

MEMORANDUM

DATE: March 28, 2023

TO: ****ORIGINAL****
CITY CLERK

FROM: Nathaniel Rubel – Assistant Procurement Director 
Procurement Management Division

SUBJECT: Record Retention

CONTRACT: 20220044

CONTRACT TITLE: Westport Wastewater Treatment Facility Nutrient
Reduction Improvements Construction Manager at Risk

VENDOR NAME: Wharton-Smith, Inc.
VENDOR ADDRESS: 750 Monroe Road
CITY & STATE: Sanford, FL 32771

APPROVED BY COUNCIL: March 27, 2023
7g) - Award Contract #20220044 for Construction Manager at Risk
Preconstruction Services for the Westport Wastewater Treatment Facility Nutrient
Reduction Improvements in the amount of \$210,305.

-

CONTRACT AMOUNT: \$210,305.00
CONTRACT TERM: 180 calendar days – 3/28/2023 through 09/24/2023, with
no option to renew.

Please see the attached for (1) original contract for your records

CITY OF PORT ST. LUCIE

This Contract for Westport Wastewater Treatment Facility ("WWTF") Nutrient Reduction Improvements ("Contract") for Construction Management at Risk ("CMAR") services is executed this 28th day of March, 2023, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, hereinafter called "City", and Wharton-Smith, Inc., 750 Monroe Road, Sanford, FL 32771 hereinafter called "Contractor" or "Proposer". The City and Contractor may be referred to individually as a "party" or collectively as "the parties."

RECITALS

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

WHEREAS, Contractor is licensed, insured, and in good standing to perform the services in the State of Florida; and

WHEREAS, the City wishes to contract with a Contractor to provide the scope of work and products / services based on the terms and subject to the conditions contained in the eRFP #20220044 and the conditions contained herein; and

WHEREAS, the City requested proposals from interested firms to provide Construction Manager at Risk ("CMAR") services to oversee the planning, design and construction of the Westport Wastewater Treatment Facility Nutrient Reduction Improvements ("Project"); and

WHEREAS, Contractor was selected to perform the work is qualified, willing, and able to provide the scope of work and products / services as set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the scope of work and product / services specified,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

SECTION I TERMS AND CONDITIONS

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Contract and made a part of hereof for reference.
2. **BACKGROUND INFORMATION ABOUT THE PROJECT.** A CMAR is selected to manage the performance of all goods and services necessary for the successful completion of the project. During the Pre-construction Phase the CMAR will assist the City and design professional(s) to determine buildability, provide input, value engineering, and advise means or methods of potential cost savings to the City. The CMAR will complete the Construction Phase by the utilization of subcontractor's qualified, experienced and licensed companies/contractors who specialize in the various areas covered in the scope of the project. The Construction Phase will be inclusive of obtaining necessary permits, the selection and subcontracting of companies/contractors for goods and services that bring quality, economic benefits and value engineering to the City. The Project may include but is not limited to construction, demolition, site work, underground utility projects, road and sidewalk replacement, and mitigation.

3. **PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS).** CMAR shall use a PMIS to collect, combine and distribute information.
4. **OTHER RESPONSIBILITIES.** Other responsibilities include, but are not limited to value engineering, construction reviews, advertising/bidding projects, pre-bid conferences, pre-construction meetings and other phases of the procurement process. The CMAR shall provide professional staff for construction oversight, superintendents, inspectors, and other supervisory and office support staff throughout the completion of project(s). Construction Manager may be engaged for the project during the design phase.

SECTION II **NOTICES**

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

Contractor: Gregory L. Williams
Director of Operations
5210 Hood Road
Palm Beach Gardens, FL 33418
561-748-5956
E-mail: gwilliams@whartonsmith.com

City Contract Administrator: Nathaniel Rubel
Procurement Division Assistant Director
Procurement Management Department
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
772-344-4230
E-mail: nrubel@cityofpsl.com

City Project Manager: David Garland, P.E.
Civil Engineer
1001 SE Prineville Street
Port St. Lucie, FL 34983
772-807-4414
E-mail: dgarland@cityofpsl.com

SECTION III **DEFINITIONS**

THE DEFINITIONS as set forth herein shall control to the extent not included and defined herein and are specifically incorporated herein by reference.

Agreed Completion Dates. The Contractor agrees to achieve Substantial Completion within (to be determined at execution of GMP) days of commencement of Work and to achieve Final Completion within (to be determined at execution of GMP) days of commencement of Work. Commencement of Work begins on the date specified in the Notice to Proceed. The Contractor acknowledges that failure to complete the Work within the construction times

set forth in the approved schedule will result in substantial damages to the City, which damage cannot be adequately quantified or ascertained.

Construction Manager at Risk. The Contractor who has been selected to review and participate in the refinement of the construction documents and who agrees upon a Guaranteed Maximum Price to perform the work identified in the Contract Documents.

Contract Documents. The Contract Documents are those as identified in the eRFP and this Contract, as amended

Coordination of Trades. Contractor shall continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. The Contractor is also responsible for performance and the relationships of the Contractor's Work to the work of Contractor's subcontractors and suppliers to enable them to perform their respective tasks so that construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements and coordination of work with City's direct purchase items.

Guaranteed Maximum Price (GMP). The maximum price that the City and Contractor at Risk agree upon as set forth herein.

City or Owner. City of Port St. Lucie, whose address is 1001 SE Prineville Street, Port St. Lucie, Florida 34983.

