



**CITY OF SEBASTIAN AGREEMENT FOR  
(SOLICITATION TITLE) WITH  
CONTRACTOR NAME**

**THIS AGREEMENT** made and entered into the \_\_\_\_\_ by and between the **City of Sebastian, Florida**, whose address is 1225 Main Street, Sebastian, FL 32958, a municipal corporation of the State of Florida, hereinafter referred to as the "**City**" and **Contractor Name (FEIN: xx-xxxxxxx)**, whose principal and local address is **Contractor Address** hereinafter referred to as the "**Contractor**". The City and the Contractor are collectively referred to herein as the "Parties."

**WITNESSETH:**

**WHEREAS**, the City desires to retain the Contractor for the work identified in the proposal specifications outlined in the **Solicitation number and title**; and

**WHEREAS**, the City desires to retain the Contractor to provide **XXX**, as subsequently specifically set out in purchase orders to be issued under this agreement; and

**WHEREAS**, the City desires to employ the Contractor to support the activities, programs, and projects of the City upon the terms and conditions hereinafter set forth, and the Contractor is desirous of performing and providing such goods/services upon said terms and conditions; and

**WHEREAS**, the Contractor hereby warrants and represents to the City that it is competent and otherwise able to provide professional services to the City; and

**WHEREAS**, all City promulgated bid documents pertaining to **solicitation number and title**, and all submissions by the Contractor (including the bid proposal and proposal clarifications) are incorporated herein to the extent not inconsistent with the terms and conditions as set forth herein; and

**WHEREAS**, the City desires to retain the Contractor to provide all labor, materials, equipment, facilities, and services included in, but not limited to, the guidelines in the scope of work; and

**WHEREAS**, the City desires to use the expertise and knowledge of the Contractor; and

**WHEREAS**, the Contractor recognizes the importance of strict adherence to all laws, rules, and regulations, particularly regarding safety procedures and processes.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and



sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

## **SECTION 1: GENERAL PROVISIONS**

- 1.1 The term "Contractor" as used in this agreement is hereby defined herein as that person or entity, including employees, servants, partners, principals, agents, and assignees providing services under this agreement.
- 1.2 The City reserves the right to utilize any other contract, including, but not limited to, the following: any state of Florida contract, any contract awarded by any other city or county governmental agencies, other school boards, other community colleges/state university system, cooperative agreements, or to negotiate/purchase per City policy directly. The City also reserves the right to bid separately any item(s) and/or service(s) covered under this agreement, if deemed to be in the City's best interest, at any time during this agreement term.
- 1.3 This agreement is for XXX, as set forth herein and as otherwise directed by the City to include all labor and materials that may be required.
- 1.4 The recitals above are true and correct and form and constitute a material part of this agreement upon which the parties have relied.
- 1.5 Each party hereto represents to the other that it has undertaken all necessary actions to execute this agreement and has the legal authority to enter into it and undertake all obligations imposed on it. The person(s) executing this agreement for the Contractor certify that they are authorized to bind the Contractor fully to the terms of this agreement.
- 1.6 Time is of the essence of the lawful performance of the duties and obligations contained in this agreement, including, but not limited to, each purchase order. The parties agree that they shall diligently and expeditiously pursue their respective obligations outlined in this agreement and each purchase order.
- 1.7 When the term "law" is used herein, it shall include statutes, codes, rules, and regulations of any type or nature enacted or adopted by a governmental entity of competent jurisdiction.
- 1.8 The Contractor hereby guarantees the City that all work and all material, supplies, services, and equipment listed on a Purchase Order meet the requirements, specifications, and standards provided for under the Federal Occupations Safety and Health Act of 1970, from time to time amended and in force on the date hereof.
- 1.9 It is agreed that nothing herein contained is intended or should be construed as



creating or establishing a relationship of co-partners between the parties or as constituting the Contractor (including, but not limited to its officers, employees, and agents) as the agent, representative, or employee of the City for any purpose or in any manner whatsoever. The Contractor is to be and shall remain independent concerning all services performed under this agreement.

- 1.10 Persons employed by the Contractor in the provision and performance of the goods and/or services and functions under this agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.
- 1.11 No claim for goods and/or services furnished by the Contractor not specifically provided for herein or in a purchase order shall be honored by the City.

