AGREEMENT BETWEEN CITY AND CONSULTANT SOLICITATION #R2013109/SVC-LOBBYIST/1314

(Hereinafter called CITY) and

Capitol Access 400 Capitol Circle SE, Suite 18116 Tallahassee, FL 32301 (850) 386-5267

(Hereinafter called CONSULTANT)

The Agreement Documents consist of this executed Agreement, the complete Solicitation Package, and CONSULTANT'S Submittal Package, and all documents that may be executed as a result of this executed agreement. City and CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

CONDITIONS OF WORK/PURCHASE: All work performed or purchases made shall be in accordance with the terms and conditions of this Agreement and any attachments hereto. No other conditions or modifications of these terms and conditions will be effective unless specifically agreed to in writing by the CITY's appropriate level of authority. Failure of CITY to object to provisions contained in any acknowledgment, document or other communications from CONSULTANT shall not be construed as a waiver of the Agreement's terms and conditions or an acceptance of any such provision.

This Agreement and any attachments hereto, constitute the complete and exclusive statement of the parties which supersedes all previous agreements, written or oral, and all communications between the parties relating to the subject matter hereof. This Agreement shall not be modified, supplemented, qualified or interpreted by any prior course of dealing between the parties or by any usage of trade. Only the CITY's appropriate Change Order Authority can make changes or modifications by issuance of an official change notice.

ARTICLE 1. - WORK

All work to be performed in accordance with the Agreement Documents, Exhibit A and shall be completed in a timely and professional manner. The Work under the Agreement Documents may be the whole or only a part is generally described as follows:

LOBBYIST

ARTICLE 2. - CITY STAFF RESPONSIBILITIES

CONTRACT MANAGER - The Procurement Manager or their designee, who is hereinafter referred to as CONTRACT MANAGER will assume all duties and responsibilities and will have the rights and authority assigned to ensure contract compliance and management of the Agreement.

CONTRACT ADMINISTRATOR — The Senior Purchasing Agent or their designee, who is hereinafter referred to as CONTRACT ADMINISTRATOR shall receive and/or be copied on all correspondence between the CITY and CONSULTANT for the project and is responsible for all records retention of Agreement correspondence.

ARTICLE 3. - TERM AGREEMENT

A. AGREEMENT TERM: This Agreement shall be for a three (3) year period, which shall commence on October 1, 2014. The CITY retains the right to renew this initial Agreement under the same terms and conditions upon mutual agreement with the Bidder. Agreement for commodities or contractual services may be renewed for a period that may not exceed 3 years, or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. A renewal contract may not include any compensation for costs associated with the renewal.

renewal. Renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.

- The CITY reserves the right to discontinue the contract in any year of a renewal period if it is deemed to be in the best interest of the CITY.
- B. NON-EXCLUSIVE AGREEMENT: No Guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open-end Agreement.
- C. APPROPRIATION OF FUNDS: If funds are not appropriated or otherwise made available to support continuation of this Agreement in any fiscal year, the CITY shall have the right to terminate the Agreement without any obligation or penalty.

ARTICLE 4. - CANCELLATION OF CONTRACT

- A. CANCELLATION CLAUSE: This Agreement may be terminated by CITY or the CONSULTANT should CONSULTANT or CITY fail to provide in any substantial manner the services and/or commodities required under this Agreement, or otherwise fails to comply with the terms of this Agreement or the Agreement Documents, or violates any ordinance, regulation or other law which applies to its performance under this Agreement. The CITY or the CONSULTANT may terminate this Agreement under this subparagraph by giving five (5) calendar days written notice. The CITY, at its option, may give CONSULTANT a reasonable period of time to cure the noncompliance.
- B. The CITY may terminate this Agreement for any reason and without cause by giving thirty (30) calendar days written notice to CONSULTANT. Upon such termination, CONSULTANT will be compensated for the value of the services performed and/or commodities delivered to the date of termination.
- C. DELAYS AND EXCUSED PERFORMANCE/FORCE MAJEURE. CONSULTANT shall not be considered in default by reason of failure, which arises out of causes reasonably beyond the CONSULTANT's control, and without its fault or negligence. Such causes may include, however, not limited to: Acts of God, the City's omissive and commissive failures, natural or public health emergencies, labor disputes, freight embargos.

