

## RESOLUTION NO. 2024-227

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AND DELIVER STANDARD CONTRACT NO. RP945 BETWEEN ST. JOHNS COUNTY AND FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR LIFEGUARD SERVICES AT ANASTASIA STATE.

### RECITALS

**WHEREAS**, St. Johns County (“County”) and Florida Department of Environmental Protection (FDEP) desire to enter into a 5-year contract for St. Johns County Marine Rescue to provide lifeguard services for Anastasia State Park during peak summer season; and

**WHEREAS**, FDEP Standard Contract No. RP945 (“Contract”) provides that the initial funding increment is \$54,874.52 for the period May 24, 2024 (the beginning of Memorial Day weekend) to September 2, 2024 (Labor Day); and

**WHEREAS**, the maximum fixed price under the 5-year contract is \$275,000; and

**WHEREAS**, entering to the Contract and providing lifeguard services is in the best interest of the County.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida, as follows:

**Section 1.** The above recitals are incorporated by reference into the body of this Resolution and are adopted as findings of fact.

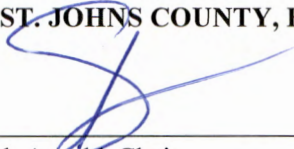
**Section 2.** The Board of County Commissioners hereby approves and authorizes the County Administrator, or designee, to execute and deliver, on behalf of the County, Standard Contract No. RP945 between Florida Department of Environmental Protection and the County for St. Johns County Marine Rescue to provide lifeguard services for Anastasia State Park during peak summer season, in substantially the same form as attached hereto.

**Section 3.** To the extent there are typographical, scrivener, or administrative errors or omissions that do not change the tone, tenor, or context of this Resolution, Amendment No. 6 may be revised without subsequent approval by the Board of County Commissioners.

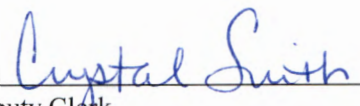
**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 21<sup>st</sup> day of May 2024.

Rendition Date MAY 23 2024

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By:  \_\_\_\_\_  
Sarah Arnold, Chair

**ATTEST:** Brandon J. Patty,  
Clerk of the Circuit Court and Comptroller

By:  \_\_\_\_\_  
Deputy Clerk



**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STANDARD CONTRACT  
CONTRACT NO. RP945**

This contract (the Contract) is entered into between the Florida Department of Environmental Protection (Department) and St. Johns County Board of County Commissioners c/o St. Johns County Fire and Rescue Department, 3657 Gaines Rd, St. Augustine, Florida 32084 (Contractor), a political subdivision of the State of Florida.

NOW, THEREFORE, the parties agree as follows:

**1. Scope of Work.**

The Contractor shall provide lifeguards through the St. Johns County Marine Rescue within the St. Johns County Fire and Rescue Department, for the area 0.5 miles South of the beach entrance ramp to 3.5 miles North of the beach entrance ramp, for Anastasia State Park, as described more fully in Attachment 3, Scope of Work.

**2. Duration.**

- a. Term. The Contract shall begin on May 24, 2024 and continue until May 23, 2029, unless otherwise terminated.
- b. Renewals. This Contract may be renewed for a period of 5 year.

**3. Contract Managers.**

Department's Contract Manager	Contractor's Contract Manager
Name: <u>Michael Watkins, Park Manager</u> or successor	Name: <u>Sean McGee, Fire Chief</u> or successor
Address: <u>1340 A A1A South</u> <u>St. Augustine, FL 32080</u>	Address: <u>3657 Gaines Rd.</u> <u>St. Augustine, FL 32084</u>
Phone: <u>904-461-2003</u>	Phone: <u>904-209-1700</u>
Email: <u><a href="mailto:Michael.Watkins@FloridaDEP.gov">Michael.Watkins@FloridaDEP.gov</a></u>	Email: <u><a href="mailto:fireadmin@sjcfl.us">fireadmin@sjcfl.us</a></u>

**4. Attachments and Exhibits.**

The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions for Noncompetitively Procured Contracts
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Scope of Work
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input type="checkbox"/> Attachment 5: Price Sheet
<input type="checkbox"/> Attachment 6: Technology Standards
<input type="checkbox"/> Attachment 7: Contractor’s Proposal (RFPs Only)
<input type="checkbox"/> Attachment 8: Contractor’s BAFO (ITNs Only)
<input type="checkbox"/> Additional Attachments (if necessary):
<input type="checkbox"/> Exhibit A: General Contract Conditions – PUR 1000
<input type="checkbox"/> Exhibit B: Subcontractor Utilization Report Form
<input type="checkbox"/> Exhibit C: Contractor Affidavit/Release of Claims Form
<input type="checkbox"/> Exhibit D: Choose an item
<input type="checkbox"/> Exhibit E: Advance Payment Terms and Interest Earned Memo
<input type="checkbox"/> Exhibit F: PUR 1808 – Common Carrier or Contracted Carrier Attestation Form
<input type="checkbox"/> Exhibit G: Non-Profit Organization Compensation Form
<input type="checkbox"/> <input type="checkbox"/> Exhibit H: PUR 1355 – Foreign Country of Concern Attestation Form
<input type="checkbox"/> Additional Exhibits (if necessary):