## **SECTION 2: SCOPE OF SERVICES**

- 2.1 The Contractor shall safely, diligently, and professionally and timely perform with its equipment and assets and provide goods and/or services included in each subsequently entered purchase order. Unless modified in writing by the parties hereto, the Contractor's duties shall not be construed to exceed the provision of the goods and/or services pertaining to this agreement.
- 2.2 The Contractor shall provide the goods and/or services as generally set forth and described in Exhibit "A" to this agreement and specifically detailed in various purchase orders as may be issued from time to time by the City.

## **SECTION 3: PURCHASE ORDERS**

- 3.1 The provision of services to be performed under the provisions of this agreement shall be commenced as outlined in the City's bid/procurement documents upon the execution of this agreement and a purchase order issued on a form provided by the City hereunder commencing the provision of goods and services. Additional services to be performed by the Contractor to the City shall be authorized in a written change order issued by the City on a form provided by the City. Purchase orders executed by the City shall include a detailed description of quantities, services, and a completion schedule. The Contractor shall review purchase orders and notify the City in writing of asserted inadequacies for the City's correction if warranted. In every case, if the Contractor completes work without authorization by a purchase/work order or a change order, the City is not obligated to compensate the Contractor for the unauthorized work.
- 3.2 The Contractor shall perform all services required by the purchase order, but the Contractor shall not be paid more than the negotiated Fixed Fee amount stated therein.



- 3.3 The Contractor may invoice the amount due based on the percentage of total services performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services completed.
- 3.4 The City shall make payments to the Contractor when requested as work progresses for services furnished, but not more than once monthly. Each purchase order shall be invoiced separately. The Contractor shall render to the City, at the close of each calendar month, an itemized invoice properly dated, describing any services rendered, the cost of the services, the name and address of the Contractor, purchase order number, contract number, and all other information required by this agreement.

#### **SECTION 4: CONTRACTOR UNDERSTANDING OF SERVICES REQUIRED**

- 4.1 Execution of this agreement by the Contractor is a representation that the Contractor is familiar with the services to be performed and local conditions. The Contractor shall make no claim for additional time or money based upon its failure to comply with this agreement. The Contractor has informed the City, and hereby represents to the City, that it has extensive experience in performing and providing the services and/or goods described in this agreement and to be identified in the purchase orders and that it is well acquainted with the work conditions and the components that are properly and customarily included within such projects and the requirements of laws, ordinance, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the City's projects. Execution of a purchase order shall be an affirmative and irrefutable representation by the Contractor to the City that the Contractor is fully familiar with all requisite work conditions of the provisions of the goods and/or services.

#### **SECTION 5: CHANGE ORDERS**

- 5.1 The City may revise the scope of services outlined in any particular purchase order.
- 5.2 Revisions to any purchase order shall be authorized in writing by the City as a change order. Each change order shall include a schedule of completion for the services authorized. Change orders shall identify this agreement and the appropriate purchase order number. Change orders may contain additional instructions or provisions specific to certain aspects of this agreement pertinent to the services provided. Such supplemental instructions or provisions shall not be construed as modifying this agreement. An agreement between the parties on and execution of any change order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged goods and/or work, including all direct and indirect costs of whatever nature, and all adjustments to the Contractor's schedule.



## **SECTION 6: CONTRACTOR RESPONSIBILITIES**

- 6.1 The Contractor shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all goods and/or services furnished by the Contractor under this agreement as well as the conduct of its staff, personnel, employees, and agents. The Contractor shall provide the City a list of employees working days, times, and assignments within two (2) hours of the City's request for such information, which the City may request. The Contractor shall provide employee addresses and driver's licenses. All Contractor employees shall at all times wear identification badges which, at a minimum, give the name of the employee and the Contractor. The Contractor shall work closely with the City to provide the goods and/or services. Concerning services, the Contractor shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and coordination of all of the following, which are listed for illustration purposes only and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and all other services of whatever type or nature furnished by the Contractor under this agreement. Without additional compensation, the Contractor shall correct or revise any errors or deficiencies in its plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature. The Contractor's submissions in response to the subject bid or procurement processes are incorporated herein by this reference.
- 6.2 Neither the City's review, approval, or acceptance of nor payment for any of the goods and/or services required shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement and the Contractor shall be and remain liable to the City per applicable law for all damages to the City caused by the Contractor's negligent or improper performance or failure to perform any of the goods and/or services furnished under this agreement.
- 6.3 The rights and remedies of the City, provided for under this agreement, are in addition to any other rights and remedies provided by law.
- 6.4 Time is of the essence in the performance of all goods and/or services provided by the Contractor under the terms of this agreement and every purchase order.

