

This **Contract No. 2022-23** ("Contract"), is entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida ("City") and Gale Construction Company of Illinois, a foreign business organization registered to do business in the State of Florida, whose principal place of business is 51 W. Jackson Street, Suite 230, Joliet Illinois 60432 ("Contractor").

WITNESSETH

NOW THEREFORE, in consideration of the mutual covenants specified herein, and for other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the Parties agree as follows:

1. CONTRACT TIME.

- A. Effective Date. This Contract becomes effective on the date the last party signs it ("Effective Date") and terminates upon the completion of the work or as otherwise provided in this Contract.
- B. Time is of the Essence. Following the Effective Date of this Contract, the Contractor specifically agrees that it will commence operations within a mutually agreed upon time following notification by the City to commence work ("notice to proceed"), and that all work performed under the provisions of this Contract must be completed in not more than **five hundred forty (540) calendar days** from the notice to proceed; subject only to delays caused through no fault of the Contractor or acts of God; and the work must be substantially completed within **five hundred ten (510) calendar days** from the notice to proceed, with final completion within **thirty (30) calendar days** after attaining Substantial Completion or after delivery to the Contractor of the punch list of items for final completion, whichever is later ("Contract Time"). Contract Time may be extended due to unforeseen circumstances or unknown site conditions that alter the scope of work only as agreed to in writing by both parties and incorporated into the Contract as a change order or amendment. Time is of the essence in the performance of this Contract.
- C. Process for Completion.
 - (1) Substantial Completion. Fourteen (14) calendar days prior to the expiration of the time for Substantial Completion, the Contractor must deliver to the City the record drawings, and all other submittals required in the Contract. After delivery, the City will review the work identified in the Contract, the record drawings, and other submittals, excluding pay requests.
 - (2) Notice. The City must issue a Notice of Substantial Completion when the City has determined that the work identified in this Contract is substantially complete, and the record drawings are submitted and approved by the City.
 - (3) Punch List Development and Contractor's Response. After Notice of Substantial Completion, the City will develop the final punch list within thirty (30) calendar.
 - (4) Punch List Content. The punch list must identify the remaining items required to render the construction services complete, satisfactory, and acceptable to the City and for the Contractor to meet its obligations under this Contract.

- (5) Delivery of Punch List. The City will provide the Contractor with a punch list and related questions. The Contractor must respond to all questions from the City. In not more than five (5) business days after the Contractor responds, the City will deliver the final punch list.
- (6) Final Completion. The Contractor must complete the items on the punch list to the satisfaction of the City within the Contract Time for final completion required in Section 1.B. above, and prior to submittal of the application for reduction of retainage or final payment. Any cost incurred by the City (i.e. inspection time) after the Contract Time for final completion must be charged to the Contractor.

2. CONTRACT PRICE.

The Contract price is **One Million Nine Hundred Eight Thousand Eight Hundred Twelve Dollars and Seven Cents (\$1,908,812.07)**.

3. RESPONSIBILITIES OF THE CONTRACTOR.

A. Scope and Incorporation of Bid Documents. The work includes the construction of the Myakkahatchee Creek Greenway Trail as described in the Request for Bid No. 2022-23 including plans, drawings, specifications, addenda, permits, drawings, diagrams and other related documents, and the Contractor's response to the RFB; are specifically made a part of this Contract ("Contract Documents") and are incorporated by reference. In the event of a conflict between or among the documents or any ambiguity or missing specifications or instruction, the following priority is established:

- (1) This Contract No. 2022-23 approved by the City Commission, and any attachments.
- (2) The RFB, including all attachments and addenda.
- (3) Contractor's response to the solicitation.
- (4) Specific direction from the City Manager.

B. Supervision.

- (1) The Contractor must supervise and direct all work performed pursuant to this Contract to the best of its ability, give it all the attention necessary for proper supervision and direction, and not employ for work on the project any person without sufficient skill to perform the job assigned by the Contractor.
- (2) The Contractor assumes full responsibility for all acts, negligence, or omissions of its employees, for those subcontractors and their employees, and for those of all other persons doing work under a contract with Contractor in furtherance of this Contract. All contracts between the Contractor and any subcontractor that the Contractor hires, must conform to the provisions of this Contract and the RFB. The Contractor must incorporate the requirements of this Contract in the subcontracts.