<u> ARTICLE 5. – AGREEMENT PRICING</u>

A. FIXED PRICE TERM: CONSULTANT agrees to supply the CITY the services listed at firm delivered prices for the first year of the initial contract in the amount of \$3,750.00 per month, which is net of all expenses to perform services. The total annual cost for services shall not exceed \$45,000.00.

B. PRICE ADJUSTMENTS:

- 1. The CITY will allow one (1) price adjustment in the second year of the initial Agreement and one (1) price adjustment in the third year of the initial Agreement. It will be at the CITY's discretion to continue the second and/or the third year of the initial contract. However, additional consideration by the CITY may be given for extreme and unforeseen volatility in the marketplace as specified in section relating to "Equitable Adjustments".
- 2. Price adjustments during the second and third year of the initial Agreement will be allowed, but shall not exceed the Consumer Price Index (Urban Consumers) South Region percent of change for the past twelve (12) months immediately preceding the date of written request for price adjustment. This request will become effective thirty (30) days from the date the notice was received by the CONTRACT ADMINISTRATOR from the CONSULTANT for all purchases and services ordered after the effective date thirty (30) days from the CONTRACT ADMINISTRATOR receipt of request).
- 3. Equitable Adjustments: The CITY may, in its sole discretion, make an equitable adjustment in the Agreement terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the CONSULTANT'S control; (2) the volatility affects the marketplace or industry, not just the particular Agreement source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects the CONSULTANT that continued performance of the Agreement would result in a substantial loss. Any and all equitable adjustments may be considered temporary due to the reason for adjustment. All equitable adjustments will be evaluated by the CONTRACT ADMINISTRATOR to determine if the reason for

adjustment is still valid. If the reason for the adjustment is no longer valid, the CITY will terminate the adjustment and notify the CONSULTANT.

- The CITY reserves the right to negotiate the contract if the prices exceed the current marketplace.
- CONTRACT RENEWAL
 - a. Price adjustment, during the optional renewal period, will be allowed. However, the CITY will allow only one (1) adjustment for each year of the renewal period. Requirements for requesting a price adjustment shall be in accordance with the Price Adjustments section above and subject to CITY approval.
 - b. The CITY reserves the right to negotiate the contract if the prices exceed the current marketplace.

ARTICLE 6. - INVOICING/PAYMENT TERMS

- A. The payment terms agreed upon by the CTTY and CONSULTANT are Net 30. The method of payment is check.
- B. The City shall make payment on all invoices, after monthly services have been performed, in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes.
- C. INVOICES: Invoices shall bear upon their face the Purchase Order number and itemized in accordance with the Agreement's fee schedule. PRICE/SALES TAX: Unless otherwise specified herein, the unit prices herein do not include sales or use tax.

ARTICLE 7. - CHANGE ORDER TO CONTRACT

- A. All requests for changes to the resulting Agreement shall be made in writing and is subject to written acceptance by the appropriate level of City authority.
- B. The following the Change Order Authority Levels for the CITY.
 - 1. Procurement Manager the Procurement Manager may approve change orders in a singularly or cumulatively amount that does not exceed 25% of the total contract price with a maximum cap of fifty thousand dollars (\$50,000.00) with the exception of contracts requiring City Council's approval for an award. The Procurement Manager may authorize contract time extension in excess of five (5) days and non-monetary changes, which are not considered minor, which do not result in a change in the contract amount.
 - 2. City Manager the City Manager may approve all change orders with the exception of contracts that require the City Council's approval.
 - 3. City Council the City Council shall approve change orders for exemption contract that are reserved for City Council approval (i.e. Franchises, inter-local agreements, land, legal, auditing, actuarial services and medical director).
- C. The CONSULTANT fully understands the CITY's Change Order Policy. In the event the CONSULTANT begins work on unauthorized changes to scope prior to receiving a signed Change Order by the CITY's appropriate level of authority, they do so at their own expense and risk not being compensated by the CITY for performing unauthorized work.