## **SECTION 7: CITY RIGHTS AND RESPONSIBILITIES**

- 7.1 The City shall reasonably cooperate with the Contractor promptly at no cost to the Contractor as outlined in this Section.
- 7.2 The City shall furnish a City project manager to administer, review, and coordinate the provision of services under purchase orders.





- 7.3 The City shall make City personnel available where, in the City's opinion, they are required and necessary to assist the Contractor. The availability and necessity of said personnel to assist the Contractor shall be determined solely at the discretion of the City.
- 7.4 The City shall examine all of the Contractor's services and indicate the City's approval or disapproval within a reasonable time so as not to delay the provisions of services of the Contractor materially.
- 7.5 The City shall transmit instructions and relevant information and interpret and define City policies and decisions concerning all materials and other matters pertinent to the services covered by this agreement.
- 7.6 The City shall give written notice to the Contractor whenever the City's designated representative knows of a development that affects the goods and/or services provided and performed under this agreement, the timing of the Contractor's provision of goods and/or services, or a defect or change necessary in the Contractor's goods and/or services.
- 7.7 The rights and remedies of the City provided under this agreement are in addition to any other rights and remedies provided by law. The City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after the performance of this agreement as well as the adjustment of payments made to the Contractor based upon the quality of work of the Contractor.
- 7.8 The City shall be entitled to recover all legal costs, including, but not limited to, attorney fees and other legal costs, that it may incur in any legal actions it may pursue to enforce the terms and conditions of this agreement or the responsibilities of the Contractor in carrying out the duties and responsibilities deriving from this agreement.
- 7.9 The failure of the City to insist in any instance upon the strict performance of any provision of this agreement or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.
- 7.10 Neither the City's review, approval, or acceptance of nor payment for any of the goods and/or services required shall be construed to operate as a waiver of any rights under this agreement nor any cause of action arising out of the performance of this agreement and the Contractor shall be and always remain liable to the City per applicable law for all damages to the City or the public caused by the Contractor's negligent or wrongful provision or performance of any of the goods and/or services furnished under this agreement.
- 7.11 After final payment is made to the Contractor, all deliverable analysis, reference



data, survey data, plans, reports, or any other form of written instrument or document that may result from the Contractor's services or have been created during the Contractor's performance under this agreement shall become the property of the City.

## **SECTION 8: COMPENSATION**

- 8.1 Compensation for performance of work per Exhibit A, subject to additions and deletions by change order as provided for in this agreement.
- 8.2 Compensation to the Contractor shall be as outlined in the purchase order, which assigns services to be accomplished by the Contractor.
- 8.3 The Contractor shall be paid per the charges outlined in Exhibit "B" attached hereto.
- 8.4 There are no reimbursable expenses to be paid to the Contractor except as specifically set forth herein.

## **SECTION 9: PRICE ADJUSTMENTS**

- 9.1 After the initial contract term, the City of Sebastian will consider requests for price adjustments. Upon receipt of the Contractor's written request for a price adjustment, the City may allow an escalation equal to the Southeastern Consumer Price Index as of May 1st of that current year, not to exceed 3% of that current year's annual contract price.
- 9.2 The Contractor shall submit the price request to the Procurement Division at least thirty (30) calendar days before the requested effective increase date. The City may approve a price increase at its sole discretion.
- 9.3 Any purchase order issued before the approval of the price increase will not be modified.
- 9.4 The contractor shall be entitled to an automatic increase in labor rates due to minimum wage increases only if a request for adjustment is submitted at least 30 days before the effective change.

## **SECTION 10: INVOICE PROCESS**

- 10.1 Invoices, in an acceptable form to the City and without disputable items, will be processed for payment within thirty (30) days of receipt by the City.
- 10.2 The City will notify the Contractor of any disputable items in invoices submitted by the Contractor within fifteen (15) days of receipt, explaining the deficiencies.



- 10.3 The City and the Contractor will try to resolve all disputable items in the Contractor's invoices.
- 10.4 Each invoice shall reference this agreement, the appropriate purchase order and Change Order if applicable, and the billing period.
- 10.5 The *Florida Prompt Payment Act* shall apply when applicable. A billing period represents the dates in which the Contractor completed goods and/or services referenced in an invoice.
- 10.6 Invoices are to be forwarded directly to the project manager: (Name, and email). Alternatively, invoices can be emailed to [accountspayable@cityofsebastian.org](mailto:accountspayable@cityofsebastian.org).