Project. The Construction of Improvements as detailed in the eRFP for Westport Wastewater Treatment Facility.

Revised Guaranteed Maximum Price. Any additions or deletions to the GMP resulting from a written, approved and signed change order.

Scope of services. The Contractor shall perform both preconstruction services and construction services pursuant to this Agreement. Preconstruction services are referred to as the Preconstruction Phase and include, but are not limited to, Project Management through the completion of the Solicitation of Bids.

Subcontractor. A subcontractor is a person or organization who has a direct contract with the Contractor to perform Work or in conjunction with the supply of materials. Subcontractor includes vendors. Nothing contained in the Contract Documents shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor. The subcontractor may be an individual, partnership, corporation, joint venture, or other combination thereof. Subcontractor also means an individual, partnership, corporation, joint venture, or other combination thereof who has a sub-agreement with another subcontractor to perform any of the Work at the site.

Work. The Work and services required of Contractor by the Contract Documents.

SECTION IV **TIME OF PERFORMANCE**

The initial term of the contract(s) is for one hundred eighty (180) days to perform pre-construction phase services. The Project must be complete by June 1, 2025 as time is of the essence with completion of the Project to comply with regulations from Florida Department of Environmental Protection. In the event that the contract(s), if any, resulting from the award of the eRFP shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, the City may, with the written consent of the awarded Contractor(s), extend the

contract(s) for such period of time as may be necessary to permit the City's continued supply of the identified products and/or services. The contract(s) may be amended in writing from time to time by mutual consent of the parties. Unless the eRFP states otherwise, the resulting award of the contract(s) does not guarantee volume or a commitment of funds.

SECTION V
SCOPE OF WORK
CONSTRUCTION MANAGER'S SERVICES

Contractor represents that it is a licensed Contractor in good standing pursuant to the requirements of Florida Statutes, Chapter 489, Part I. In addition to the Contractor duties as described herein, Contractor shall perform all of the duties of a Contractor. The services described or specified herein shall not be deemed to have the effect of excluding services not specifically mentioned, but which are customarily performed by construction managers on similar projects.

5.1 Project Management. The Contractor shall solicit trade bids from trade contractors on a competitive basis and enter into contracts with these trade contractors to perform their trade work.

Pre-Construction Phase. During the Pre-construction Phase, the CMAR shall assist the City and the Design Professional ("DP") in developing an optimum, minimum risk and buildable design for the Project(s). During the Pre-construction Phase, the City, the DP, and the CMAR shall develop and complete a design for the Project that meets the City's needs and is within the portion of the City's Project Budget available for payment of costs of the construction work. During the Pre-construction Phase, the CMAR shall be paid a Pre- construction Phase Services Fee. During the Pre-construction Phase, the selected Proposer shall cooperate with City Staff, and the Design Professional teams:

- 1.1.1 To develop an optimum, minimum risk, and buildable design for the Project(s);
- 1.1.2 To review and evaluate throughout this phase the design, as necessary, for constructability;
- 1.1.3 Value engineering, as necessary, of the construction documents to ensure that the cost to construct will be achieved within the available construction budget; and
- 1.1.4 Develop Guaranteed Maximum Price ("GMP") based on the final permitted construction documents and specifications;
- 1.1.5 Services: The CMAR shall meet with the City to determine the schedule of meetings and the work required to provide value engineering. Services provided during the Pre-construction Phase of the project should include, but not limited to:
 - a. Consulting with, advising, assisting, and making recommendations to the City and the DP.
 - b. Reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, and time requirements for procurement and construction.
 - c. Projected costs; developing, reviewing, and refining the Project's budget estimates based on the City's program and other available information.
 - d. Making recommendations to the City and the DP regarding the division of work in the plans and specifications to facilitate the bidding process and awarding of contracts.
 - e. Soliciting the interest of capable contractors and taking bids on the Project and analyzing the bids received.

- d. Preparing and maintaining a progress schedule during the Pre-construction Phase of the project and the preparation of a proposed construction schedule.
- e. The following milestones shall be completed in the Pre-construction Phase before the Project can progress to the Construction Phase.
- f. The CMAR and City shall agree on a GMP, contingent upon City Council approval.
- g. Contingent upon City council approval, the CMAR and City shall execute the Construction Contract with all attachments and exhibits.
- h. The CMAR shall not commence construction activities during the Pre-construction Phase.

The CMAR shall have no basis of claim against the City if the City elects to terminate or not construct the Project for any reason or at any time during the Pre-construction Phase. The City shall not be obligated to have the CMAR construct the Project nor shall the CMAR assume to have any rights to construct the Project.

5.1.1 City Direct Purchases. The Contractor shall assist the City with City Direct Purchases of materials and equipment.

5.1.2 Schedule. Failure of the Contractor to update, revise, and submit the construction schedule shall be sufficient grounds for the Contractor to be in default of this Agreement. In City's sole discretion, City may certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Contractor until a schedule or schedule update acceptable to the City and consistent with this Agreement is submitted. No revisions, activity additions, activity deletions, or logic changes shall be made without the City's written approval, which shall not be unreasonably withheld.

5.1.3 Coordination of Trades. Contractor shall continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. The Contractor is also responsible for performance and the relationships of the Contractor's Work to the work of Contractor's subcontractors and suppliers to enable them to perform their respective tasks so that construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements and coordination of work with City's direct purchase items.