**5. Compensation.**

- a. As consideration for the services rendered by Contractor under the terms of this Contract, the Department shall pay the Contractor on a fixed price basis up to a maximum of \$275,000.00 for the completion of services as specified in the Scope of Work.
- b. The initial funding increment under this Contract is \$54,874.52 for the period of May 24, 2024 (the beginning of Memorial Day weekend) to September 2, 2024 (Labor Day).
- c. In no event shall the Contractor continue to perform services once the authorized funding amount has been reached. The Contractor shall not commence work on any services the cost of which exceed the balance of the current incremental funding amount until notice is received by the Contractor of an increase in funding. It is the Contractor’s responsibility to determine when the authorized incremental funding amount will be reached.
- d. Contractor will not perform, nor be compensated for, any services beyond the services described in the Scope of Work.
- e. The Department shall not reimburse the Contractor for any costs incurred in the performance of this Contract.

IN WITNESS WHEREOF, this Contract shall be effective on the date indicated above or the last date signed below, whichever is later.

**ST. JOHNS COUNTY BOARD OF COUNTY  
COMMISSIONERS C/O ST. JOHNS COUNTY FIRE  
AND RESCUE DEPARTMENT**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

By: \_\_\_\_\_  
*(Authorized Signature)*

By: \_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Print Name and Title of Person Signing

\_\_\_\_\_  
Print Name and Title of Person Signing

FEID No. F596000825

Additional signatures attached on separate page.



**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Standard Terms and Conditions for Noncompetitively Procured Contracts**

**ATTACHMENT 1**

**1. Entire Agreement.**

This Contract, including any Attachments and Exhibits referred to herein and/or attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. The requirements contained within section 287.058(1), F.S. are hereby incorporated by reference where applicable, unless superseded by provisions within the agreement. Any terms and conditions included on Contractor's forms or invoices with respect to the subject matter of this Contract shall be null and void.

**2. Contract Administration.**

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for interpretation of the Contract is as follows:
- i. Standard Contract
  - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Contract
  - iii. Attachment 1, Standard Terms and Conditions
  - iv. The Exhibits in the order designated in the Standard Contract
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Contract Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Contract Manager is designated by either party after execution of this Contract, notice of the name and contact information of the new Contract Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Contract Manager does not require a formal amendment or change order to the Contract.
- d. This Contract may be amended only by a written agreement between both parties. Amendments shall be based on availability of funding. A change order may be used when there is
- (1) a change in the subcontractor or approval of subcontractors,
  - (2) changes in deliverables due dates that do not change the overall Contract term or increase in the deliverable price or Contract amount, or
  - (3) changes in the price of an individual deliverable in cost reimbursement Contract when the overall Contract amount does not change.
- All other changes shall be done through a formal amendment.
- e. There is no minimum amount of work guaranteed as a result of this Contract. Any and all work assigned will be at the sole discretion of the Florida Department of Environmental Protection ("Department").
- f. The Department reserves the right to suspend or terminate any portion of this Contract or any other contract with the Department, if the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution. The suspension may last until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.
- g. All days in this Contract are calendar days unless otherwise specified.

**3. Contract Duration.**

- a. Term. The term of the Contract shall begin and end on the dates indicated in the Standard Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Any renewals provided under the Contract must meet the requirements of section 287.058(1)(g), Florida Statute (F.S.), which is incorporated herein by reference. If the Standard Contract indicates renewals are available, the contract may be renewed for those timeframe(s). All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

**4. Deliverables.**

The Contractor agrees to render the services or otherwise provide deliverables as set forth in Attachment 3, Scope of Work and as otherwise set forth in this Contract. The services and/or deliverables shall be delivered in accordance

with the schedule and at the pricing outlined in the Contract. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable.