C. Labor and Materials.

- (1) The Contractor must provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, all transportation and all other facilities and services necessary for the proper completion of the work to be performed in furtherance of this Contract in strict conformity with the provisions of this Contract, the RFB, and the Contractor's response to the solicitation on file with the City.
- (2) The Contractor represents and warrants to the City that all equipment and materials used in the work, and made a part of the structures, or permanently placed in connection with the work, must be new unless otherwise specified in this Contract or related bid documents, must be of good quality, free of defects, and in conformity with this Contract and related bid documents. The Contractor and the City agree that all equipment and materials not in conformity with this Contract are defective.

D. Public Records Law. In accordance with Florida Statutes Section 119.0701, Contractor must comply with all public records laws, and shall specifically:

- (1) Keep and maintain public records required by the City to perform the service.
 - (a) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.
(See <http://dos.state.fl.us/library-archives/records-management/general-records-schedules/>)
 - (b) "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during the term and in furtherance of this Contract.
- (2) Upon request from the City's custodian of public records, provide the City, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (3) Ensure that project 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, if the Contractor does not transfer the records to the City following completion of the Contract, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.

- (4) Upon completion of the Contract, transfer, at no cost, to the City all public records in Contractor's possession or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor must 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 the completion of the Contract, the Contractor must comply with all applicable requirements for retaining public records.
- (5) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, 941.429.7063 OR HOTLINE 941.429.7270; E-MAIL: publicrecordsrequest@cityofnorthport.com.**
- (6) Failure of the Contractor to comply with these requirements constitutes a breach of this Contract. Further, Contractor may be subject to penalties under Florida Statutes Section 119.10.
- E. Contractor's Affidavit. When all work contemplated by this Contract has been completed and has been inspected and approved by the City or its duly authorized agent, the Contractor must furnish the City with a Contractor's Affidavit in a form acceptable to the City. Signed affidavits of payment are required from all subcontractors hired by the Contractor, unless payment is approved by the surety in accordance with Florida Statutes Section 255.05(11). The affidavits must state whether the subcontractor(s) have been paid in full or whether there are payments remaining. A list of all subcontractors must be furnished to the City prior to any payments against the Contract.
- F. Subcontractors and Suppliers. Contractor must furnish the City with a list of all subcontractors and suppliers prior to any payments against the Contract. All subcontractors are subject to City approval. No change in subcontractors or suppliers shall be made without written consent and approval from the City. All subcontractors shall comply with Florida Statutes Section 448.095 for registration and use of the E-Verify system operated by the United States Department of Homeland Security.
- G. Licenses and Permits/Laws and Regulations. The Contractor must pay all taxes required by law in connection with the activities done in furtherance of this Contract including sales, use, and similar taxes, and unless mutually agreed to in writing to the contrary must secure all licenses and permits necessary for proper completion of the work, and paying any fees, therefore. Violation of any local, state, or federal law in the performance of this Contract shall constitute a breach of this Contract. The Contractor must comply with all laws, ordinances, rules, regulations, and orders of all public authorities relating to the performance of the work required. If any of the Contract documents are at variance therewith, the Contractor must notify the City promptly on the discovery of the variance.

- H. E-Verify System. Upon entering into this Contract, the Contractor must be registered with and must continue during the term of this Contract to use the Department of Homeland Security E-Verify System as required by Florida Statutes Section 448.095, Employment Eligibility, including but not limited to, verifying the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting 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.