ARTICLE 8. - INSURANCE REQUIREMENTS

The CONSULTANT, before commencing any work, shall provide insurance and furnish the City with a Certificate of Insurance as follows:

- THE CITY IS TO BE SPECIFICALLY INCLUDED AS AN ADDITIONAL INSURED (WITH REGARDS TO GENERAL LIABILITY).
- THE CITY SHALL BE NAMED AS CERTIFICATE HOLDER. PLEASE NOTE THAT THE CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:

City of Punta Gorda 326 W. Marion Avenue Punta Gorda, Florida 33950 No CITY Division, Department, Project name or individual name should appear on the Certificate. NO OTHER FORMAT WILL BE ACCEPTABLE.

- GENERALLY REQUIRED COVERAGE INCLUDES:
 - Business Auto Policy Not less than \$500,000 Per Occurrence; Combined Single Limit (CSL) for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-Owned Vehicles, and Employees Non-Ownership.
 - o Professional Liability Not less than \$2,000,000 Per Claim
 - Workers Compensation Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The coverage must include Employers' Liability with a minimum of \$100,000.00 for each accident.
 - Public Liability Insurance Bodily injury and property damage, Combined Single Limits (CSL) of \$1,000,000 minimum.

Should any of the policies be cancelled before the expiration thereof, notice will be delivered in accordance with the policy provisions. CONSULTANT shall provide notice to CITY at any time CONSULTANT becomes aware of any cancellation or material change in the above insurance policies.

ARTICLE 9. - CONSULTANT'S REPRESENTATIONS

- A. In order to induce City to enter into this Agreement, CONSULTANT makes the following representations and assurances:
 - 1. CONSULTANT shall be legal to conduct business within the State of Florida for the term of this Agreement. CONSULTANT shall hold and maintain current Business Tax Receipt for CONSULTANT's locality for the term of this Agreement. CONSULTANT shall hold and maintain current City of Punta Gorda Business Tax Receipt for the term of this contract IF their business if physically located within the city limits.
 - 2. CONSULTANT has familiarized himself with the nature and extent of the Contract Documents, Work, Locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
 - 3. CONSULTANT shall comply with all Federal, State and Local rules, policies and ordinance in the performance of their work and document management.
 - 4. CONSULTANT has given CONTRACT ADMINISTRATOR written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CONTRACT ADMINISTRATOR is acceptable to CONSULTANT.
 - 5. SUBCONSULTANTS Not authorized
 - 6. Equal Employment Opportunity Clause. CONSULTANT shall be in compliance with Executive Order 11426 Equal Opportunity as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations as applicable.
 - 7. Contract Work Hours/Safety Standards Act. CONSULTANT shall be in compliance with provisions of Section 103 and Section 107 of Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and as supplemented by the Department of Labor Regulations (Part V, 28CFR).
 - 8. SAFETY COMPLIANCE. It shall be the CONSULTANT'S sole responsibility to comply with all Local, State and Federal rules and regulations while performing work for the City.
 - 9. Competent Personnel. CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in this scope of work.

ARTICLE 10. - INDEMNIFICATION / LIMITS OF LIABILITY

A. <u>INDEMNIFICATION</u> The CONSULTANT shall be fully liable for the actions of its agents, employees, or partners and shall fully indemnify, defend, and hold harmless the CITY and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by CONSULTANT, its agents, employees, or partners, provided, however, that the CONSULTANT shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the CITY or a Customer.

Further, the CONSULTANT shall fully indemnify, defend, and hold harmless the CITY and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification or CONSULTANT's products or a Customer's operation or use of CONSULTANT's products in a manner not contemplated by the Agreement or the purchase order. If any product is the subject of an infringement suit or in the CONSULTANT's opinion is likely to become the subject of such a suit, the CONSULTANT may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the CONSULTANT is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the CONSULTANT shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The CONSULTANT's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the CITY or Customer giving the CONSULTANT (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at CONSULTANT's sole expense, and (3) assistance in defending the action at CONSULTANT's sole expense. The CONSULTANT shall not be liable for any cost, expense, or compromise incurred or made by the City or Customer in any legal action without the CONSULTANT's prior written consent, which shall not be unreasonably withheld.