**5. Performance Measures.**

The Contractor warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Scope of Work; (3) Any and all such equipment, products or materials necessary to perform these services, or requirements shall be supplied by the Contractor; (4) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (5) the services shall not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (6) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes for work done at the Department or other location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

**6. Department's Oversight Team.**

Pursuant to section 287.057, F.S., Contractors for services of \$5 million or greater must meet with the Department's oversight team within thirty (30) days of formation of the team and meet with the oversight team at least once quarterly to respond to questions or requests for information from the oversight team.

Contractors for services of \$10 million or greater must meet with the Department's oversight team within thirty (30) days of formation of the team and meet with the oversight team at least once monthly to respond to questions or requests for information from the oversight team.

The continuing oversight team may submit written questions to the Contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the oversight team's questions within 10 business days after receiving the written questions. The questions and responses will be included in the contract file.

**7. Warranty of Ability to Perform.**

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

**8. Acceptance of Deliverables.**

a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Contract Manager before payment. If the Department's Contract Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.

b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Scope of Work, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Contractor's lack of satisfactory performance under the terms of this Contract. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Scope of Work will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Contract requirements. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department. The Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable timeframe. The Contractor's efforts to correct the rejected deliverables will be at the Contractor's sole expense. The Contractor's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

**9. Financial Consequences for Nonperformance.**

a. Withholding Payment. In addition to the specific consequences explained in the Scope of Work and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Contractor has failed to perform/comply with provisions of this Contract. None of the financial consequences for nonperformance in this Contract, as more fully described in the Scope of Work, shall be considered penalties.

b. Invoice Reduction

If Contractor does not meet a deadline for any deliverable, the Department will reduce the invoice amount by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.

c. Corrective Action Plan. If the Contractor fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department. The Department request that the Contractor specify the

outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.

- i. The Contractor shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the proposed CAP has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above may result in the Department's termination of this Contract for cause as authorized in this Contract.
- ii. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate this Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall preclude the Department from subsequently asserting any deficiencies in performance. The Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department's Contract Manager.
- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Contract as specified by the Department may result in termination of the Contract.

#### **10. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Contract, the pricing per deliverable, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance with section 215.422, F.S. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written acceptance of each interim deliverable or the final deliverable specified in the Scope of Work. Invoices and the appropriate documentation shall be submitted via email to the Department's Contract Manager. Contractor's failure to submit invoices within this timeframe may result in forfeiture of retainage suspension or termination of remaining work, or the Contractor's forfeiture of any unpaid balance for such deliverables.
- b. Vendor Rights. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing Problems in obtaining timely payment(s) from state agencies. The vendor Ombudsman may be reached at (850) 413-5516.
- c. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Contractor, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.
- d. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Scope of Work shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Contractor shall only invoice the Department for deliverables that are completed in accordance with the Scope of Work.
- e. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
  - a. Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of Contractor.
  - b. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to s. 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.



- f. Multiple Payment Request. Contractor's submitted invoice shall represent a full account of the work done during each invoice period, and include all fees and costs claimed for work done during that period. Department's payment of an invoice shall constitute full payment and a final settlement of all of Contractor's claims for services provided during the invoice period. No subsequently asserted claims or invoices for services performed during a previously invoiced period will be payable by the Department.
- g. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Contract Manager.
- h. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Contract to ensure the availability of funds for payment. However, all work performed pursuant to the Scope of Work must be performed on or before the completion date of the Contract.
- i. Annual Appropriation Contingency. The State's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations.
- j. Interest Rates. All interest rates charged under the Contract shall be calculated on the prevailing rate used by the State Board of Administration. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. To obtain the applicable interest rate, please refer to: <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- k. Limitation on Payment. Contractor shall not be compensated for services performed prior to execution of this Contract, for services performed following its expiration, termination, or suspension, nor for services that exceed the funding amount specified herein or in any amendment to this Contract. It is the Contractor's responsibility to know when the authorized compensation amount of the Contract will be reached. Contractor shall not perform, nor be compensated for, any services beyond the services described in the Scope of Work.

**11. Documentation Required for Cost Reimbursement Contracts.**

If Cost Reimbursement is authorized in the Standard Contract, the following conditions apply. To be eligible for reimbursement, costs and supporting documentation must be in compliance with laws, rules, and regulations governing agreements for services, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>. Invoices for cost reimbursement shall be supported by an itemized listing of expenditures by category (salary, travel expenses, etc.). Supporting documentation must indicate that the item was paid and indicate the date of service.

**12. Preferred Pricing Clause.**

If this Contract incorporates the PUR 1000, section 4.(b), and it is applicable, or other preferred pricing clause, the Contractor must submit an affidavit, at least annually, attesting that Contract is in compliance with the preferred-pricing clause.

**13. Changes.**

The Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Department may solicit separate bids to satisfy them.