4. PAYMENT.

- A. Form and Documents Required. The Contractor must submit one (1) original request for payment to the City on a City approved form. Each pay request must be accompanied by an updated work schedule to reflect the progress of all work. Payment requests must be accompanied by either written approval and direction of the surety, or receipt of updated affidavits of payment by subcontractors and/or suppliers, in accordance with Florida Statutes Section 255.05(11).
- B. Payment of Invoices. Contract price is net, and all invoices must be payable according to the Florida Local Government Prompt Payment Act (Florida Statutes Section 218.70, *et seq.*). Upon certification and approval by the City or its duly authorized agent, progress payments may be made to the Contractor upon its application for all services or work completed or materials furnished in accordance with this Contract.
- C. Retainage. The Contractor will be paid monthly the total value of the work completed and accepted during the preceding month, less five percent (5%) retainage. The City must inform the Contractor's Surety of any reduction in retainage.
- D. Final Payment. Contractor must update each new pay request in accordance with any changes made to the previous submittal. City approval is required before making final payment for all work, materials, or services furnished under this Contract. Retainage may be reduced upon issuance of the Certificate of Substantial Completion by the City if, in the sole opinion of the City, sufficient progress on the schedule has been accomplished, all required affidavits have been provided, and the City has retained adequate coverage for the project through the achievement of Final Completion.

5. LIQUIDATED DAMAGES.

- A. Generally. The work performed pursuant to this Contract must be completed within the Contract Time specified. The Contract Time includes the preparation, submittal, review, and approval of submittals, delivery of materials, and construction, assembly, adjustment, and placement into service for beneficial use of all facilities covered under this Contract.
- B. Amount. The City and the Contractor agree that the City will suffer damages if the work is not substantially completed within the Contract Time, plus any extensions thereof allowed by Change Order(s). It is further recognized and agreed by the City and the Contractor that the determination of the exact value of the damages the City would suffer due to a delay in the Substantial Completion of the work would be a difficult, time consuming, and a costly process. It is therefore agreed by the City and the Contractor that it is in their mutual interest to establish a figure of **ONE THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS (\$1,694.00)** as

Liquidated Damages (but not as a penalty) to be paid by the Contractor to the City for each calendar day that Substantial Completion is delayed beyond the Contract Time.

- C. Adjustments prohibited. It is mutually agreed by the City and the Contractor that neither will make any claim to increase or reduce the amount to be paid under Liquidated Damages as the result of any calculation of actual damages suffered by the City as the result of delay in the Substantial Completion of the work.

6. BOND REQUIREMENTS.

A. Security.

- (1) The Contractor must provide the required performance and payment bond or other acceptable security to the City within **ten (10)** business days of executing this Contract. Failure by the Contractor to provide the bond within **ten (10)** business days constitutes a default. Pursuant to Section 2-404 of the Code of City of North Port, Florida, upon such default the City may immediately award the bid to the next lowest responsive and responsible bidder and recover from the original successful bidder the difference in cost between the original winning bid and the next lowest responsive and responsible bidder. The default is only curable at the option of the City.
- (2) In addition, the Contractor is responsible and bears all cost associated with recording the Performance and Payment Bond with the Sarasota County Clerk's Office. The Contractor must furnish the receipt of the recording and certified copy of the recorded bond to the Purchasing Department at the time of the pre-construction meeting. The default is only curable at the option of the City.

- B. Performance and Payment Bond. The Contractor must provide a Performance and Payment Bond, in the form prescribed in Florida Statutes Section 255.05, in the amount of one hundred percent (100%) of the Contract price, the costs of which are to be paid by the Contractor. The bond must be acceptable to the City only if the Surety Company:

- (1) Is licensed to do business in the State of Florida;
- (2) Holds a certificate of authority authorizing it to write surety bonds in the State of Florida;
- (3) Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
- (4) Is otherwise in compliance with the provisions of the Florida Insurance Code;
- (5) Holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. §§ 9304-9308;

(6) Has a current rating of at least Excellent (A or A-) as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., of 75 Fulton Street, New York, New York 10038; and

(7) Has an underwriting limitation of at least two times the dollar amount of this Contract.

C. Substitute Bond Required. If the Surety Company for any bond furnished by the Contractor files for bankruptcy, has a receiver appointed, is declared bankrupt, becomes insolvent, has an assignment made for the benefit of creditors, has its right to do business terminated in the State of Florida, or ceases to meet the requirements imposed by this Contract, the Contractor must, within **five (5)** calendar days thereafter, substitute another Bond and Surety Company, both of which are subject to the City's approval.

D. Surety Acceptance of Terms. By execution of the bond, the Surety Company acknowledges that it has read the surety qualifications and surety obligations imposed by this Contract and satisfies all conditions.