5.1.4 Meetings. Contractor shall advise the City, City's representatives and the Architect-Engineer of their required participation in any meeting or inspections giving each at least five working days notice unless such notice is made impossible by conditions beyond the Contractor's control. Contractor shall hold job-site meetings at least once each month or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

5.2 Project Accounting and Document Retention for Audit Purposes. All documents and information required to be maintained by Contractor pursuant to the General Conditions, shall be maintained and retained through the date of Final Completion and shall be made available to City for inspection and copying upon request. Upon Final Completion copies of said documentation shall be delivered to City if requested. All other maintenance and retention requirements of the General Conditions remain in full force and effect.

5.3 Design, Review and Recommendations.

5.3.1 Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other, if requested by City.

5.3.2 Consultation. The Contractor will jointly schedule and attend regular meetings with the City and Architect-Engineer. The Contractor will consult with the City regarding site use and improvements, and the selection of materials, building systems and equipment. The Contractor will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; value engineering; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.

5.3.3 Phased Construction. The Contractor shall make recommendations to the City regarding the phased issuance of Construction Documents to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

5.3.4 Review Reports. Within thirty (30) calendar days or as otherwise agreed upon in writing after receiving the Construction Documents for each phase of the Project, the Contractor shall perform a specific review thereof and shall submit to the City, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Contractor may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments the Contractor may deem to be appropriate with respect to separating the Work into separate contracts, alternative materials, and all comments required pursuant to this Agreement.

5.3.5 Design Professional Responsibilities. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and City's professional consultants. Contractor shall not assume in any way the responsibilities of the Architect-Engineer. However, if the Contractor recognizes that portions of the Construction Documents are at variance with codes, laws, or regulations, or with each other, the Contractor shall promptly notify the Architect-Engineer and City in writing.

UPON THE EXECUTION OF THE GMP, THE CONTRACTOR SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE TO THE BEST OF ITS KNOWLEDGE CONSISTENT, PRACTICAL, REASONABLE AND CAN BE CONSTRUCTED IN ACCORDANCE WITH INDUSTRY STANDARDS. CONTRACTOR SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES WILL BE CONSTRUCTED IN ACCORDANCE WITH INDUSTRY STANDARDS AND THAT THE WORK IS CAPABLE OF BEING PERFORMED WITHIN THE SCHEDULED COMPLETION TIME.

5.4 Long Lead Procurements. The Contractor shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Contractor shall notify the subcontractors, the City and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. The Contractor shall remain informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise City and Architect-Engineer of any problems or prospective delay in delivery and upon request provide the City documented proof of a reason for delay. The Contractor may recommend to the City a schedule for procurement of the long-lead time items, which will constitute part of the Project as required to meet the Project Schedule. All contracts for such items shall be on forms acceptable to Contractor and shall (if

initially contracted by City) be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall assist in expediting the delivery of long-lead time items.

5.5 Separate Contracts Planning. Without assuming any design responsibilities, the Contractor shall review the design with the Architect-Engineer and make recommendations to the City with respect to dividing the work in such manner as will permit the Contractor to take bids and award separate construction subcontracts on the current schedule while the design is being completed, if applicable. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the City.

5.6 Solicitation of Bid

5.6.1 Bid Interest. The Contractor, with City's cooperation, shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Work.

5.6.2 Prospective Bidders. The Contractor shall submit to the City a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. Prior to submission to bidders, as various bid packages are prepared for bidding, the Contractor shall submit to the City and the Architect-Engineer a list of potential bidders. The Contractor shall be responsible to stimulate bidders' interest in the local market place and identifying and encouraging bidding competition. City has the right, in its sole discretion, to remove any bidders from Contractor's list for good cause.

5.6.3 Invitations to Bid, with consultation and supervision by City, Contractor shall prepare invitations for bids, or requests for proposal ("RFP"), which, when applicable, conform to the City's RFP and other requirements for all procurement of long lead items, materials and services, for subcontractors and for site utilities.

5.6.5 Bid Packages. The Contractor shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Contractor for bidding of the separate bid packages. The City shall in writing approve the bid list and bid packages prior to the submission of the bid packages to prospective bidders.

5.6.6 Consistency. As part of such preparation, the Contractor shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Contractor shall be brought to the attention of the City and Architect Engineer in written form.

5.6.7 Pre-bid Conference. The Contractor and the City's Representative shall mutually agree when and if to conduct a pre-bid conference for the various bid packages with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Contractor shall transmit these questions to the City and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

5.6.8 Competitive Bids. All portions of the Work to be subcontracted shall be competitively bid. The Contractor shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or

equipment fabricated to a special design for the Work. The Contractor shall receive at least three competitive bids per trade package unless approved otherwise in writing by the City. Should the nature of the trade package prohibit three competitive bids, the Contractor shall notify the City in writing as to the reason and offer suggestions, if any, to create trade interest.

5.6.9 Qualified, Responsive and Approved Bidders. The Contractor shall determine whether the bidders are qualified. The Contractor shall not enter into contracts without the City reviewing and approving the proposed successful bidder. The City shall review and approve all proposals and provide comments so as not to cause delay in the award of a contract. City shall have the right to reject any award of subcontract which the City deems, in its sole discretion, is not responsive, provided, however, that if the rejection causes an increase in Cost, then the GMP will be equitably adjusted.

5.7 Construction Phase.

5.7.1 Permits. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for those building permits, which are customarily secured by the Contractor. City will pay for the building permit with an allowance included in the GMP. No mark-up for building permits will be allowed.