### **SECTION 11: COMMENCEMENT SCHEDULE OF AGREEMENT**

- 11.1 The Contractor shall commence providing services as described in this agreement upon execution of a purchase order issued by the City.
- 11.2 The Contractor and the City agree to make every effort to adhere to the schedules required by the City or as established for the various purchase orders as described in each purchase order. However, if the Contractor is delayed at any time in the provision of goods and/or services by any act or omission of the City, or of any employee, tumult of the City, or by any other Contractor employed by the City, or by changes ordered by the City, or by strikes, lockouts, fire, unusual delay in transportation, terrorism, unavoidable casualties, or any other causes of *force majeure* not resulting from the inactions or actions of the Contractor and beyond the Contractor's control which would not reasonably be expected to occur in connection with or during performance or provision of the goods and/or services, or by delay authorized by the City pending a decision, or by any cause which the City shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the City may decide in its sole and absolute discretion. It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation or be reimbursed for any losses due to any delay or delays resulting from any of the causes as mentioned earlier or any other cause whatsoever.

### **SECTION 12: TERM/LENGTH OF AGREEMENT**

- 12.1 The initial term of the Agreement is for a term of two years. The Agreement may be renewed by the parties for two additional terms of one year if agreed to in writing sixty days prior to the end of the initial term.
- 12.2 The City has the right to extend any contract for the period necessary for the Contractor to complete their contractual obligations and/or release, award, and implement a replacement agreement. Such extension shall be based on the same prices, terms, and conditions this contract outlines.





### SECTION 13: DESIGNATED REPRESENTATIVES

- 13.1 The City designates the City Manager or their designated representative, to represent the City in all matters pertaining to and arising from the work and the performance of this agreement.
- 13.2 The City Manager, or his/her designated representative, shall have the following responsibilities:
- 13.2.1 Examination of all work and rendering, in writing, decisions indicating the City's approval or disapproval within a reasonable time so as not to materially delay the work of the Contractor;
  - 13.2.2 Transmission of instructions, receipt of information, and interpretation and definition of City's policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this agreement;
  - 13.2.3 Giving prompt written notice to the Contractor whenever the City official representative knows of a defect or change necessary in the project; and
  - 13.2.4 Coordinating and managing the Contractor's preparation of any necessary applications to governmental bodies to arrange for submission of such applications.
- 13.3 Until further notice from the City Manager, the designated representative for this agreement is concerning this section of the Agreement:

#### City Representative & Contact Information

**The Contractor's designated representative is:**

#### Contractor Representative & Contact Information

### SECTION 14 - LIQUIDATED DAMAGES

- 14.1 If the Contractor fails to perform janitorial services at any required location on a scheduled workday, by skipping a location, failing to service a location, or otherwise not completing the required scope, the Contractor shall incur liquidated damages in the amount of **five hundred dollars (\$500)** per calendar day, per missed location, until all missed services are fully completed to the satisfaction of the City.
- 14.2 The Parties acknowledge and agree that such liquidated damages are fixed and agreed upon in advance, represent a reasonable estimate of the City's damages



resulting from delay or nonperformance, and are not to be construed as a penalty. The Parties further recognize the impracticability of precisely determining the actual damages the City would sustain due to the Contractor's failure to perform required services at any location.

- 14.3 When the Contractor defaults on the Agreement or any material provision thereof or fails to remedy any deficiency in performance, the City may procure the necessary supplies or services from an alternative source and hold the contractor financially responsible for any excess costs incurred. The difference between the bid price of the product or service and the actual price paid may be deducted from any current or future obligations owed to the contractor as liquidated damages.

#### **SECTION 15: TERMINATION FOR CAUSE OR CONVENIENCE.**

- 15.1 Notwithstanding any other provision of this agreement, the City shall have the right at any time to terminate this agreement in its entirety, with or without cause, as outlined herein.
- 15.2 **WITH CAUSE:** If the Contractor is found to have failed to perform services in a manner satisfactory to the City, the Contractor shall have ten (10) days to correct deficiencies.
- 15.2.1 Failure of the Contractor to remedy said specified deficiencies within ten (10) days of receipt of such notice shall result in the termination of the agreement, and the City shall be relieved of any responsibilities and liabilities under the terms and provisions of the contract.
- 15.3 **WITHOUT CAUSE:** The City shall have the right to terminate this agreement without cause with thirty (30) days' written notice to the Contractor. Notice shall be served to the parties as specified in the agreement.
- 15.4 Upon receipt of notice of termination, the Contractor shall promptly discontinue the provision of all services unless the notice provides otherwise.
- 15.5 If this agreement is terminated, the City shall identify any specific purchase order(s) being terminated and the specific purchase order(s) to be continued to completion according to the provisions of this agreement.
- 15.6 This agreement will remain in full force and effect as to all authorized purchase order(s) to be completed as outlined above.
- 15.7 **EFFECTIVE IMMEDIATELY:** This Contract will terminate immediately and absolutely if the City of Sebastian determines that adequate funds are de-appropriated such that the City of Sebastian cannot fulfill its obligations under the Contract, which determination is at the City of Sebastian's sole discretion and shall be conclusive. Further, the City of Sebastian may terminate the Contract for any