7. CONTRACTOR'S INSURANCE.

A. Insurance.

(1) Before performing any work pursuant to this Contract, the Contractor must procure and maintain, during the life of this Contract, the insurance listed below against all claims of injury to persons or damage to property which may arise from or in connection with its performance of the Contract work, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Florida Department of Financial Services, and meet a minimum financial A.M. Best and Company, Inc. rating of no less than "A - Excellent: FSC VII." No changes can be made to these specifications without prior written approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon agreement with the Contractor. The insurance policies must remain in place until all of the Contractor's and subcontractor(s)' obligations and warranty periods in place pursuant to this Contract have been discharged or satisfied.

(2) The below insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work done pursuant to this Contract by the Contractor, its agents, representatives, employees, or subcontractors. Contractor is free to purchase additional insurance as it may determine necessary. The extent of Contractor's liability for indemnity of the City shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Contractor and its carrier.

B. Workers' Compensation and Employers' Liability Insurance. Coverage pursuant to Florida Statutes, Chapter 440 must apply to all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 for each accident;

\$1,000,000 each employee; and \$1,000,000 policy limit for bodily injury or disease. Proof of insurance must be filed by the Contractor with the City within **ten (10)** days after the Effective Date of this Contract.

- C. Comprehensive Commercial General Liability Insurance. The Contractor must procure and maintain, and require all subcontractors to procure and maintain, during the life of this Contract, a comprehensive commercial general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit must apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.

The policy must include General Liability with a limit of \$1,000,000 for General Aggregate; \$1,000,000 for each occurrence; \$1,000,000 for Products and Completed Operations; \$100,000 for damage to rented premises; and \$100,000 for Fire Damage. Proof of insurance must be filed by the Contractor with the City within **ten (10)** days after the Effective Date of this Contract.

- D. Automobile Liability Insurance. The Contractor must procure and maintain, and require all subcontractors to procure and maintain, during the life of this Contract, automobile liability insurance to include all owned, leased, hired, and non-owned vehicles. Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos.

The policy must include liability insurance with a limit of \$1,000,000 for Combined Single Limit (CSL) for each accident; \$1,000,000 per person for Bodily Injury; \$1,000,000 per accident for Bodily Injury; and \$1,000,000 per accident for Property Damage. Proof of insurance must be filed by the Contractor with the City within **ten (10)** days after the Effective Date of this Contract.

- E. Other Insurance Required. The Contractor must procure and maintain coverage for the items designated as follows:

[] Builder's Risk Insurance for the Course of Construction or Installation Floater Insurance. The policy must include the "All Risk" (Special Perils) coverage with limits equal to the completed value of the project; and must not include coinsurance penalty provisions.

[] Contractor's Pollution Legal Liability for projects involving environmental hazards. The policy must include liability insurance with a limit of [\$1,000,000] for each occurrence or claim and [\$2,000,000] for Policy Aggregate.

- F. Waiver of Subrogation. All required insurance policies, except for Workers' Compensation, are to be endorsed with a Waiver of Subrogation. The insurance companies, by proper endorsement or through other means, must agree to waive all rights of subrogation against the City, its Commissioners, officers, officials, employees, volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the Contractor for the City. It is the Contractor's responsibility to notify its insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. **ADDITIONALLY, THE CONTRACTOR, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, VOLUNTEERS, AND ANY SUBCONTRACTORS, AGREE TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY AND ITS INSURANCE CARRIERS FOR ANY LOSSES PAID, SUSTAINED, OR**

INCURRED, BUT NOT COVERED BY INSURANCE, THAT ARISE FROM THE CONTRACTUAL RELATIONSHIP OR WORK PERFORMED. THIS WAIVER APPLIES TO ANY DEDUCTIBLES OR SELF-INSURED RETENTIONS FOR WHICH THE CONTRACTOR OR ITS AGENTS MAY BE RESPONSIBLE.