5.7.2 Contractor's Staff. The Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Work site authorized to act on behalf of the Contractor to coordinate, inspect and provide direction of the Work and progress of the subcontractors. In the event Contractor's personnel are not performing to the standards as required in this Agreement, Contractor shall replace same as soon as practicable. City shall have the right to demand replacement of any personnel who, in the opinion of City or Architect-Engineer are impeding

the progress of the Work or failing to communicate as necessary to facilitate the completion of the Work. Upon such demand, said personnel shall be replaced within five (5) calendar days.

- 1.2 During the Construction Phase, the CMAR shall successfully complete the Project in accordance with the Construction Documents and within the GMP. During the Construction Phase, the CMAR shall:
 - 1.2.1 Successfully complete the Project in accordance with the Construction Contract Documents and within the Guaranteed Maximum Price (GMP);
 - 1.2.2 Provide and maintain adequate staff to oversee and manage the construction throughout the construction phase of these projects;
 - 1.2.3 Provide a construction team for each site (at a minimum: Project Manager, Superintendent);
 - 1.2.4 Successfully complete the construction within the approved construction schedule; and
 - 1.2.5 Comply with the CMAR contract documents and its general conditions.
 - 1.2.6 Services provided by the CMAR during the Construction Phase of the Project shall include, but not be limited to:
 - a. Maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the sub-contractors on the Project.
 - b. Directing the work as it is being performed for general conformance with working drawings and specifications.
 - c. Establish and implement procedures for the coordination among the CMAR, City, Design Professional, and sub-contractors with respect to all aspects of the Project.

- d. Maintain a record of local hires and hours worked as requested by the City.
- e. Maintain job site records and producing appropriate progress reports.
- f. Implement a labor policy in conformance with the requirements of the City.
- g. Review and provide recommendations regarding the safety and equal opportunity programs of each sub-contractor for conformance with the City's policies.
- h. Review and process all pay applications and invoices for payment by involved sub-contractors and material suppliers in accordance with the terms of the Contract.
- i. Make recommendations, process, and maintain records of requests for changes in the work through change orders.
- j. Schedule and conduct regularly scheduled and non-scheduled job related meetings to ensure orderly progress of the work. Provide meeting minutes for each meeting.
- k. Develop and monitor the project progress schedule, coordinate, and expedite the work of all contractors, and provide periodic status reports to the City and the DP.
- l. Establish and maintain a cost control system.
- m. Conduct meetings to review costs.

5.7.3 Subcontractor Interfacing. The Contractor shall be the single point of interface between all subcontractors and the City, its agents and representatives, including the Architect-Engineer. The Contractor shall negotiate all change orders, field orders and requests for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the City and Architect-Engineer of their validity and reasonableness, acting in the City's best interest prior to requesting approval of each change order from the City. Before any Work is begun on any change order, a written change order or work directive from the City must be issued. A work directive shall be defined as a directive from the City to the Contractor that deviates the Work from current plans and specifications, but which does not require a change in the current completion schedule or the GMP, or which specifies that any change in completion date(s) or GMP will be determined later. However, when health and safety are threatened, the Contractor shall act immediately to remove the threat to health and safety. Contractor shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer shall, within fourteen (14) calendar days, transmit them back to the Contractor who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Contractor shall request the Architect-Engineer, with the City's consent, to make interpretations of the drawings or specifications requested of them by the subcontractors and shall maintain a suspense control system to promote response within seven (7) calendar days of receipt of all data necessary to make such an interpretation. The Contractor shall advise the City and Architect-Engineer when timely response is not occurring on any of the above, and City will secure timely performance from the Architect-Engineer.

5.8 Job Site Administration. In addition to the obligations set forth in this Agreement, the Contractor shall be required to administer the job site as follows:

5.8.1 Start-up. With the City's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.

5.8.2 Daily log. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, and other activities as directed by City, a copy of which will be provided to City each week.

5.8.3 Roster. Maintain a roster of companies on the Work with names and telephone numbers of key personnel, a current copy of which will be promptly provided to City, upon request.

5.8.4 Job Meetings. Hold weekly progress and coordination meetings to provide for an easy flowing project. The subjects of the meetings should include the following: establish procedure implementation; receipt

of timely submittals; expedite processing of approvals; return of shop drawings, samples; coordinate and expedite critical ordering and delivery of materials, Work sequences, inspection and testing, labor allocation; review and coordinate each subcontractor's Work; review and implement revisions to the Schedule; monitor and promote safety requirements; schedule and attend regular monthly project status meetings with the Architect-Engineer and City. The job site meeting should be used as a tool for: planning of Work; enforcing schedules; establishing procedures, responsibilities, and identification of authority; identifying party or parties responsible for follow up on any problems, delay items or questions and record course for solution; revisit pending items at each subsequent meeting until resolution is achieved; and require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

5.8.5 Quality Control. Develop and maintain a written program, acceptable to the City and Architect-Engineer, to assure quality control of the construction. It shall supervise the Work of all subcontractors providing instructions to each when their Work does not conform to the requirements of the plans and specifications and it shall continue to exert influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Contractor and Architect-Engineer over acceptability of Work and conformance with the requirements of the specifications and plans, the City shall be the final judge of performance and acceptability, subject to the dispute provisions of the contract.

5.8.6 Shop Drawing Submittals/Approvals. Provide staff to check shop drawings and to implement procedures to be approved by City for submittal and transmittal to the Architect-Engineer and City of such drawings for action, and closely monitor their submittal and approval process.