one or more of the following reasons, **effective immediately without advance notice**: (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and 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; (ii) The City of Sebastian 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; (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

#### **SECTION 16: PAYMENT IN THE EVENT OF TERMINATION**

- 16.1 In the event this agreement or any purchase order is terminated or canceled before completion without cause, payment for the unpaid portion of the satisfactorily, undisputed services provided by the Contractor before the date of termination will be paid.

#### **SECTION 17: EQUAL OPPORTUNITY EMPLOYMENT**

- 17.1 The Contractor shall not discriminate based on race, color, sex, age, national origin, religion, and disability or handicap by the provisions of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000 et seq.), Title VII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), Florida Civil Rights Act of 1992 (§ 760.10 et seq.), Title 41 CFR Part 60 for compliance with Executive Orders 11246 and 11375, Title 49 CFR 23 and Title 49 CFR 26 for Disadvantaged Business Enterprises, Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.), Title 49 CFR 21 and Title 49 CFR 23, Nondiscrimination based on handicap, Title 49 CFR 27, Americans with Disabilities Act of 1990 (42 U.S.C. 12102, et. seq.), Federal Fair Labor Standards Act (29 U.S.C. § 201, et seq.), and any other federal and state discrimination statutes. The contractor shall furnish pertinent information regarding its employment policies and practices and those of their proposed subcontractors the City may require. The above shall be required of any subcontractor hired by the Contractor. All equal employment opportunity requirements shall be included in all non-exempt subcontracts entered into by the Contractor. Subcontracts entered into by the Contractor shall also include all other applicable labor provisions. No subcontract shall be awarded to any noncomplying subcontractor. Additionally, the Contractor shall insert in its subcontracts a clause requiring subcontractors to include these provisions in any lower tier subcontracts that may be made. The Contractor shall comply with all state laws and local ordinances.

#### **SECTION 18: INDEMNIFICATION**

- 18.1 The Contractor and any subcontractors shall indemnify, defend and hold harmless the City, and its officers and employees, from liabilities, damages, losses, and



costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or its subcontractors and other persons employed or utilized by the Contractor or its subcontractors in the performance of the contract; irrespective of the negligence of the indemnitee or its officers, directors, agents, or employees. However, such indemnification shall not include claims of, or damages resulting from, gross negligence or willful, wanton, or intentional misconduct of the City or its officers, directors, agents, or employees. Upon request of the City, the Contractor or its subcontractors shall, at no cost or expense to the City, indemnify and hold the City harmless of any suit asserting a claim for any loss, damage, or liability specified above, and the Contractor or its subcontractors shall pay any cost and reasonable attorneys' fees that may be incurred by the City in connection with any such claim or suit or in enforcing the indemnity granted above. Nothing in this agreement shall be construed as the City waiving its sovereign immunity under Florida Statute §768.28 or any other sovereign or governmental immunity, nor an admission of any liability. This provision shall survive the termination of this agreement.

## SECTION 19: INSURANCE

- 19.1 The Contractor shall obtain or possess and continuously maintain the following insurance coverage from a company or companies with a Best Rating of A- or better, authorized to do business in the State of Florida and a form acceptable to the City and with only such terms and conditions as may be sufficient to the City:

19.1.1 Worker's Compensation: The Contractor shall provide and maintain Coverage for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. Any policy must include the **Employer's Liability with minimum limits of \$1,000,000 for each accident and a waiver of subrogation.**

19.1.2 Comprehensive General Liability: The Contractor shall provide minimum combined single limits of \$1,000,000.00 for each occurrence / \$2,000,000.00 general aggregate for bodily injury and property damage liability. This shall include premises/operations, personal & advertising injury, products & completed operations, broad form property damage, personal and advertising injury, and contractual liability coverage.

