.

3.4 90% Specifications (Consultant/PROJECT DESIGN TEAM)

- Refine and revise as necessary technical specifications in CSI (Construction Specification Institute) format for all BMX Racetrack and Bicycle Learning Playground and BMX Racetrack and Bicycle Learning Playground construction.

3.5 100% Biddable Construction Document Submittal (Consultant/PROJECT DESIGN TEAM)

- Consultant will finalize plans to facilitate construction of the BMX Racetrack and Bicycle Learning Playground project. These final construction documents at a minimum shall include:
 - Site Plan
 - Materials Reference Plan
 - Layout Plan
 - Grading and Drainage Plan
 - All BMX Racetrack and Bicycle Learning Playground feature detailing
 - Sections/Profiles Plan
 - Construction Details
 - Quantity Survey and Cost Estimate
 - Construction Specifications.
 - Estimate of Probable Construction-Bid Tab

4.0 - CONSTRUCTION SUPPORT - Bidding

Objectives:

- Aid Client in bidding process by fielding questions and answers from prospective bidders during the contract procurement process. Bidders will be working with ABA Ethos.
- Provide necessary Requests for Information (RFI's) if applicable.
- Review of contractor's bids providing feedback on qualifications and acceptable experience.

5.0 - CONSTRUCTION SUPPORT - Construction Meetings-As-Builts

Objectives:

- Aid City in determining in general if the work is proceeding in accordance with the Contract Documents design intent.
- Consultant shall provide observation of the implementation of work designed by Consultant within the construction documents and shall advise and consult with City. Issues relating to Consultant's work will be conveyed and communicated to City's representative for evaluation and direction to the contractor.
- Consultant shall visit the project site during specific critical points in the construction of the BMX Racetrack and Bicycle Learning Playground.
- Consultant's role shall be to ensure that the contractor is performing the work in accordance with the contract documents and design intent. Consultant shall not be responsible for construction means, methods, techniques, sequences for procedures, or for safety precautions in connection with work, or for the contractor's failure to carry out the work per local codes, ordinances, and guidelines.

5.1 Pre-Construction Conference (Consultant) - 1 onsite meeting

- Consultant shall not be responsible for the acts or omissions of the contractor or any sub-contractors, or any of the contractors or sub-contractor's agents or employees, or any other persons performing any of the work. To ensure that the intent of working drawings is carried out, at least five (5) working days' notice is required for approval of deviations of field changes related to the drawings and specifications prepared by Consultant. Changes shall be approved in writing by Consultant before the contractor is authorized to make those changes.

5.2 Progress Review/Site Visits (Consultant) - 3 onsite meetings

- Progress reports shall be provided following each site visit to City indicating the progress of the project, quality of construction methods, specific problem areas, and state of completion. These reports are for the sole purpose of assisting City in its management of the construction process.
- Consultant shall photograph work during site visits and include photos with each written progress report for City records.
- Consultant shall review and approve shop drawings, samples, and other submissions of the contractor only for conformance with the design concept of the project and for compliance with construction documents by Consultant.
- City shall have the final decision and approval on all matters related to design and construction. Consultant shall make recommendations in matters relating to artistic/technical effect which will be final if consistent with the intent of the contract documents. Consultant will make recommendations to City to reject work that does not conform to the contract documents and require special inspection or testing when deemed necessary.
- A representative of Consultant shall always have access to the work and shall make periodic visits to the site as scheduled below to become familiar with the progress and quality of the work to determine if the work is proceeding in accordance with the contract documents. The primary basis of on-site observations will be to advise City of any areas not conforming with the design intent (we will not be providing testing or inspections).

5.3 Pay Application Approvals and Substantial Completion Review (Consultant) - 1 onsite meeting

- Consultant will review and approve the contractor's applications for payment and submit for City review and processing. Consultant shall advise and inform on the completeness of each phase of work within their scope.

5.4 Project Closeout (Consultant) - 1 onsite meeting

- Consultant will provide final approval letter for project close out.