G. Policy Form.

- (1) All policies required by this Contract, except for Workers' Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Division, are to be written on an occurrence basis, and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Contract. Claims Made Policies may be accepted for professional liability, hazardous materials and other risks as are authorized by the City's Purchasing Division. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein must have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, Contractor must purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- (2) Insurance requirements itemized in this Contract, and required of the Contractor, must be provided by or on behalf of all subcontractors to cover their operations performed under this Contract. The Contractor is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to its subcontractors.
- (3) Each insurance policy required by this Contract must:
 - (a) Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - (b) Be endorsed to state that coverage must not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Contractor is to notify the City's Purchasing Division of any occurrence by written notice via certified mail, return receipt requested.
- (4) The City retains the right to review, at any time, coverage, form, and amount of insurance.
- (5) The Contractor is solely responsible for payment of all premiums for insurance required in this Contract and is solely responsible for the payment of all deductibles, SIR (self-insured retentions), any loss or portion of any loss that is not covered by any available insurance policy, and retention as set forth in the policies, whether the City is an insured under the policy. Contractor's insurance is considered primary for any loss, regardless of any insurance maintained by the City.
- (6) All certificates of insurance must be on file with and approved by the City before commencement of any work done pursuant to this Contract. All required certificates of insurance must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of Insurance evidencing Claims Made or Occurrences form coverage

and conditions to this Contract, as well as the contract number and description of work, are to be furnished to the City's Purchasing Division at 4970 City Hall Boulevard, Suite 337, North Port, FL 34286 prior to commencement of the work and a minimum of **thirty (30)** calendar days prior to expiration of the insurance contract when applicable. All insurance certificates must be received by the City's Purchasing Division before the Contractor commences or continue work. The certificate of insurance issued by the underwriting department of the insurance carrier must certify compliance with the insurance requirements of this Contract.

- (7) Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed pursuant to this Contract must be provided to Contractor's insurer(s) and the City's Purchasing Division as soon as practicable after notice to the insured Contractor.

8. INDEMNITY.

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONTRACTOR ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER THE FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF THE CONTRACTOR, OR CONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS, SUB-CONTRACTORS, SUB-CONSULTANTS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONTRACTOR IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THIS CONTRACT. THE CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.
- B. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONTRACTOR MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST PROMPTLY NOTIFY THE CONTRACTOR IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (FEDERAL EXPRESS, UPS, USPS OR OTHERS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS CONTRACT.
- C. THIS CONTRACT FOR INDEMNIFICATION SURVIVES TERMINATION OR COMPLETION OF THIS CONTRACT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS CONTRACT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND THE INSURANCE COVERAGE MUST NOT BE DEEMED A LIMITATION ON THE CONTRACTOR'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES, AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- D. THIS CONTRACT MUST NOT BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES SECTION 768.28.
- E. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS CONTRACT.

- F. FURTHER, THE CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA, 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.

9. TERMINATION.

- A. Termination with or without Cause. The City Manager may terminate the work under this Contract with or without cause, in whole or in part, whenever the City Manager determines that termination is in the City's best interest. Any termination must be effective by delivery to the Contractor of a written notice of termination at least thirty (30) calendar days before the date of termination, specifying the extent to which performance of the work is terminated and the date upon which the termination becomes effective. Except as otherwise directed, the Contractor must cease all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims. Contractor must deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Contractor in connection with its services. After delivery of the documents, the City must pay the Contractor in full settlement of all claims by it hereunder as the work actually completed bears to the entire work under this Contract, as determined by the City, less payments already made to the Contractor, and any amounts withheld by the City to settle claims against or to pay indebtedness of the Contractor in accordance with the provisions of this Contract. The City has no obligation under any circumstances to make any payment to Contractor for services that have not been performed or that are performed after the termination date.
- B. Termination for Non-Appropriation. The parties acknowledge and agree that the obligations of the City to fulfill financial obligations of any kind pursuant to all provisions of this Contract, or any subsequent contract entered pursuant to this Contract, or referenced when the City is a party, are subject to the provisions of Florida Statutes Section 166.241, as amended, regardless of whether a particular obligation has been expressly so conditioned. Since funds are appropriated annually by the City Commission on a fiscal year basis, the City's legal liability for the payment of any costs must not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission; nor will liability arise if a request for the appropriations is excluded from the budget approved by the City Commission. Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of the City must have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by the City under this Section. This Contract does not constitute an indebtedness of the City nor an obligation of the City to levy or pledge any form of taxation nor an obligation for which the City has levied or pledged any form of taxation.
- C. Termination for Abandonment. If the Contractor abandons performance under this Contract, the City Manager or designee may terminate this Contract upon three (3) calendar days' written notice to the Contractor indicating the intention to do so. The written notice must state the evidence indicating the Contractor's abandonment.