19.1.3 Comprehensive Automobile Liability: The Contractor shall provide minimum liability limits of \$1,000,000.00 for each accident, combined with a single limit for bodily injury and property damage. This shall include coverage for:

- 19.1.3.1 Owned Automobiles
- 19.1.3.2 Hired Automobiles
- 19.1.3.3 Non-Owned Automobiles



- 19.1.4 **Umbrella/Excess Liability:** The Contractor shall provide umbrella/excess coverage with limits of no less than \$1,000,000.00 excess of Comprehensive General Liability, Automobile Liability, and Employers' Liability. **\*\*This coverage is optional if the CONTRACTOR carries \$2,000,000 Commercial General Liability Insurance with a \$2,000,000 general aggregate\*\***
- 19.1.5 All insurance other than Worker's Compensation to be maintained by the Contractor shall specifically include the City as an additional insured.
- 19.2 The Contractor shall provide certificates of insurance to the City, evidencing that all such insurance is in effect before the issuance of the first purchase order under this agreement from the City. These certificates of insurance shall become part of this agreement. Neither approval by the City nor failure to disapprove the insurance furnished by a Contractor shall relieve the Contractor of the Contractor's full responsibility for performance of any obligation, including the Contractor's indemnification of the City under this agreement. If, during the period which an insurance company is providing the insurance coverage required by this agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the Contractor shall, as soon as the Contractor knows any such circumstance, immediately notify the City and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this agreement. Until the Contractor has replaced the unacceptable insurer with insurance acceptable to the City, the Contractor shall be deemed to be in default of this agreement.
- 19.3 The insurance coverage shall contain a provision that requires that before any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the City by submission of a new certificate of insurance.
- 19.4 The Contractor shall furnish a certificate of insurance directly to the City's procurement/contracts manager. The certificates shall indicate that the Contractor has obtained insurance of the type, amount, and classification required by this agreement.
- 19.5 Nothing in this agreement or any action relating to this agreement shall be construed as the City's waiver of sovereign immunity beyond the limits outlined in Section 768.28, *Florida Statutes*.
- 19.6 The City shall not be obligated or liable under the terms of this agreement to any party other than the Contractor. There are no third-party beneficiaries to this agreement.
- 19.7 The Contractor is an independent Contractor and not an agent, representative, or employee of the City. The City shall have no liability except as specifically provided





in this agreement.

- 19.8 All insurance shall be primary to, and not contribute to, any insurance or self-insurance maintained by the City.

## **SECTION 20: STANDARDS OF CONDUCT**

- 20.1 The Contractor shall promptly notify the City in writing of the filing of any voluntary or involuntary petition for bankruptcy and/or any insolvency of the Design-Builder or any of its subcontractors involved in the provision of the Services under this Agreement.
- 20.2 The Contractor hereby certifies that no undisclosed (in writing) conflict of interest exists concerning the agreement, including, but not limited to, any conflicts that may be due to the representation of other clients, customers, or vendees, other contractual relationships of the Contractor, or any interest in property that the Contractor may have. The Contractor further certifies that any conflict of interest arising during this agreement's term shall be immediately disclosed in writing to the City. Violation of this Section shall be considered as justification for immediate termination of this agreement.
- 20.3 If the City determines that any employee or representative of the Contractor is not satisfactorily performing his/her assigned duties or is demonstrating improper conduct under any assignment or work performed under this agreement, the City shall notify the Contractor in writing. The Contractor shall immediately remove such employee or representative of the Contractor from such assignment.
- 20.4 The Contractor shall not publish any documents or release information regarding this agreement to the media without prior approval of the City.
- 20.5 The Contractor shall certify, upon request by the City, that the Contractor maintains a drug-free workplace policy following Section 287.0878, *Florida Statutes*. Failure to submit this certification may result in termination of this agreement.
- 20.6 If the Contractor or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action will result in termination of this agreement by the City. Under a contract with any public entity, the contractor, supplier, or subcontractor may not transact business with any public entity above the threshold amount provided in s. 287.017, *Florida Statutes* for CATEGORY TWO for 36 months after being placed on the convicted vendor list.
- 20.7 Contractor certifies to the best of their knowledge and belief, that they and their principals (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any municipal, City, state or federal department or agency; (2) have not, within a three year period preceding execution of this agreement, been convicted of or had a civil



judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property; (3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated above; (4) have not within a three year period preceding execution of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and (5) will advise the City immediately if their status changes and will explain the change in status.

- 20.8 The City reserves the right to unilaterally terminate this agreement if the Contractor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of *Chapter 119, Florida Statutes*, and other applicable law, and made or received by the Contractor in conjunction, in any way, with this agreement.
- 20.9 The Contractor shall comply with the requirements of the *Americans with Disabilities Act* (ADA), and all related federal or state laws which prohibit discrimination by public and private entities based on disability.
- 20.10 The City will not intentionally award publicly-funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the *Immigration and Nationally Act (INA)*. The City shall consider the employment by the Contractor of unauthorized aliens, a violation of Section 274A(e) of the *INA*. Such violation by the Contractor of the employment provisions contained in Section 274A(e) of the *INA* shall be grounds for immediate termination of this agreement by the City.
- 20.11 The Contractor agrees to comply with federal, state, and local environmental, health, and safety laws and regulations applicable to the goods and/or services provided to the City. The Contractor agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors, or the surrounding environment will ensure compliance with all employment safety, environmental, and health laws.
- 20.12 The Contractor shall ensure that all goods and/or services are provided to the City after the Contractor has obtained any permits, licenses, permissions, approvals, or similar consents at its sole and exclusive expense.
- 20.13 If applicable, per Section 216.347, *Florida Statutes*, the Contractor shall not use funds provided by this agreement to lobby the Legislature, the judicial branch, or state agency. Furthermore, Contractor shall not, in connection with the contract, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on



anyone as consideration for any City officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any City officer or employee. "Gratuity" means any payment of more than nominal monetary value in cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, money deposits, services, employment, or contracts.

- 20.14 The Contractor shall advise the City in writing who has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, or may not transact business with any public entity.
- 20.15 The Contractor shall not engage in any action that would create a conflict of interest in the performance of that actions of any City employee or other person during the performance of, or otherwise related to, this agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government.

## **SECTION 21: PUBLIC RECORDS**

- 21.1 The Contractor will keep and maintain public records required by the City to perform the service. Upon request from the City's custodian of public records, the Contractor will provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Upon completion of the Agreement, the Contractor will 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. The Contractor will ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the term of the Agreement and following completion of the Agreement if the Contractor does not transfer the records to the City. If the Contractor keeps and maintains public records upon completion of the Agreement, 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 system of the City. If the Contractor does not comply with the City's request for public records, the City shall enforce the provisions of the Agreement per the terms of the Agreement and may terminate the Agreement.
- 21.2 **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT JANE GARCIA, THE CUSTODIAN OF PUBLIC RECORDS AT:**



**CITY CLERK**  
**1225 MAIN STREET**  
**SEBASTIAN, FL 32958**  
**TELEPHONE: 772-388-8215**  
**EMAIL: [CityHallPublicRecordsRequest@cityofsebastian.org](mailto:CityHallPublicRecordsRequest@cityofsebastian.org)**

## **SECTION 22: CODES AND DESIGN STANDARDS**

- 22.1 All services to be performed by the Contractor shall, at a minimum, be in conformance with commonly accepted industry and professional codes and standards, standards of the City, and the laws of any federal, state, and local regulatory agencies.
- 22.2 The Contractor shall be responsible for keeping apprised of any changing laws applicable to the goods and/or services to be performed under this agreement.

## **SECTION 23: ASSIGNABILITY**

- 23.1 The Contractor shall not sublet, assign, or transfer any interest in this agreement or claims for the money due or to become due out of this agreement to a bank, trust company, or other financial institution without written City approval. When approved by the City, written notice of such assignment or transfer shall be furnished promptly to the City.
- 23.2 The Contractor agrees to reasonably participate in the contract "piggybacking" programs pertinent to local governments.

## **SECTION 24: SUBCONTRACTORS**

- 24.1 Any Contractor's proposed subcontractors shall be submitted to the City for written approval before the Contractor enters a subcontract. Subcontractor information shall include, but not be limited to, state registrations, business address, occupational license tax proof of payment, and insurance certifications.
- 24.2 The Contractor shall coordinate the provision of goods and/or services and work product of any City approved subcontractors and remain fully responsible for such goods and/or services and work under the terms of this agreement.
- 24.3 Any subcontract shall be in writing and shall incorporate this agreement and require the subcontractor to assume the performance of the Contractor's duties commensurately with the Contractor's responsibilities to the City under this agreement; it is understood that nothing herein shall in any way relieve the Contractor from any of its duties under this agreement. The Contractor shall provide the City with executed copies of all subcontracts.



- 24.4 The Contractor shall reasonably cooperate with the City and other City Contractors and professionals.