PROJECT ASSUMPTIONS

The following assumptions shall apply to the proposed scope of work and submitted fees:

- All written documents will be generated using Microsoft Word.
- All spreadsheet documents will be generated using Microsoft Excel.
- All project scheduling will be generated using Microsoft Project.
- Consultant will provide a Site Survey for the construction documents.
- Consultant will retain specialty engineering required for: Geotechnical Engineering and Site Survey, Civil Engineering, Structural Engineering, Electrical Engineering.
- The Client shall be provided division 1 of the technical specifications and any specialty bidding requirement documents for the specifications. Consultant will provide division 2-16 of the technical specifications.
- Additional meetings, if required and approved, will be submitted as a change order request.
- Additional plan sets, if required and approved, will be billed at our standard in-house, or out-of-house, duplication rates.
- Data collected and methods used shall at a minimum be as follows:

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- Plan Processing Requirements – The Client shall outline to Consultant and the design team the process required for the ultimate approval of all reports, plans, specifications, and cost estimates. The Client shall provide Consultant with any specific details, title blocks, specifications, and/or document formatting required by the Client. A Project Manager employed by the Client shall be provided to assist Consultant and the design team in the submittal and approval process during the entire duration of the project.
- Budgeting – The Client shall inform Consultant of the proposed construction budget of this project.
- Gather existing reports/studies/record drawings – The Client shall provide Consultant with all available information for water, sewer, electrical, and irrigation prior to the site visit. The Client shall provide Consultant and design team any available “as-built” plans/notes, all existing digital files for existing conditions (grades, facilities, past improvements), as well as a current site survey.
- Coordination of Utilities – The Client shall provide Consultant with addresses, phone numbers, and contacts for all utility companies servicing the site. This information shall be utilized to verify existing services and determine requirements to adequately serve the park development. The utility companies shall also be expected to provide underground utility locations critical to the project as well as describing any existing or future utility easements. Specific processing requirements shall be provided to Consultant for each utility company involved in the project site.
- Survey and Mapping – Client will provide a current survey within the project limits of work.
- Topographic Mapping – Consultant shall provide a current overall base map displaying the site’s relief through contour and spot elevations. Should a current overall base map not exist, Consultant shall hire a surveyor to gather such survey points necessary.
- Geotechnical Report – If a current geo-technical report is available, it shall be the responsibility of Client to provide Consultant. Should an existing report be available it shall be a maximum of one (1) year old. If the report is over one (1) year old, the original firm preparing the report shall issue a letter testifying that the report is still valid, and no corrections or updates need to be prepared for the report. The letter shall be dated within 30 days of Consultant’s receipt of the Geotechnical report. The report shall be completed and sealed by a Geotechnical Engineer registered in the state where the project site is located.

At a minimum the report is to include the following: vicinity map of the project limits, plot plan/aerial showing location of borings, detailed description of the findings and recommendations, a detailed report of the laboratory tests performed, and an executive summary stating general findings and recommendations. Should a current geo-technical report not exist, upon the Client’s request, Consultant can interview potential sub-consultants, negotiate a contract with the sub-consultant and coordinate the testing and preparation of the report.

PROJECT CONDITIONS

- Client Approvals. A written request by the Client to commence each phase constitutes approval of prior design. Changes, directed and approved by Client requiring redesign and/or revisions during subsequent phases, will be considered as additional services and will be documented and billed on an hourly basis.

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- Offsite Improvements: Responsibilities for the preparation and coordination of construction documents and exhibits for all off-site improvements not specifically outlined in this scope or work are not included in this fee proposal.

SECTION IV
TIME OF PERFORMANCE

The Contract Period start date will be _____, and will terminate two hundred and seventy-five (275) calendar days thereafter on _____. The Consultant will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in the bid specifications has not been completed by the specified date, the Consultant agrees to provide work as authorized by the Project Manager until all work specified in the bid specifications has been rendered and accepted by the City.

Written requests shall be submitted to the Project Manager for consideration of extension of completion time due to strikes, unavailable materials, or other similar causes over which the Consultant feels 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 Consultant, warrant such an extension with reasons clearly stated and a detailed explanation given as to why the delays are considered to be beyond the Consultant's control.