**14. Retainage.**

The following provisions apply if the Department withholds retainage under this Contract:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Contract up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Contractor, pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Contractor's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Scope of Work. The Department shall provide written notification to Contractor of identified deficiencies and the Department's intent to withhold retainage. Contractor's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Contractor.
- c. If Contractor fails to perform the requested work or fails to perform the work in a satisfactory manner, Contractor shall forfeit its right to payment for the work and the retainage called for under the entire Scope of Work. Failure

- to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Contract is suspended.
  - e. Except as otherwise provided above, Contractor shall be paid the retainage associated with the work, provided Contractor has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Contract.

**15. Insurance.**

- a. Proof of Insurance. Upon execution of this Contract, the Contractor shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Contract. Upon receipt of written request from the Department, the Contractor shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.
- c. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Contractor cannot get adequate coverage, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- d. Insurance Requirements for Sub-Contractors. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

**16. Termination.**

- a. Termination for Convenience. When it is in the State's best interest, the Department may, in its sole discretion, terminate the Contract in whole or in part by giving thirty (30) days written notice to the Contractor. The Department shall notify the Contractor of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Contract is to be terminated. The Contractor must submit all invoices for work to be paid under this Contract within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Contract if any of the events of default described in the Events of Default provision below occur or in the event that the Contractor fails to fulfill any of its other obligations under this Contract. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- c. Contractor Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, unless otherwise directed by the Department, the Contractor shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, the Contractor shall continue work on any portion of the Contract not terminated. If the Contract is terminated before performance is completed, the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If the Department has paid for any services prior to the expiration, cancellation, or termination of the Contract, the Contractor shall continue to provide the Department with those services for which it has already been paid or, at Department's discretion, Contractor shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Contract. If services provided under the Contract are being transitioned to another provider(s), the Contractor shall assist in the smooth transition of Contract services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Scope of Work. The Contractor shall not perform any services after Contract expiration or termination, except as necessary to complete the transition or continued portion of the Contract, if any.

**17. Step-in Rights.**

If the Contractor is in material breach of its obligation to perform any of the services under the Contract and fails to remedy such breach within ten (10) days after written notice of the breach from the Department, the Department, at its sole discretion, shall have the right to “step-in” (i.e. perform the work itself) or hire another contractor to perform these services. Contractor shall be liable to the Department for any fees or expenses that the Department may incur in exercising its step-in rights or securing a substitute provider to assume completion of those services.

**18. Notice of Default.**

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, any of the events of default, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Contractor fail to perform within the time provided, the Contractor will be found in default, and the Department may terminate the Contract effective as of the date of receipt of the default notice.

**19. Events of Default Subject to the Notice of Default Provision.**

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, shall constitute events of default.

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering the performance of the Contract;
- c. Failure to honor any term of the Contract;
- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by a state or other licensing authority;
- e. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Contract;
- f. Failure to comply with a preferred-pricing clause required by this Contract, if any, at the Department’s discretion;
- g. Failure to maintain the insurance required by this Contract;
- h. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
  - i. Entry of an order for relief under Title 11 of the United States Code;
  - ii. The making by the Contractor of a general assignment for the benefit of creditors;
  - iii. The appointment of a general receiver or trustee in bankruptcy of the Contractor’s business or property; and/or
  - iv. An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

**20. Events of Default that Result in Immediate Termination.**

- a. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Contractor in this Contract or in its response to the solicitation;
- b. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act; and
- c. Department’s good faith belief that failure to comply with the Employment Eligibility Verification requirements of this Contract has occurred.

**21. Suspension of Work.**

The Department may, in its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State to do so. The Department shall provide the Contractor with written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Contract. If the Contract is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days’ notice required for a notice of termination for convenience. Suspension of work shall not entitle the Contractor to any additional compensation.

**22. Force Majeure.**



The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Contract quantity; or (3) terminate the Contract in whole or in part.

#### **23. Indemnification.**

- a. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
  - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
  - ii. the Contractor's breach of this Contract or the negligent acts or omissions of the Contractor.
- b. The Contractor's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Contractor (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense; and (3) assistance in defending the action at Contractor's sole expense.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Contractors that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Contract.
- d. No provision in this Contract shall require the Department to hold harmless or indemnify the Contractor, insure or assume liability for the Contractor's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

#### **24. Limitation of Liability.**

The Department's liability for any claim arising from this Contract is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Contract. Such liability is further limited to a cap of \$100,000.