- D. Contractor's termination. The Contractor may terminate this Contract only in the event of the City failing to pay the Contractor's properly documented and submitted invoice within ninety (90) calendar days of the approval by the City's Administrative Agent, or if the project is suspended by the City for a period greater than ninety (90) calendar days.
- E. Court proceedings. The City Manager or designee reserves the right to terminate this Contract in the event the Contractor is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Contractor, or an assignment is made for the benefit of creditors.
- F. Breach. In the event Contractor is in breach of this Contract, the City must provide written notice of the breach and Contractor shall have ten (10) calendar days from the date the notice is provided to cure. If the Contractor fails to cure within the ten (10) calendar days, the City Manager or designee can immediately terminate the Contract and/or refuse to make any additional payment, in whole or in part, and if necessary, may demand the return of a portion or the entire amount previously paid to Contractor due to:
- (1) The quality of a portion or all of the Contractor's work not being in accordance with the requirements of this Contract;
 - (2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
 - (3) The Contractor's rate of progress is, in the City's opinion, whether substantial or final completion, or both, inexcusably delayed;
 - (4) The Contractor's failure to use Contract funds, previously paid the Contractor by the City, to pay Contractor's project related obligations including, but not limited to, subcontractors, laborers, and material and equipment suppliers;
 - (5) Claims made, or likely to be made, against the City or its property;
 - (6) Loss caused by the Contractor;
 - (7) The Contractor's failure or refusal to perform any of the obligations to the City, after written notice and a reasonable opportunity to cure, as set forth above; or
 - (8) Violation of any local, state, or federal law in the performance of this Contract constitutes a breach of this Contract.
- G. Payment adjustments. If the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Section, the Contractor must promptly comply with the demand. The City's rights hereunder survive the term of this Contract and are not waived by final payment and/or acceptance.
- H. E-Verify Violation. If the City has a good faith belief that the Contractor has knowingly violated Florida Statutes Section 448.09(1), then this Contract may be terminated by the City. If the City has a good faith belief that a subcontractor has knowingly violated Florida Statutes Section 448.09(1) but the Contractor has otherwise complied, then the City will promptly notify the

Contractor and order the Contractor to immediately terminate this Contract with the subcontractor. Any challenge to termination of this Contract under this Section must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor must not be awarded a public contract for a period of one (1) year after the date of termination and must be liable for any additional costs incurred by the City and resulting from the termination of this Contract.

- I. Remedies. In the event of a default or breach of this Contract terms, the City may avail itself of every remedy specifically given to it now existing at law or in equity, and every remedy must be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in the order as may be deemed expedient by the City. The exercise, or the beginning of the exercise, of one remedy must not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies as set forth in this Contract are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

10. EQUAL EMPLOYMENT OPPORTUNITY.

The City of North Port, Florida, consistent with the provisions of Title VII of the Civil Rights Act of 1964 ("Title VII") and the regulations issued pursuant to Title VII and Florida Statutes Section 287.09451, states that in any contract entered into pursuant to the advertisement, minority business enterprises will be afforded full opportunity to submit replies in response to the advertisement and will not be discriminated against on the ground of race, color or national origin in consideration for an award.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates written below.

(Space Intentionally Left Blank. Signatures on Next Page)

CONTRACTOR
GALE CONSTRUCTION COMPANY OF ILLINOIS

By: *Laura J. Payer*
SIGNATURE

Laura J. Payer, President
PRINT NAME AND TITLE

Date: May 23, 2022

ACKNOWLEDGEMENT

STATE OF IL
COUNTY OF Will

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 23 day of May, 2022, by Laura Payer (name), as President (title) for Gale Construction Company of Illinois.

Kayleigh Cimaroni
Notary Public

Personally Known OR Produced Identification
Type of Identification Produced _____



Approved by the City Commission of the City of North Port, Florida on _____, 2022.

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER TAYLOR, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY