

Prepared By:
City of Port St. Lucie
City Attorney's Office
121 SW Port St. Lucie Blvd
Port St. Lucie, FL 34984

**AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND
THE ECONOMIC DEVELOPMENT COUNCIL OF ST LUCIE COUNTY, INC.**

THIS AGREEMENT, made this ____ day of _____, 2024, between the City of Port St Lucie, a Florida municipal corporation, hereinafter called the "City", and the Economic Development Council of St Lucie County, Inc., a Florida not-for-profit corporation, and its successors, executors, officials, administrators, and assigns hereinafter called the "Council":

WITNESSETH:

WHEREAS, the City and the Council have made the following determinations:

WHEREAS, the Council is a private organization originally created, by the St. Lucie County Chamber of Commerce, to encourage economic development in St. Lucie County; and

WHEREAS, the City will continue to use its own resources to facilitate and encourage economic development in the City; and

WHEREAS, nothing in this Agreement is intended to delegate any of the City's authority to encourage economic development to the Council. In addition, nothing in this Agreement is intended to provide the Council with an integral part in the City's decision-making process concerning approval of economic development initiatives in the City. The parties do not intend that the Council will act on behalf of the City in facilitating and encouraging economic development in the City.

IN CONSIDERATION of the mutual benefits received by each part, the parties mutually agree as follows:

1. **Term:** The City shall disburse to the Council, annually, a grant in the amount of ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$165,000.00) per fiscal year (hereinafter, the "City Grant"). The term of this Agreement during which the annual City Grant shall be paid to the Council shall be for a total of three (3) years (the "Agreement Term"). The Agreement Term shall commence on October 1, 2024, and terminate on October 1, 2027, unless otherwise extended by written mutual agreement of the parties hereto. The annual payment of the City Grant shall be made

within thirty (30) days of the City's receipt and acceptance of the Council's interim report showing that the Council is meeting the goals and objectives of the City, as set forth in Paragraph 2, justifying issuance of the City Grant.

2. **Scope:** The funds from the City Grant shall be used toward the Council's costs in its efforts to facilitate economic development in the City. The goals and objectives for the Council's economic development efforts in connection with the City Grant shall include the following:
 - a. The Council shall aggressively market relocation opportunities in the City to target industry businesses. To accomplish this goal, the Council shall establish a marketing program in conjunction with the City to seek these targeted industry businesses.
 - b. The Council shall aggressively market the retention and expansion of existing businesses located in the City.
 - c. During the Agreement Term, the Council shall deliver to the City interim reports bi-annually, with the first interim report delivered to the City on or before June 30th of each year, and the second bi-annual interim report being due to the City on or before January 31st of each year. Such bi-annual reports shall analyze the Council's activities relative to the City's goals and objectives of promoting economic development within the City, indicate how City funds were spent, and detail the results of the Council's efforts on behalf of the City during the preceding quarter. On or before December 1, 2027, the Council shall deliver to the City a final report with the above information for the entire grant period.
 - d. The Council shall have internal controls adequate to safeguard the grant.
 - e. If the grant cannot be used or a subsequent audit reveals the grant was not used according to the terms and conditions of this contract, any money not so used shall be reimbursed to the City.
 - f. On or before April 30th of each year during the Agreement Term, the Council shall provide an audit for the preceding year of the expenditures of the City Grant, and said audit shall be prepared by a certified or duly licensed public accountant. In the alternative, and subject to the prior written approval of the City Manager and Office of Management and Budget Director, the Council may submit qualifying paid invoices in lieu of a certified audit.
 - g. The Council gives the City the right, until the expiration of three (3) years after expenditure of funds under this Agreement, to audit the use of the grant monies. Upon demand, the City shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Council involving transactions related to these grant monies. All required records shall be maintained until an audit is completed and all questions arising there from

are resolved, or until the expiration of three (3) years after the expenditure of the funds.

- h. The Council is and shall be an independent contractor, responsible to all parties for all its acts or omissions and the City shall in no way be responsible for such acts or omissions. The Council shall and will indemnify and hold harmless the City from and against any and all liability, claims, damages, expenses, fees, fines, penalties, suits, proceedings, and actions and costs of actions, including reasonable attorney's fees, of any kind and nature arising or growing out or in any way connected with the use, occupations, administration or control of above services by the Council or its agents, employees, customers, patrons or invitees, or resulting from any injury to person or property, or a loss of life or property of any kind or nature whatsoever sustained during the term of this Agreement. The Council hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification provided herein.
 - i. All publications, media productions and exhibit graphics produced by the Council to facilitate economic development in PSL shall include the following statement: "Sponsored in part by the City of Port St. Lucie."
3. **Contractual Relationship; Indemnification:** The Council is and shall be an independent contractor, responsible to all parties for all its acts or omissions and the City shall in no way be responsible for such acts or omissions. The Council shall and will indemnify and hold harmless the City from and against any and all liability, claims, damages, expenses, fees, fines, penalties, suits, proceedings, and actions and costs of actions, including reasonable attorney's fees, of any kind and nature arising or growing out or in any way connected with the use, occupations, administration or control of above services by the Council or its agents, employees, customers, patrons or invitees, or resulting from any injury to person or property, or a loss of life or property of any kind or nature whatsoever sustained during the term of this Agreement. The Council hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification provided herein.
 4. **Compliance with Laws:** The Council agrees to comply with all local, state, and federal laws, rules, and regulations.
 5. **Termination:** Either party may terminate this contract, with cause, by providing thirty (30) days written notice to the other provided that the party allegedly violating the terms of the Agreement shall have a reasonable opportunity to cure the alleged violation. The Council shall reimburse the City for all unencumbered funds or funds expended or encumbered in conflict with Council's application, as of the date of termination notice.

6. **Force Majeure:** The parties understand that in the event of a Force Majeure Event, as defined herein, the City's failure to deliver any payment of the City Grant shall not be deemed a default or violation of this Agreement and the City may elect to terminate this Agreement following delivery of a thirty (30) day written notice and the Council shall not be responsible for reimbursing the City for any or all funds paid prior to the date of the termination notice. As used herein, a "Force Majeure Event" shall be defined as an event, through no fault of the City, whereby the City has formally adopted a resolution requiring the redirection of funds for the City Grant that were intended and obligated to be monies to be paid to the Council under this Agreement.
7. **Notice:** Any notice shall be in writing and sent by registered or certified mail, postage, and charges prepaid, and addressed to the parties at the following addresses.

To the City:
City Manager
121 SW Port St. Lucie Blvd
Port St. Lucie, FL 34984
(772) 873-5163

With a Copy to:
City Attorney
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871-5294

To the Council:
Economic Development Council of St Lucie County, Inc.
P.O. Box 881358
Port St Lucie, FL 34988

8. **Sovereign Immunity:** The parties agree that the City's liability in all instances shall be limited to the monetary limits set forth in Sec. 768.28, Florida Statutes. Nothing contained in this agreement or related documents shall be deemed a waiver of the City's sovereign immunity, whether by contract or by law.
9. **Insurance:** The Council 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 Agreement, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Agreement.

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

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

Workers' Compensation Insurance & Employer's Liability: The Consultant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, and as may be amended from time to time. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

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

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000

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

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that

coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: "City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Agreement [Number and Name]." Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Agreement to exceed the above limits, the Consultant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

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

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

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

It shall be the responsibility of the Consultant to ensure that all independent

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

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

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

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

10. **Public Records:** Consultants and any subcontractor shall comply with section 119.0701, Florida Statutes. Council and any subcontractor are to allow public access to all documents, papers, letters, or other material made or received by The Council in conjunction with the Agreement, unless the records are exempt from Article I, section 24(a), Florida Constitution and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. The Council shall comply with Florida's Public Records Law for this grant.

COUNCIL'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

The Council 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 agreement, the Council shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this agreement. 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. The Council's records under this Agreement 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 Council agrees to make available to the City, during normal business hours all books of account, reports and records relating to this agreement.
5. The Council may also be subject to penalties under Section 119.10, Florida Statutes should it fail to provide the public records to the City within a reasonable time.

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

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the agreement if the Council does not transfer the records to the City. Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency, and that resides or exists internal or external to a computer, computer system, computer network or electronic device is confidential and exempt from s. 119.07(1), F.S.

Upon completion of the agreement, transfer, at no cost to the City, all public records in possession of the Council, or keep and maintain public records required by the City to perform the service. If the Council transfers all public records to the City upon completion

of the agreement, the Council shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Council keeps and maintains public records upon completion of the agreement, the Council 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 COUNCIL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNCIL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, 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**

11. **Amendments:** No amendment, modification or waiver of this Agreement shall be valid or effective unless in writing and signed by both parties and no waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other conditions.

12. **Audit:** The Council shall establish and maintain a reasonable accounting system that enables the City to readily identify the Council's assets, expenses, costs of goods, and use of funds throughout the term of the Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; agreement amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Council shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Agreement kept by or

under the control of the Council, including, but not limited to, those kept by the Council, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Council's office or place of business. The Council shall not impose a charge for audit or examination of the Council's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Council for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Council's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Council. Evidence of criminal conduct will be turned over to the proper authorities.

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

13. **Law and Venue:** The Council agrees to comply with all local, state, and federal laws, rules, and regulations. In the event it is necessary for either party to initiate legal action regarding a breach or default under this Agreement, venue shall be in the Nineteenth Judicial Circuit for St. Lucie County, Florida, for claims under state law, and the Southern District of Florida for any claims which are justiciable in federal court.
14. **Assignment:** Council shall not delegate, assign, or subcontract any part of the work under this Agreement or assign any monies due him hereunder without first obtaining the written consent of the City. If an entity purchases all or substantially all of Council's assets, Consultant merges, or Consultant's parent company merges, with another entity, then it shall immediately notify the City of such action.
15. **Non-exclusivity:** Council acknowledges and agrees that this Agreement is non-exclusive.
16. **Entire Agreement:** This Agreement embodies the whole understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, whether verbal or written, between the parties hereto. Except as otherwise provided, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF PORT ST. LUCIE

Witness
Print Name: _____
Address:

By: _____
Jesus Merejo
City Manager

Witness
Print Name: _____
Address:

STATE OF FLORIDA)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me **by means of** **physical presence**
or **online notarization**, on this _____ day of _____, 2024, by Jesus Merejo,
the City Manager of the City of Port St. Lucie, a Florida municipality. He is personally known to
me.

Notary Public

Typed printed or stamped name of Notary Public

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Richard Berrios
City Attorney

COUNCIL:
Economic Development Council of St Lucie County, Inc.

By: _____

Witness
Print Name: _____
Address:

Witness
Print Name: _____
Address:

STATE OF)
COUNTY OF)

The foregoing instrument was acknowledged before me **by means of** **physical presence**
or **online notarization**, on this ____ day of _____, 2024, by
_____ as _____ for the Economic
Development Council of St Lucie County, Inc., a Florida corporation who is either personally
known to me [] or has produced his driver's license as identification.

Notary Public

Typed printed or stamped name of Notary Public