Unless otherwise specifically enumerated in the Contract, purchase order, or task order, Department shall not be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. Department shall not be liable for lost profits, lost revenue, or lost institutional operating savings. The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The Department may set off any liability or other obligation

of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

**25. Dispute Resolution.**

Any dispute concerning performance of the Contract shall be decided by the Department's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty-one (21) days from the date of receipt, the Contractor files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Contractor's right to review pursuant to chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in chapter 120.

**26. Remedies.**

All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. Nothing in this Contract shall be construed to make the Contractor liable for force majeure events.

**27. Ownership of Documents.**

All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract.

**28. Waiver.**

The delay or failure by the Department to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**29. Statutory Notices Relating to Unauthorized Employment and Subcontracts.**

- a. The Department shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
- b. Pursuant to sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
  - i. Convicted Vendors. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
  - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor,



- supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
  - iv. Notification. The Contractor shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or the antitrust violator vendor list during the life of the Contract. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

### **30. Employee Eligibility.**

Effective January 1, 2021, Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to section 448.095, F.S. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work. The subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. If the Department has a good faith belief that a subcontractor knowingly violated section 448.095(1), F.S. and notifies the Contractor of such, but the Contractor otherwise complied with this statute, the Contractor shall immediately terminate the contract with the subcontractor.

### **31. Compliance with Federal, State and Local Laws.**

- a. The Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Contractor shall include this provision in all subcontracts issued as a result of this Contract.
- b. Contractor and its subcontractors and agents also must comply with the following civil rights laws and regulations:
  - i. Title VI of the Civil Rights Act of 1964 as amended (prohibiting discrimination in federally assisted programs on the basis of race, color, or national origin in the delivery of services or benefits);
  - ii. Section 13 of the 1972 Amendment to the Federal Water Pollution Control Act (prohibiting discrimination on the basis of sex in the delivery of services or benefits under the Federal Water Pollution Control Act as amended);
  - iii. Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination in federally assisted programs on the basis of disability, both in employment and in the delivery of services and benefits);
  - iv. Age Discrimination Act of 1975 (prohibiting discrimination in federally assisted programs on the basis of age in the delivery of services or benefits);
  - v. 40 C.F.R. Part 7, (implementing Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of the Rehabilitation Act of 1973);
  - vi. United States Executive Order (EO) 13166 (federal agencies required to ensure that recipients of federal financial assistance take reasonable steps to provide meaningful access to their programs and activities by Limited English Proficiency (LEP) persons);
  - vii. Florida Civil Rights Act of 1992 (Title XLIV Chapter 760, Sections 760.01, 760.11 and 509.092 .01), including Part I, chapter 760, F.S. (prohibiting discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status).
- c. This Contract shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Contract shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Contract will be in the courts, and venue will be in a court of competent

jurisdiction, in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

**32. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.**

**This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.**

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

**33. Scrutinized Companies.**

- a. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.
- b. If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

**34. Lobbying and Integrity.**

The Contractor agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between the Contractor and the State, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Contractor shall comply with sections 11.062 and 216.347, F.S.

**35. Record Keeping.**

The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following the completion date or termination of the Contract. In the event that any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the

Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of: (1) three years after the expiration of the Contract; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

**36. Audits.**

- a. Inspector General. This Contract is subject to a post-performance audit by the Department's or State's Inspector General. The Contractor understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing regarding the Contract. The Contractor will comply with this duty and ensure that its Subcontracts issued under this Contract, if any, impose this requirement, in writing, on its sub-Contractors.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Contract, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Contractor shall provide access to any location or facility on which Contractor is performing work, or storing or staging equipment, materials or documents; and
  - ii. In a contract for services, Contractor shall provide access and documentation to the Department, within 10 business days of a request, to inspect the following:
    - A. Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.
    - B. Programmatic records, papers, and documents of the contractor which the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.
  - iii. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Contract; and,
  - iv. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Contract.
- c. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Contract pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of Contractor's multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Contractor must provide the additional proof within thirty (30) calendar days of such request.

**37. Conflict of Interest.**

The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

**38. Independent Contractor.**

The Contractor is an independent contractor and is not an employee or agent of the Department.

**39. Subcontracting.**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Contractor's employee, subcontractor, or agent. Shall cause, includes technical or training qualifications, quality of work, change in security clearance, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Contractor shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of subcontracts should reflect the full



diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.

- f. The Contractor shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

**40. Improvements to Real Property.**

If any state funds are provided under this Contract for the purchase of or improvements to real property, the Contractor shall grant to the state a security interest in the property equal to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements, unless otherwise provided by law.

**41. Inspection at Contractor's Site.**

The Department reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**42. Guarantee of Parent Company.**

In the event the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Contractor.

**43. Headings.**

The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.