SECTION V
RENEWAL OPTION

N/A

SECTION VI
COMPENSATION

This is a Lump Sum Contract per the Fee Schedule Table below, with a Contract total of **\$328,980.00**. The City will not pay for out-of-pocket expenses including, but not limited to, office & utilities, sub-consultants fees, or any reimbursable expense. There will be no additional amount paid for reimbursable expenses. All Lump Sum Amounts are "Not to Exceed" amounts. Payments will be disbursed in the following manner:

Fee Schedule					
Line	Items	Specialty Design	Engineering	Bidding & Construction Admin	Totals
1	Task 1.0 Schematic Design - City Meetings	\$49,660.00	\$8,300.00	\$0.00	\$57,960.00
2	Task 2.0 Design Development (60%)	\$65,760.00	\$9,100.00	\$0.00	\$74,860.00
3	Task 3.0 Construction Documents (90%-100%)	\$73,900.00	\$10,060.00	\$0.00	\$83,960.00
4	Task 4.0 Construction Support - Bidding	\$83,660.00	\$11,240.00	\$3,740.00	\$98,640.00
5	Task 5.0 Construction Support - Construction Meetings-As-Builts	\$0.00	\$0.00	\$13,560.00	\$13,560.00
TOTALS:		\$272,980.00	\$38,700.00	\$17,300.00	\$328,980.00

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Invoices for services shall be submitted once a month, by the tenth (10th) day of the month, and payments shall be made within thirty (30) days, unless Consultant has chosen to take advantage of the Purchasing Card Program, which guarantees payment within several days. Payments shall be made if and only if the invoice is accompanied by adequate supporting documentation, including any necessary partial release of liens as described herein, and is approved by the Project Manager as required under Section XV of this Contract.

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

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

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

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

All invoices are to be sent to the assigned Project Manager for this Contract.

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

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

SECTION VII **WORK CHANGES**

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

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Manager who shall reduce the decision to writing. The decision of the City Manager shall be final and conclusive.

SECTION VIII
CONFORMANCE WITH PROPOSAL

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

SECTION IX
INDEMNIFICATION/HOLD HARMLESS

Consultant agrees to indemnify 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, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant, its agents, laborers, subconsultants, or other personnel acting under Consultant in connection with the Consultant's performance of services under this Contract. 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 Consultant shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

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

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additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

Workers' Compensation Insurance & Employer's Liability: The Consultant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, 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.

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

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

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

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract #20230085 Design Services for the BMX Racetrack at Traditional Regional Park."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Business Automobile Liability Insurance: The Consultant shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Consultant does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Consultant to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General

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Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but is not obligated, to review and request a copy of Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Consultant warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Consultant shall agree to purchase a SERP with a minimum reporting period not less than four (4) years.

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

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

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

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

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

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

SECTION XII **ACTS OF GOD**

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

Emergencies - In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the Consultant, or his designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury, or loss. In the event such actions are taken, the Consultant shall promptly give to the City written notice and contact immediately by phone, of any significant changes in work or deviations from the Contract documents caused thereby, and if such action is deemed appropriate by the City, a written authorization signed by the City covering the approved changes and deviations will be issued.

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

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

SECTION XIV **COMPLIANCE WITH LAWS**

The Consultant shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. Consultant will comply with all requirements of [28 C.F.R. § 35.151, and as may be amended from time to time](#). Consultants and any subconsultant, shall comply with [§ 119.0701, Fla. Stat.](#), and as may be amended from time to time. The Consultant and any subconsultants, are to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this Contract, unless the records are exempt from [Art. I, § 24\(a\), Fla. Const.](#) and § 119.07(1)(a), Fla. Stat. (2013), 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 Consultant shall comply with Florida's Public Records Law, and as may be amended from time to time. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

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

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

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

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

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

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

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must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AND AS MAY BE AMENDED FROM TIME TO TIME, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

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

SECTION XV
INSPECTION AND CORRECTION OF DEFECTS

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

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

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

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

Repair or Replacement - Should any defect appear during the warranty period, the Consultant shall, at 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 Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, in the City's option, will be invoiced to the Consultant and/or may be deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

SECTION XVI **SCRUTINIZED COMPANIES**

[Section 287.135, Florida Statutes](#), and as may be amended from time to time, prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to [Section 215.473, Florida Statutes](#)
https://www.sbafla.com/fsb/Portals/FSB/Content/GlobalGovernanceMandates/QuarterlyReports/Global_Governance_Mandates_and_Florida%20Statutes_2019_01_29.pdf?ver=2019-01-29-130006-790.

SECTION XXVII **CONTRACT ADMINISTRATION**

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

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

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

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

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

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

Performance by Industry Standards - The Consultant represents and expressly warrants that all aspects of the Services provided or used by it shall, at a minimum, conform to the Standard of Care in the Consultant's industry which is the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

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

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

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

SECTION XVIII **ADDITIONAL REQUIREMENTS**

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

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

Contractual Relations - The Consultant is advised that nothing contained in the contract or specifications shall create any contractual relations between the City and any subconsultant of the Consultant.

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 and other public agencies. Consultant may agree to allow other public agencies the same items at the same terms and conditions as this Contract, during the period of time that this Contract is in effect. Each political entity will be responsible for execution of its own requirements with the Consultant.

SECTION XIX **ASSIGNMENT**

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

SECTION XX **TERMINATION AND DELAYS**

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

- I. The Consultant fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Consultant;
- II. The Consultant fails to make substantial and timely progress toward performance of the Contract;

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- III. In the event the Consultant is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- IV. The Consultant becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Consultant terminates or suspends its business; or the City reasonably believes that the Consultant has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- V. The Consultant has failed to comply with applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing within the scope of the Contract;
- VI. If the City determines that the actions, or failure to act, of the Consultant, its agents, employees or subconsultants have caused, or reasonably could cause, life, health, or safety to be jeopardized;
- VII. The Consultant has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
- VIII. The Consultant furnished any statement, representation, or certification in connection with the Contract, which is materially false, deceptive, incorrect, or incomplete.

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

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

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

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

SECTION XXI
LAW, VENUE, AND WAIVER OF JURY TRIAL

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

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

SECTION XXII
APPROPRIATION APPROVAL

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

SECTION XXIII
TRUTH-IN-NEGOTIATIONS

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

SECTION XXIV
CONFLICT OF INTEREST

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

SECTION XXV
PROHIBITION AGAINST CONTINGENT FEES

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

SECTION XXVI
ATTORNEY'S FEES

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

SECTION XXVII
CODE OF ETHICS

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

SECTION XXVIII
POLICY OF NON-DISCRIMINATION

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

SECTION XXIX
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 XXX
AUDITS

The Consultant shall establish and maintain a reasonable accounting system that enables the City to readily identify the Consultant's assets, expenses, costs of goods, and use of funds throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid

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recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Consultant shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records or other records relating or pertaining to this Contract kept by or under the control of the Consultant, including, but not limited to those kept by the Consultant, its employees, agents, assigns, successors, and subconsultants. Such records shall be made available to the City during normal business hours at the Consultant's office or place of business. The Consultant shall not impose a charge for audit or examination of the Consultant's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Consultant for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Consultant. Evidence of criminal conduct will be turned over to the proper authorities.

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

SECTION 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 Consultant attached hereto), the E-Bid (including any subsequent addenda and written responses to bidders' questions), and the Consultant's Response, any inconsistency or conflict shall be resolved as follows:

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

SECTION 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

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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
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.

(Balance of page left intentionally blank)

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

CITY OF PORT ST. LUCIE FLORIDA

CONSULTANT

By: _____
Purchasing Agent

By: [Signature]
Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF Texas)
FLORIDA to)
COUNTY OF Travis) ss

The foregoing instrument was acknowledged before me by physical presence or [] online notarization, this 27th day of June, 2023, by Michael McIntyre who is [] personally known to me, or who has produced the following identification:
Texas Driver License



[Signature]
Signature of Notary Public

Jennifer Slade
Print Name of Notary Public to
Notary Public, State of Florida Texas
My Commission expires:
07-25-2025

NOTARY SEAL/STAMP