5.8.7 Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries, including City Direct Purchase materials and equipment and follow-up procedures on supplier commitments of all subcontractors.

5.8.8 Payments to Subcontractors. Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.

5.8.9 Document Interpretation. Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer with the City's knowledge and consent.

5.8.10 Variances in Contract Documents. If the Contractor observes that portions of the Contract Documents are at variance with laws, regulations, codes, or each other, the Contractor shall promptly notify the Architect-Engineer and City in writing, and necessary changes shall be accomplished by appropriate modification.

5.8.11 Work Contrary to Laws. If the Contractor knowingly or negligently performs Work, or knowingly permits a subcontractor to perform Work, which is contrary to laws, statutes, ordinances, building codes and rules and regulations, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

5.8.12 Re-inspections. Cost for all re-inspections of Work found defective and subsequently repaired, shall be borne by the Contractor.

5.8.13 Reports and Project Site Documents. Record the progress of the Work; submit written progress reports to the City and the Architect-Engineer, including information on the subcontractor's Work and the percentage of completion; keep a daily log available to the City, the Architect-Engineer and the Permitting Authority inspectors; and submit the daily log to the City each week.

5.8.14 Subcontractor's Progress. Prepare periodic punch lists for the subcontractor's Work including unsatisfactory or incomplete items and schedules for their completion.

5.8.15 Substantial Completion. Ascertain when the Work, or designated portions thereof, are ready for the City's and the Architect-Engineer's Substantial Completion inspection in accordance with the schedule determined at the execution of the GMP.

5.8.16 Record Drawings. Monitor the progress of his own forces or his subcontractors on "As-built" Marked Prints and is responsible for the accuracy of same, which at Final Completion, shall be sent to the Architect-Engineer via the City who will prepare the final record drawings. It shall continuously review the "As-Built" Marked Prints and mark up progress prints to provide as much accuracy as possible. Complete Asset Registry.

5.8.17 Final Completion. Monitor the subcontractor's performance on the completion of the Work and provide notice to the City and Architect-Engineer that the Work is ready for final inspection. Secure and transmit to the City, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion certificate.

5.8.18 Safety Program. Provide and maintain a safety program for the Work to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with the best acceptable practice.

5.8.19 Job Rules. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

5.8.20 Labor Relations. Provide labor relations management for a productive and timely Work.

5.8.21 Office Supplies. Provide miscellaneous office supplies that support the construction efforts, which are consumed by the Contractor's own forces.

5.8.22 Travel. Travel to and from the Contractor's home office to the Work site, as the project requires.

5.8.23 Administrative Records. The Contractor may be required to maintain at the job site on a current basis, files and records such as, but not limited to, the following:

- "As-Built" Marked Prints
- Asset Registry
- Bid Analysis and Negotiations
- Bid/Award Information Bulletin
- Quotations
- Certificate of Entitlement for Direct Purchase Materials
- Contract Changes
- Contract Drawings and Specifications with Addenda
- Contracts or Purchase Orders
- Correspondence Files
- Cost Accounting Records
- Cost-Estimates
- Cost Proposal Requests

Equipment Costs
Labor Costs
Material Costs
Meeting Minutes
Payment Request Records
Daily Progress Reports
Design Handbooks
Equipment Purchase/Delivery Logs
Job Photographs (Job Photographs will be submitted to City with each payment application)
Inspection Reports
Insurance Certificates and Bonds
Lab Test Reports
Material Purchase Delivery Logs
Monthly Progress Reports
Operating & Maintenance Instruction
PMIS Schedule and Updates
Project Manual
Punch Lists
Purchase Orders
Shop Drawing Submittal/Approval Logs
Record Drawings
Transmittal Records
Videos
Warranties and Guarantees

The project records shall be available at all times to the City and Architect-Engineer for reference or review.

5.9 Public Authorities. The Contractor shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

SECTION VI **CITY/OWNER RESPONSIBILITIES**

6.1 City's Information. The City shall provide full information regarding the requirements for the Work.

6.2 City's Representative: The City shall designate in writing any representatives authorized to act on the City's behalf with respect to the Work, together with the scope of its respective authority. In no event shall any delegation of authority be contrary to any applicable laws or codes. Designation of the City's Representative and the designated authority may be changed from time to time by the City pursuant to written notice to the Contractor. The Contractor shall be entitled to rely on directions (and it shall be required to follow directions) from the properly designated City's Representative. City may authorize the City's Representative to: (1) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Contract; (2) negotiate a duly authorized Change Order or work directive on behalf of the City but not execute same; and (3) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and Work to be provided pursuant to this Agreement. Field directions and decisions made by City's Representatives shall be binding on the City. City's Representative will be designated or replaced by written notice to the Contractor.

6.3 Design Professionals. The City shall retain an Architect-Engineer for design and to prepare construction

documents for the Work. From time to time, it may be necessary for City to hire additional design professionals. The City will notify the Contractor in writing of each design professional hired. Notwithstanding same, it is expected that the Architect-Engineer will remain the point contact for the Contractor on all design matters.

6.4 Work Fault Defects. If the City becomes aware of any fault or defect in the Work or non-conformance with the drawings and specifications, the City shall give prompt written notice thereof to the Contractor and Architect-Engineer.

ARTICLE VII SUBCONTRACTS

7.1 Proposals. Subject to Article 5.6 of this Agreement, the Contractor shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after the Contractor and the City have reviewed each proposal and are satisfied that the subcontractor/supplier is qualified to perform the Work. Any contract with a subcontractor must be approved in writing by the City prior to the Contractor awarding the contract to the subcontractor.