B. LIMITATION OF LIABILITY. For all claims against the CONSULTANT under any individual purchase order, and regardless of the basis on which the claim is made, the CONSULTANT's liability under this Agreement for direct damages shall be limited to the greater of \$25,000, or the dollar amount of the purchase order, or two times the charges rendered by the CONSULTANT under this Agreement. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement.

Unless otherwise specifically enumerated in the Agreement or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase order requires the CONSULTANT to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The CITY and Customer may, in addition to other remedies available to them at law or equity and upon notice to the CONSULTANT, retain such monies from amounts due the CONSULTANT as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The CITY may set off any liability or other obligation of the CONSULTANT or its affiliates to the CITY against any payments due the CONSULTANT under any contract with the CITY.

ARTICLE 11. - MISCELLANEOUS

A. PUBLIC RECORDS COMPLIANCE

- CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH FLORIDA STATUTE 119 AND 119.0701
 - Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
 - b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in chapter 119.07 or as otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - d. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the CONSULTANT upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All

- records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
- e. Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement.
- B. CITY'S RIGHT TO AUDIT. The CITY reserves the right to audit the CONSULTANT's records throughout the term of the Agreement and in accordance with Public Records requirement established for the retention period.
- C. AUDIT DISALLOWANCES. If at any time the CITY determines that a cost for which payment has been made is a disallowed cost, such as overpayment, CITY shall notify the CONSULTANT in writing of the disallowance. CITY shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the CONSULTANT by the amount of the disallowance, or to require repayment of the disallowed amount by the CONSULTANT.

D. SETTLEMENT OF DISPUTES

- 2. Any dispute concerning a question of fact arising under this Agreement that is not resolved by the Agreement shall be decided by the CONTRACT MANAGER, who may consider any written or verbal evidence submitted by the CONSULTANT. The decision of the CONTRACT MANAGER, issued in writing, shall be the final decision of the CITY.
- 3. Neither the pendency of a dispute nor its consideration by the CONTRACT MANAGER will excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.
- E. No assignment by a party hereto of any rights under or interests in the Agreement Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.
- F. JURISDICTION AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Florida, and the parties hereto agree that venue shall be in Charlotte County, Florida.
- G. ATTORNEY'S FEES. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses.
- H. CTTY and CONSULTANT each binds himself/herself, his/her partners, successors, assigns and legal representatives to the other party hereto, his/her partners successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Agreement Documents. No assignment by a party hereto of any rights under or interests in the Agreement Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.
- I. The CITY and the CONSULTANT agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the previous terms and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed in full concurrence by the parties thereto.

IN WITNESS WHEREOF, the undersigned signatories declare they are authorized to enter into this Agreement and sign on behalf of their respective party. All portions of the Agreement Documents have been acknowledged by CONTRACTOR and CITY. The parties hereto have signed this Agreement in duplicate. One counterpart each has been delivered to CITY and CONTRACTOR.

Kristi Z. Paul
Witness

Address for giving Notices:

By:

Frint Name:

JERRY PAU

400 Capitol Circle SE, Suite 18116
Tallahassee, FL 32310

Date:

9/8/14

Cours mate

Witness

Address for giving Notices: Procurement Office 326 W. Marion Avenue Punta Gorda, FL 33950 **CITY OF PUNTA GORDA**

By: Certify

Print Name: Hachel Heesling

Date: 9/17/2014

CONTRACTOR - CAPITOL ACCESS

Exhibit A to Agreement R2013109

1) SCOPE OF SERVICES

- a) Tasks/Deliverables
 - Item Specific Lobbying, when applicable.
 - ii) Development of legislative priorities packet including City of Punta Gorda's goals, interests, and specific projects that can be addressed at the state level.
 - iii) Monitor legislation and budget process and provide a weekly written communication to the City Council, City Manager and City Attorney on any actions that may directly or indirectly impact the City of Punta Gorda.
 - iv) Facilitate and coordinate meetings with policymakers in the executive branches of Florida government, with legislators, with leaders of interest groups with similar policy objectives, and with other key opinion makers.
 - v) Advise when City representatives may be required in person in Tallahassee to address issues of particular interest to the City and prepare backup information for these sessions.
 - vi) Advise and inform members of the legislature and their staff of City priorities and objectives.
 - vii) Monitor and advocate City of Punta Gorda's interests before state agencies.
 - viii) Monitor and advise on state grant opportunities and coordinate with City's grants management staff.
 - ix) Assist in the development, preparation and management of state appropriations requests and any necessary forms.
 - x) Provide a written legislative session wrap-up presented orally before the City Council, summarizing legislative activity and the effect that approved legislation will have on Punta Gorda,
 - xi) Pertinent duties and actions with state relations as required.

b)
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	Appropriations/Project funding		City Revenue/Expenditure Issues
	Transportation Issues/Transit funding		Environmental Issues/Permitting
	Human Services Issues/funding		Building Code/Construction/Permitting issues
	Economic Development		Green Initiatives
	Public Works – General/funding		Water & Wastewater projects
	Tourism		Home Rule Authority Protection
	Housing & Community Development		Telecommunications/Service Taxes
	Unfunded Mandates		Solid Waste/Recycling/Waste to Energy
	Growth Management/ Planning & Zoning	П	Emergency Management/ Disaster Mitigation
	Public Safety Issues	\Box	Parks & Recreation
	Energy Issues/funding		Local Bills
П	Item specific requests	berned	addi sing



CITY OF PUNTA GORDA PROCUREMENT DIVISION

326 West Marion Avenue Punta Gorda, FL 33950 (941) 575-3366 Fax (941)575-3340

CENTRAL WAREHOUSE - (941)575-5077 Fax (941)575-5068

Website: www.ci.punta-gorda.fl.us Email: pgpurch@pgorda.us

** PURCHASE ORDER/TERM CONT **

Vendor #: 11730

To: CAPITOL ENERGY FLORIDA S D/B/A CAPIOL ACCESS 400 CAPITAL CIRCLE SE **SUITE 18116** TALLAHASSEE, FL 32301-3

INVOICE TO:

CITY OF PUNTA GORDA FINANCE DEPARTMENT

326 W. Marion Ave. Punta Gorda, FL 33950

Ship To: CITY OF PUNTA GORDA SEE SHIPPING DIRECTIONS BELOW, IF APPLICABLE PUNTA GORDA, FL 33950

PAGE:

CHANGE #:

DATE: 10/14/14

DATE CHANGE:

Purchase Order # 046264

Deliver By: 09/30/15		Ship Via: F.O.B.			Confirm By:				
			VICTORIA DE LA COMP	R2013109/SVC-LOBBYIST/131					
Terms: NET/30		Account Number:		Project:	R	EQ#: Co		nfirm To:	
Line	Quantity	Description				Unit Price Ext Price			
1	12.00 МТН	This PO is issue response to the The monthly cost materials and in assigned by the LOBBYIST SERVICE REMARKS: ALL OTHER TERMS THE CONTEXT OF TI RESPONSE TO SAME	City's RFP R201 shall be inclu cidentals to co City. S AS DIRECTED B AND CONDITIONS	3109. sive of all mplete all s Y THE CITY	labor, services	3 SUB-T TOTAL	750.0000 OTAL	45000.00 45000.00 45000.00	
RE	Q/ACCT	DATE REQ. BY		PROJECT	AMOUNT				
00	00054704 09	25/14 1415 MHP			22500.00				
00		25/14 1415 MHP	'DD		22500.00				

NOTES: Federal I.D. Number is required for payment. Mail two (2) invoices to the "Invoice to" address above Above Purchase Order Number is to be referenced on all Documents City Tax Exemption No. 85-8012621674C-0 Vendor Federal I.D. #

Authorized Signature