**44. Modification of Terms.**

This Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Department. Contractor may not unilaterally modify the terms of this Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Department's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**45. Interpretation of Contract.**

- a. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.
- b. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used. If the Contract is competitively procured, the Contractor further acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Response, to review the terms and conditions of this Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein.

**46. Modifications Required by Law.**

Department reserves the right to revise this Contract to include additional language required by Federal agency(ies) or other sources awarding funding to the Department in support of this Contract, if applicable, and to include changes required by Florida law or Administrative Code rule changes.

**47. Survival.**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Contract.

**48. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Contractor, its agents, servants, and employees. The Contractor shall not disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

**49. Severability.**

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

**50. Contractor's Employees, Subcontractors and Agents.**

- a. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract.
- b. The Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

This subsection does not apply to contracts with other State of Florida entities.

**51. Assignment.**

The Contractor shall not sell, assign, or transfer any of its rights, duties, or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to the Contractor of its intent to do so.

**52. Antitrust Assignment.**

The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**53. MFMP Transaction Fee.**

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), F.S. All payments issued by Agencies to registered vendors for purchases of Commodities or Contractual Services under chapter 287, F.S., shall be assessed the Transaction Fee of one percent (1.0%) of the total amount of the payments received from the State or Eligible Users, as prescribed by Rule 60A-1.031, Florida Administrative Code (F.A.C.), or as may otherwise be established by law. Vendors shall pay the Transaction Fee and are subject to automatic deduction of the Transaction Fee, when automatic deduction becomes available. Vendors shall submit any monthly reports required pursuant to Rule 60A-1.031, F.A.C. All such reports and payments are subject to audit. The Agency will have grounds for declaring the vendor in default if the vendor fails to comply with the payment of the Transaction Fee or reporting of payments, which may subject the vendor to being suspended from business with the State of Florida.

**54. Compensation Report.**

If this Contract is a sole-source, public-private agreement or if the Contractor, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Contractor shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation



for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Contractor must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Contractor.

**55. Disclosure of Gifts from Foreign Sources.**

If the value of this Agreement is \$100,000 or more, Contractor shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Contractor must also provide a copy of such disclosure to the Department of Financial Services.

**56. Dispute Resolution.**

Any dispute concerning performance of the Contract shall be decided as follows:

- a. All claims or disputes (Claims) must be presented to the Department in writing within thirty (30) days of the date such Claim arises (Notice of Dispute). The Notice of Dispute shall set out in detail all aspects of the disputed matters to be resolved, including the specific relief sought by the Contractor. Claims not presented by Notice of Dispute to Contract Manager shall be deemed waived by the Contractor.
- b. The parties shall make a good faith attempt to resolve Claims which may arise from time to time by informal conference within ten (10) days of the Notice of Dispute.

**57. Execution in Counterparts.**

This Contract, any amendments, and/or change orders related to the Contract, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature.

**58. Warranty of Authority to Sign.**

Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Special Terms and Conditions**

**ATTACHMENT 2**

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

**1. Insurance.**

Required Coverage. At all times during the Contract the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. Contractor shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Contract may be required elsewhere in this Contract, however the minimum insurance requirements applicable to this Contract are:

a. Comprehensive General Liability Insurance.

The Contractor shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Contract. The minimum limits shall be \$200,000 for each person and \$300,000 per occurrence.

b. Commercial Automobile Insurance.

If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation.

The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S. with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Contract.

d. Other Insurance.

None.

**2. Payment and Performance Bonds.**

There are no bonds required under this Contract.

**3. Liquidated Damages.**

In addition to other remedies elsewhere in this Contract, and as provided by law, the Contractor hereby covenants and agrees to pay liquidated damages to the Department as outlined in the Scope of Work or elsewhere in the Contract. The Contractor acknowledges that time is of the essence for all services provided under this Contract, and the actual damages to be suffered by late performance and the damages suffered by failing to meet the standards as outlined in the Scope of Work are incapable of accurate calculation. Therefore, the parties agree that it is in the parties' best interests to agree upon a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages.

**4. Retainage.**

No retainage is required under this Contract.

**5. MFMP Transaction Fee.**

The State of Florida, through the Department of Management Services (DMS), has instituted MFMP, a statewide e-procurement system. Pursuant to Rule 60A-1.031, Florida Administrative Code, payments under this Contract are exempt from the MFMP transaction fee.

**6. Quality Assurance Requirements.**

There are no special Quality Assurance requirements under this Contract.

**7. Subcontracting.**

The Contractor shall not subcontract any services under this Contract.

**8. Personnel Changes.**

The Contractor may remove its personnel assigned to perform under this Contract and substitute other qualified personnel. Any removals or replacements by Contractor shall be at no additional cost to the Department.

**9. Intellectual Property.**

- a. The Contractor's intellectual property rights that preexist this Contract will remain with the Contractor. Intellectual property rights to all property created or otherwise developed by Contractor specifically for the Department will be owned by the State through the Department.
- b. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish or release to others, such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.
- c. This ownership interest and the rights conferred under this section will continue after the expiration or termination of the Contract.
- d. Notwithstanding the foregoing language, the Contractor's workpapers prepared or developed under this Contract are the exclusive property of the Contractor, but Contractor shall permit Department access and review of workpapers upon Department's request.

**10. Common Carrier.**

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution] If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808

**11. Foreign Country of Concern Attestation**

Contractor without access to personal identifying information. The Contractor represents and warrants that the Contractor does not have access granted by the Department to an individual's personal identifying information. In the event of and prior to receiving access to an individual's personal identifying information by the Contractor from the Department, the Contractor shall provide the Department with an affidavit signed by an officer or representative of the Contractor attesting under penalty of perjury that the Contractor does not meet any of the criteria in paragraphs (2)(a)-(c) of section [287.138](#), F.S.

**12. Additional Terms.**

None.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Scope of Work**

**ATTACHMENT 3**

**1. Scope of Services.** In accordance with the Department’s authority in section 258.004(1), F.S., the Contractor will be responsible for providing lifeguard services for Anastasia State Park for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp through the St. Johns County Marine Rescue. The Contractor will set up lifeguard stands as shown on the map appearing on the Anastasia State Park Lifeguard Services Map (page 3 of Attachment 3), traditionally the primary use area. One stand will be placed just south of the beach entrance ramp. The Contractor’s lifeguards may need to adjust the placement of the stand based on their experience of the tides and the number of visitors using the area.

The Contractor will recruit, train, employ, and staff Anastasia State Park with lifeguard services that are consistent with the standards established by the United States Lifesaving Association and St. Johns County. The Contractor will equip all lifeguard towers and patrol vehicles with rescue, medical, and communications equipment as specified by the minimum equipment standards promulgated by the United States Lifesaving Association.

From a pool of lifeguards, two (2) lifeguards, one being a Lifeguard III and the other being a Lifeguard II, will be assigned to Anastasia State Park for the operating hours of 10:00 a.m. to 6:00 p.m. local prevailing time. Lifeguard III will not work more than 10 hours a day and Lifeguard II will work no more than 8 hours a day. An individual lifeguard selected to work at Anastasia State Park will not be scheduled more than, nor work more than, forty (40) hours in a workweek. The performance period will start on the Friday before Memorial Day each year and will end on Labor Day.

The following schedule will be followed by the Contractor:

<b>Position</b>	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Total</b>
Lifeguard III	10	10	10	10	10	10	10	70
Lifeguard II	8	8	8	8	8	8	8	56
<b>Total Hours</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>126</b>

**2. Deliverables: Daily Operations:**

**A. Weekends & Holidays:**

- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicles will be on continuous patrol within the visual and /or communication range of beachfront staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

**B. Weekdays (excluding holidays):**



- One (1) Lifeguard III: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicles will be on continuous patrol within the visual and/or communication range of beach front staff.
- One (1) Lifeguard II: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

**3. Payment Schedule:**

Performance Period	Payment Amount	Invoice Due Date
May 24, 2024– June 30, 2024	\$20,021.88	July 8, 2024
July 1, 2024—September 2, 2024	\$34,852.64	September 30, 2024
Total:	\$54,874.52	

Each invoice will include documentation by timesheets or other auditable means of the total number of hours worked by each individual lifeguard for the billing period.

It is hereby understood and agreed by both parties that the Contractor will not be expected to provide lifeguard services in situations as described in **Force Majeure** of the Contract. The Contractor will submit a report documenting the dates in which lifeguard services were not provided due to the circumstances outlined above. In addition to the dates, the reason for the Contractor’s inability to provide the services must be documented. Documentation will be submitted with each invoice.

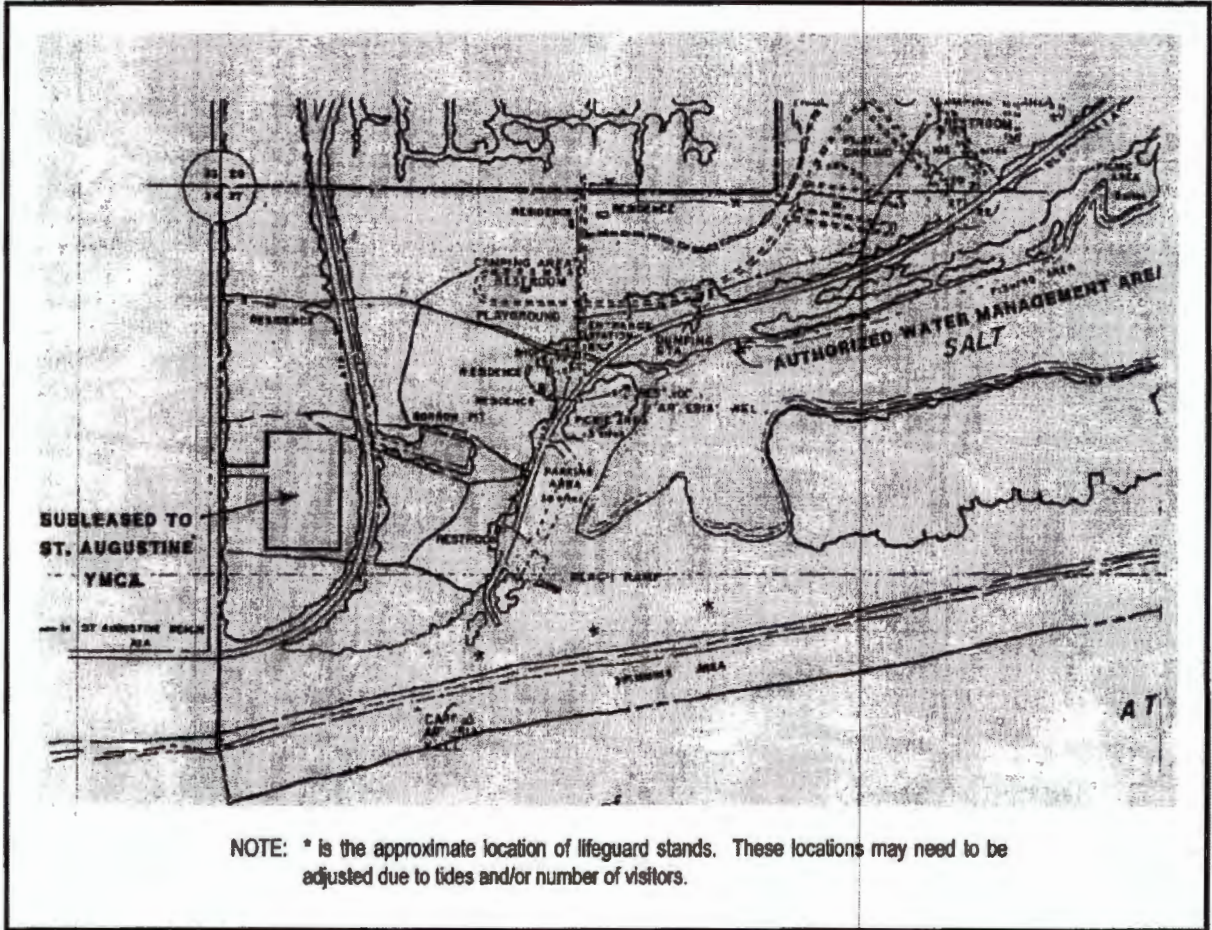
All equipment, products, or materials necessary to perform these services, or requirements will be supplied by the Contractor. The above payment schedule includes all personnel and incidental costs associated with the Contractor’s performance of the services described. No additional compensation will be provided.

**4. Reports**

- A. Monthly Reports: The Contractor will provide monthly reports to the Department’s Contract Manager, within five (5) days of completion of each calendar month, which summarizes the activities performed during the month. The report will include information on the number of citizen assists made and the nature of the assistance, the number of emergency actions taken and the nature of the emergency, and the beach closures occurring during the month and the reason for such closures.
- B. Final Report: The Contractor will submit a final report to the Department’s Contract Manager, documenting all lifeguard services and activities performed during the contract period. Documentation will be submitted with the final invoice specified above.



ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES MAP



-REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Public Records Requirements**

**ATTACHMENT 4**

**1. Public Records Access Requirements.**

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

**2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. 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 Public Records to the Department.
- e. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department 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 Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone: (850) 245-2118**

**Email: [Public.Services@FloridaDEP.gov](mailto:Public.Services@FloridaDEP.gov)**

**Mailing Address: Department of Environmental Protection**

**ATTN: Office of Ombudsman and Public Services**

**Public Records Request**

**3900 Commonwealth Boulevard, MS 49**

**Tallahassee, Florida 32399**