7.2 Required Subcontractors' Qualifications and Subcontract Conditions.

7.2.1 Subcontract Relations. The Contractor shall require each subcontractor to assume towards Contractor all the obligations and responsibilities which the Contractor owes the City under this Agreement to the extent of Work to be performed by the subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the City and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting there of will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractor.

7.2.2 Insurance. Insurance requirements for subcontractors shall be no more stringent than those requirements imposed on the Contractor by the City.

7.2.3 Contract Documents. The Contractor shall make available to each proposed subcontractor, prior to the execution of any agreement, copies of the relevant Contract Documents to which the subcontractor will be bound.

7.2.4 No Damages For Delay. The subcontractor's exclusive remedy for delays in the performance of the subcontract caused by events beyond its control, including delays caused by the City, Architect-Engineer or Contractor or attributable to the City, Architect-Engineer or Contractor including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

7.2.5 Changes in the Work. In the event of a change in the Work, the subcontractor's claim for adjustments in the contract sum is limited exclusively to its negotiated costs for such changes, plus mark-up thereon.

7.2.6 Express Provisions Incorporated into Subcontracts. The subcontracts shall require each subcontractor to expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claims for increases in the contract price, damages, losses, consequential damages or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Contractor within the time and in the manner in which the Contractor must submit such claims to the City, and that failure to comply with the

conditions for giving notice and submitting claims shall result in the waiver of such claims.

7.3 Responsibilities for Acts and Omissions. The Contractor shall be responsible to the City for the acts and omissions of his employees, agents, subcontractors, sub-subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.

7.4 City Purchased Materials. The Contractor shall provide the City a list of all intended suppliers, vendors, and material suppliers for long lead items for consideration as City-Purchased Materials. The Contractor shall submit a description of the materials to be supplied, estimated quantities and prices. The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the subcontractor for resolution with the appropriate supplier or vendor.

7.4.1 Requisition Form. The Contractor shall prepare a purchase order requisition form in a form acceptable to the City, to specifically identify the materials, which City has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:

- A. the name, address, telephone number and contact person for the material supplier;
- B. manufacturer or brand, model or specification number of the item;
- C. quantity needed as estimated by subcontractor;
- D. the price quoted by the supplier for the materials identified therein;
- E. any sales tax associated with such quote; and
- F. delivery dates.

7.4.2 Additional Terms. Contractor shall include reference to any terms and conditions, which have been negotiated with the vendors (i.e., payment terms, warranties, retainage). The purchase order requisition forms are to be submitted to the City's designated representative no less than fourteen (14) days prior to the need for ordering such City-Purchased Materials, in order to provide sufficient time for City's review and approval and to assure that such materials may be directly purchased by City and delivered to the Work site without any delay to the Work.

7.4.3 Purchase Order. After receipt of the purchase order requisition form, City shall prepare its Purchase Orders for equipment, materials or supplies which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Contractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the City-Purchased Materials on the delivery date provided by the Contractor in the purchase order requisition form and shall indicate F.O.B. jobsite. The City's Purchase Orders shall contain or be accompanied by the City's exemption certificate and must include the City's name, address, and exemption number with issue and expiration date shown.

7.4.4 Shop Drawings. All shop drawings and submittals shall be made by the subcontractor in accordance with the Work specifications.

7.4.5 Receipt of Materials. Contractor shall be fully responsible for all administrative matters relating to the receipt of materials purchased and furnished by the City in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating

purchases, providing and obtaining all warranties and guarantees required by the Contract Documents and inspection and acceptance of the goods at the time of delivery. The subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the subcontractor for the particular materials purchased and furnished by the City. The subcontractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers for which the subcontractor is responsible. Pursuant to Section 12.2.4 below, Contractor shall have sufficient insurance to cover the risk of loss assumed by the City by virtue of the Direct Purchase of the materials.

7.4.6 Conformity. The Contractor shall ensure that City Purchased Materials conform to the specifications, and determine prior to incorporation into the Work if such materials are defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defects or nonconformities in the City-Purchased Material upon such inspection, the Contractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally the Contractor shall notify the City of such occurrence. If the Contractor fails to perform such inspection and otherwise incorporates City-Purchased Materials, the defective or nonconforming condition of which it either knew or should have known by performance of an inspection, the Contractor shall be responsible for all damages to the City resulting from the incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or nonconforming, the subcontractor shall promptly take action to remedy the defect or nonconformance so as not to delay the Work.

7.4.7 Records. The Contractor shall maintain records of all City Purchased Materials it incorporates into the Project, including the Certificates of Entitlement required by the Department of Revenue. The Contractor shall account to the City for any City-Purchased Materials delivered into the Contractor's possession, including portions of all such materials.

7.4.8 Warranties and Guarantees. The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the subcontractor for resolution with the appropriate supplier or vendor.

7.4.9 Invoices. On a monthly basis, the Contractor shall be required to review invoices submitted by all suppliers of City-Purchased Materials delivered to the Project site during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the subcontractor's records of materials delivered to the site and any defects in such materials.

7.4.10 Prompt Payment to Suppliers. In order to arrange for the prompt payment to the supplier, the Contractor shall provide to the City a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. The Contractor agrees to assist the City to immediately obtain partial or final waivers as appropriate.