## **SECTION 25: CONTROLLING LAWS/VENUE/INTERPRETATION/WAIVER OF JURY TRIAL**

- 25.1 The laws of the State of Florida shall govern the agreement. In the event of litigation arising under this agreement, the venue of such action shall be an appropriate State or Federal Court in and for Indian River County, Florida. The parties agree that in the event of litigation arising from this agreement, each shall waive any right to trial by jury.
- 25.2 This agreement is the result of *bona fide* arms-length negotiations between the City and the Contractor, and all parties have contributed substantially and materially to the preparation of the agreement. Accordingly, this agreement shall not be construed or interpreted more strictly against any one party than against any other party.

## **SECTION 26: FORCE MAJEURE**

- 26.1 Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, pandemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

## **SECTION 27: EXTENT OF AGREEMENT/INTEGRATION/AMENDMENT.**

- 27.1 This agreement and the exhibit(s) constitute the entire integrated agreement between the City and the Contractor and supersedes all prior written or oral understandings in connection therewith. This agreement and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof and supersedes and controls over any prior agreements, understandings, representations, correspondence, and statements whether written or oral.
- 27.2 This agreement may only be amended, supplemented, or modified by a formal written amendment.
- 27.3 Any alterations, amendments, deletions, or waivers of the provisions of this agreement shall be valid only when expressed in writing and duly signed by the



parties.

## SECTION 28: NOTICES

- 28.1 Whenever either party desires to give notice unto the other, it must be given by written notice, sent by email and/or registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified. The place for giving notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.
- 28.2 For the present, the parties designate the following as the representative places for giving of notice, to wit:

TO THE CITY:	
City Manager	Procurement Manager
City of Sebastian	City of Sebastian
1225 Main Street	1225 Main Street
Sebastian, FL 32958	Sebastian, FL 32958
	P: 772-388-8231
	E: <a href="mailto:procurement@cityofsebastian.org">procurement@cityofsebastian.org</a>
TO THE CONTRACTOR:	
Title	
Company	
Address	
Address	
P:	
E:	

- 28.3 Written notice requirements of this agreement shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The Contractor agrees not to claim any waiver by the City of such notice requirements based upon the City having actual knowledge, implied, verbal or constructive notice, lack of prejudice, or any other grounds as a substitute for the failure of the Contractor to comply with the express written notice requirements herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the agreement.

## SECTION 29: WAIVER

- 29.1 The failure of the City to insist in any instance upon the strict performance of any provision of this agreement or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.



### **SECTION 30: NO GENERAL CITY OBLIGATION**

- 30.1 In no event shall any obligation of the City under this agreement be or constitute a general obligation or indebtedness of the City, a pledge of the ad valorem taxing power of the City, or a general obligation or indebtedness of the City within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds.
- 30.2 The Contractor shall not have the right to compel the exercise of the ad valorem taxing power of the City.

### **SECTION 31: EXHIBITS**

- 31.1 Each exhibit referred to and attached to this agreement is an essential part of this agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this agreement.

### **SECTION 32: SEVERABILITY/CONSTRUCTION**

- 32.1 If any term, provision, or condition contained in this agreement shall, to any extent, be held invalid or unenforceable, the remainder of this agreement, or the application of such term, provision, or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.
- 32.2 All provisions of this agreement shall be read and applied in para materia with all other provisions hereof.

### **SECTION 33: SURVIVAL**

- 33.1 All express representations, waivers, indemnifications, and limitations of liability included in this agreement shall survive completion or termination of the agreement for any reason.





**IN WITNESS WHEREOF**, the parties hereto have made and executed this agreement on the respective dates under each signature: the City through its City Council taking action on the \_\_\_\_\_, day of \_\_\_\_\_, 2005 and the Contractor signing by and through its duly authorized corporate officer having the complete authority to execute same.

ATTEST:

**COMPANY NAME**

By:

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Contractor name and title**

Date: \_\_\_\_\_

ATTEST:

**CITY OF SEBASTIAN, FL**

By:

\_\_\_\_\_  
Jane Garcia, City Clerk

\_\_\_\_\_  
Brian Benton, City Manager

Date: \_\_\_\_\_

For the use and reliance of the City of Sebastian only. Approved as to form and legal sufficiency.

\_\_\_\_\_  
James D. Stokes, City Attorney



Exhibit "A"  
Scope of Services

SAMPLE



Exhibit "B"  
Price Proposal

SAMPLE



Exhibit "C"  
Required Contract Forms

SAMPLE