7.4.11 Subcontract Provisions. All subcontracts shall include the provisions contained in this Article.

SECTION VIII
COMPENSATION
PAYMENT AND PERFORMANCE BOND
GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

GMP. The Contractor and the City will agree on a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the City, for the construction cost of the Project. The GMP will be established between the Contractor and City upon completion of the Preconstruction Phase by addendum in the form attached hereto as a Contract Addendum and will become a Contract Document, as defined herein.

Taxes. The GMP will only include those taxes in the cost of the Project, which are legally enacted at the time the GMP is established.

Approved Schedule. At the time of submission of the GMP, the Contractor will have verified the time schedule for activities and work, which were approved by the City and Architect-Engineer and used to determine the Contractor's GMP.

Contingency.

81 Project Construction Contingency. The GMP will include an amount agreed upon by the City and Contractor as a contingency for Contractor's use in paying for unforeseeable conditions. Unforeseeable condition expenditures require prior written consent of the City prior to the execution of the work.

82 Bid Contingency. A GMP executed prior to final design or bidding of all construction disciplines will include a Bid Contingency in an amount to be included in the GMP. The bid contingency may only be used to make up the difference in the negotiated GMP and the GMP based upon final design and bidding of all construction disciplines. Unused bidding contingency will become the City's contingency and maybe used by the City at his sole discretion.

Payments will be disbursed in the following manner:

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

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

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

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

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

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

Invoices for services shall be submitted once a month, by the tenth (10th) day of each month, and payments shall be made within twenty (20) business days unless 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.

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 Project Manager Assigned by the City.

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

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

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

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

Payment and Performance Bond. In accordance with Section 255.05, Florida Statutes, a Public Payment and Performance Bond is to be issued in a sum equal to one-hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by City and otherwise authorized to transact business in the State of Florida shall be required from the successful Proposer. This shall insure the faithful performance of the obligations imposed by the resulting contract and protect the City from lawsuits for non-payment of debts incurred during the successful Proposers performance under such Contract. A public Payment and Performance bond must be properly executed, by the Surety Company and successful Proposer, and recorded with the St. Lucie County Clerk of Court, within seven calendar days after notification by City of the approval to award the Contract. A Clean Irrevocable Letter of Credit or Cash Bond may be accepted by the City in lieu of the Public Payment and

Performance Bond. Only City form(s) may be accepted. Personal Checks are not acceptable to City as a Bid Security. Surety: In order to be acceptable to the City, a Surety Company issuing Evidence of Bondability, Bid Guaranty Bonds or 100% Public Payment and Performance Bonds or Letters of Credit called for herein shall meet and comply with the minimum standards set forth in as part of the Contract Documents. The surety company shall be authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of its authority to execute the bond being submitted.

SECTION IX **WORK CHANGES**

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

SECTION X **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 XI **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, reasonable attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of Contractor, agents, laborers, subcontractors or other personnel entity acting under Contractor control in connection with the Contractor's performance of services under this Contract and to that extent Contractor shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and reasonable 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 XII **SOVEREIGN IMMUNITY**

Nothing contained in this Contract or related documents shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in [Section 768.28, Florida Statutes](#).

SECTION XIII **INSURANCE**

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

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

1. Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall 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 (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

2. 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

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of possession by City or completion of contract. Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non- contributory basis. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for mold, silica or respirable dust or bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. 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, Employers' Liability, and Professional Liability Insurance, said Certificate(s) 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 added to its Commercial General Liability, Business Auto and Pollution 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 #20220044 – Westport Wastewater Treatment Facility Nutrient Reduction Improvements Project be listed as additionally insured."** The Policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

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 shall be provided. Coverage shall apply on a primary non-contributory basis.

4. Professional Liability Insurance: Contractor shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Contractor 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, Contractor shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.

5. Pollution Insurance: Contractor shall procure and agree to maintain in full force during the term of this Agreement, Contractors Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for any operations relating to the construction, handling, storage, and transportation of hazardous materials and/or waste. Contractors Pollution should be in force for no less than entire term of the project and two years extended Completed Operations. 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.
6. Builder's Risk Insurance: Contractor shall purchase and maintain Builder's Risk insurance in an amount equal to 100% of the completed value of the project including any amendments thereto (without coinsurance). Contractor's policy shall be written on an "ALL Risk" Builders Risk form that shall cover physical loss or damage to the Work, temporary buildings, construction forms and scaffolding, materials and equipment in transit or in storage/at temporary locations, and should extend coverage to foundations, excavations and other underground property. Coverage shall insure against at least the following perils or causes of loss: fire, lightning, windstorm/and hail, theft (including theft of materials whether or not attached to any structure), vandalism and malicious mischief, flood, earthquake, collapse, and such other perils or causes of loss as may be specifically required. The policy shall include coverage for pollutant cleanup, debris removal, demolition and increased cost of construction, water damage, backup of sewers and drains, testing and startup of building systems (including hot testing), and mold & fungus remediation. The Builders Risk coverage shall include a waiver of subrogation rights endorsement in favor of the City.

The "ALL RISK" Builder's Risk Insurance must also cover soft costs, including additional advertising/promotional, additional license and permit fees, additional legal/accounting fees, insurance premiums including builder's risk, and architects' and engineers' fees that may be necessary to provide plans and specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril.

This policy must include insurance for the City of Port St. Lucie, Contractor, Subcontractors, Architect/Engineer and Consultants for their interest in covered property. The City's policy will not provide coverage related to this project.

The Contractor has the right to purchase coverage or self-insured any exposures not required by these specifications, but shall be held liable for all losses, deductibles, self-insurance for coverages not required. The Contractor is responsible for all deductibles including those for windstorms.

7. 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. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Contractor enter into such a Contract on a pre-loss basis..
8. Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent

annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and/subcontractors comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage for a minimum of five (5) years from the date of possession by City or completion of contract. It will be the responsibility of the Contractor to obtain Certificates of Insurance from all 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, or 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 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.

A failure on the part of the Contractor to execute the contract and/or punctually deliver the required insurance, 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. A reasonable adjustment in time shall be made to the Contractor for damages to the Work resulting from these Acts. The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

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

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

Subject to the laws of the State of Florida and of the United States, neither Contractor nor any Sub-Contractor supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in

the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION XIV **COMPLIANCE WITH LAWS**

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

RECORDS

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

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

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

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

Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does

not exceed the cost provided in this chapter or as otherwise provided by law.

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

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

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

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

**SECTION XV
INSPECTION AND CORRECTION OF DEFECTS**

In order to determine whether the required material has been delivered or the required work performed in accordance with the terms and conditions of the Contract documents, the Project Manager shall make inspection as soon as practicable after receipt from the Contractor of a Notice of Performance or delivery ticket. If such inspection shows that the required material has been delivered and required work performed in accordance with terms and conditions of the Contract documents and that the material and work is entirely satisfactory, the Project Manager shall approve the invoice when it is received. Thereafter the Contractor shall be entitled to payment, as described in Section V. If, on such inspection the Project Manager is not satisfied, he shall as promptly as 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 commence performance of the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five (5) days written notice to the Contractor, the City may, without prejudice to any other remedy he may have, correct such deficiencies. The Contractor shall be charged all costs incurred to correct deficiencies. Such examination, inspection, or tests made by the Project Manager, at any time, shall not relieve Contractor of his responsibility to remedy any deviation, deficiency, or defect.

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

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

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

Repair or Replacement - Should any defect appear during the one (1) year warranty period, the Contractor shall, at their own expense, have repaired or replaced such item upon receipt of written notice from the City of said defect. Said repair or replacement must have been commenced within fourteen (14) calendar days after receipt of notification from the City of the defect.

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

SECTION XVI SCRUTINIZED COMPANIES

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

SECTION XXVII
CONTRACT ADMINISTRATION

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

Fiscal Year- All reference to Fiscal Year shall mean the City's Fiscal Year. The City's Fiscal Year is from October 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 standard of care and skill ordinarily used by members of the Construction Industry operating under similar conditions at the same time and locality of the Project. 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. ORDER OF PRECEDENCE FOR CONFLICTING TERMS. E-RFP, CONTRACT DOCUMENTS, RESPONSE.

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

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

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

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

Patent Fees, Royalties, and Licenses. – If the Contractor requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the Contractor and his surety shall indemnify and hold harmless the City from any and all claims for infringement in connection with the work agreed to be performed, but only to the extent that the loss or damages or expenses arising from the said claim are caused by the negligent act or omission of the Contractor or anyone for whom the Contractor is liable. 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, but only to the extent that the loss or damages or expenses arising from the said claim are caused by the negligent act or omission of the Contractor or anyone for whom the Contractor is liable.

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

SECTION XIX **ASSIGNMENT**

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

SECTION XX **TERMINATION 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 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 twenty (20) 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. 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 including cost expended and for which the Contractor is to be compensated.

Liquidated Damages. In the event the Contractor does not achieve Substantial Completion within the substantial completion date (as specified on the Notice to Proceed), including approved extensions, the Contractor shall pay the City, as liquidated damages and not as a penalty, the sum of (To Be Established When GMP is Determined) per day for each calendar day the actual time of performance exceeds the authorized Contract Time. In addition to the accrual of liquidated damages for delay in meeting the Substantial Completion date, in the event the Contractor does not achieve Final Completion by the Final Completion date, including approved extensions, the Contractor shall pay the City, as liquidated damages and not as a penalty, the sum of (TBD AT BIDDING) per day for each calendar day the actual time of performance exceeds the authorized Contract Time. These liquidated damages do not waive City's right to all other legal remedies in this Contract but are the sole remedy for delays caused by Contractor.

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 compensation for services rendered and costs incurred up to the date of termination are paid. No charges, penalties or other costs shall be assessed.

SECTION XXIII
TRUTH-IN-NEGOTIATIONS

In accordance with the provisions of Section 287.055, Florida Statutes, the Contractor 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 Contractor may be performing professional services for private developers within the Treasure Coast area. Should a conflict of interest arise between providing services to the City and/or other clients, the Contractor shall terminate its relationship with the other client to resolve the conflict of interest. The City Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal the Contractor shall disclose all of its Treasure Coast clients and related Scope of Work.

SECTION XXV
PUBLIC RECORDS / TRADE SECRETS / COPYRIGHT

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

Any language contained in the Proposer's response to the Solicitation purporting to require confidentiality of any portion of the Proposer's response to the Solicitation, except to the extent that certain information is in

the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the Solicitation constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

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

SECTION 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 XXVII **ATTORNEY'S FEES**

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

SECTION XXVIII **CODE OF ETHICS**

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

SECTION XXIX **POLICY OF NON-DISCRIMINATION**

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

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

SECTION XXX **AUDITS**

The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the City throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

SECTION XXXI **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 XXXII **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 eRFP (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 eRFP.

- (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 XXXIII
ENTIRE AGREEMENT

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

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