

This **Contract No. 2022-18** ("Contract") is entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida "City" and D.B.E. Management, LLC, dba DBE Utility Services, a Limited Liability Company registered to do business in the State of Florida, whose principal place of business is 13387 Bryan Road, Loxahatchee, Florida 33470 ("Contractor").

WITNESSETH

NOW THEREFORE, in consideration of the mutual covenants contained 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 (the "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 **three hundred sixty-five (365) 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 **three hundred thirty-five (335) 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 days**.
 - (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 **Two Million Thirty Thousand Seventy-Five Dollars and Zero Cents (\$2,030,075.00)**.

3. RESPONSIBILITIES OF THE CONTRACTOR.

A. Scope and Incorporation of Bid Documents. The work includes the construction of Toledo Blade Boulevard Utility Extensions as described in the Request for Bid No. 2022-18 ("RFB"), 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. 2022-18 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 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 the 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 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 meet 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 will be made without written consent and approval from the City. All subcontractors shall comply with Florida Statute 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 constitutes 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 must 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 **Nine Hundred Ninety Dollars (\$990.00)** 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 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. Such 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 the Contract price.
- 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 must 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) calendar 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 must 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) calendar 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 such insurance must be filed by the Contractor with the City within **ten (10) calendar days** after the Effective Date of this Contract.

- E. Environmental/Pollution Liability. Environmental/Pollution liability coverage is required if chemicals are being used that are listed as hazardous on www.epa.gov website. In the event that hazardous chemicals are to be used, Contractor must provide an Environmental/Pollution Liability policy in an amount of:

- General Aggregate \$3,000,000
- Each Occurrence \$1,000,000

Contractor must notify the City prior to usage of hazardous chemicals so that adequate insurance coverage is provided prior to usage of such chemicals. Failure to notify City will be deemed a breach of this Contract.

- 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 such other risks as are authorized by the City's Purchasing Division. All Claims Made Policies contributing to the satisfaction of the insurance requirements 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 continues 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. THIS 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 MUST 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 MUST 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.

G. THE CONTRACTOR/SUBCONTRACTOR/CONSULTANT/SUBCONSULTANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY AND ALL OF ITS OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DEMANDS, LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF, BECAUSE OF, OR DUE TO ANY NEGLIGENT ACT OR OCCURRENCE OF OMISSION OR COMMISSION OF THE CONTRACTOR/SUBCONTRACTOR/CONSULTANT/SUBCONSULTANT, ITS OFFICERS, AGENTS OR EMPLOYEES.

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 materials, services, or facilities except as necessary for completion of the 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 the 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 circumstance to make any payment to Contractor for services that have not been performed or that are performed after the termination date.

B. Termination for Convenience. The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Contract is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Contract through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that Contractor has received good, valuable, and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Contract for convenience. Contractor will not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- C. 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' will not have legal liability for the payment of any costs 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 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.
- D. 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.
- E. 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 Manager or designee, or if the project is suspended by the City for a period greater than ninety **(90) calendar days**.
- F. 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.
- G. 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.
- H. 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.
- I. E-Verify Violation. If the City has a good faith belief that the Contractor has knowingly violated Florida Statute 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 Statute Section 448.09(1), but the Contractor has otherwise complied, then the City must 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.
- J. 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 is additional 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 will 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.
- K. Sanctions and Penalties. In the event of a breach of the terms of this Contract, the Contractor and its subcontractors will be subject to sanctions and penalties as may be imposed and remedies invoked as provided by rule, regulation, or order of the local, state, and federal agency, and as otherwise provided by law and other terms of this Contract.

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 this advertisement, minority business enterprises will be afforded full opportunity to submit replies in response to this advertisement and

will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

11. NOTICES.

Any notice, demand, communication, or request required or permitted by this Contract must be sent by certified mail return receipt requested, or by delivery through any national recognized courier service (Federal Express, UPS, USPS, and others) which provides evidence of delivery, at the address provided for receipt of notices in this Contract and e-mailed to:

As to the City: Michael Acosta, P.E.
Utilities Engineer
City of North Port Utilities
6644 W. Price Boulevard
North Port, Florida 34291
Tel: 941.223.4138
E-Mail: macosta@cityofnorthport.com

**With copies of notices
and demands sent to:** City of North Port, Florida
City Attorney's Office
4970 City Hall Boulevard
North Port, Florida 34286
E-Mail: northportcityattorney@cityofnorthport.com

As to Contractor: D.B.E. Management LLC, dba DBE Utility Services
Dustin Ertle, President
13387 Bryan Road
Loxahatchee, Florida 33470
Tel: 561.508.3713
E-Mail: dertle@dbeutilityservices.com

Notices are effective when received at the addresses specified above. Changes to the respective addresses may be made from time to time by either party by written notice directed to the other party. This Section must not be construed to restrict the transmission of routine communications between representatives of Contractor and City.

12. WAIVER.

No delay or failure to enforce any breach of this Contract by either City or Contractor will not be binding upon the waiving party unless the waiver is in writing. In the event of a written waiver, the waiver will not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.

13. ATTORNEYS' FEES.

In any proceedings between the parties arising out of or related to this Contract, the prevailing party must be reimbursed all costs, expenses, and reasonable attorneys' fees through all proceedings, at both trial and appellate levels.

14. SCRUTINIZED COMPANIES.

- A. Certification. As required by Florida Statutes Section 287.135(2), for contracts of any amount, the Contractor must certify on a form provided by the City, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes Section 215.4725, and that it is not engaged in a boycott of Israel.
- B. Requirements. As required by Florida Statutes Section 287.135(5), for contracts of \$1,000,000 or more, the Contractor must certify on a form provided by the City, that all of the following are true:
 - (1) Contractor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes Section 215.4725, and that it is not engaged in a boycott of Israel; and
 - (2) Contractor is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, created pursuant to Florida Statutes Section 215.473; and
 - (3) Contractor is not engaged in business operations in Cuba or Syria.
- C. Termination. If the Contractor provides a false certification or has been placed on one of the above-noted Lists of Scrutinized Companies or has engaged in business operations in Cuba or Syria, the Contractor will be in breach of this Contract and the City may terminate the Contract.
- D. Penalty.
 - (1) A Contractor that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of this Contract, plus all reasonable attorneys' fees and costs, including any costs for investigations that led to the finding of the false certification; and
 - (2) Will be ineligible to bid on any contract with the City for three (3) years after the date the City determined that the Contractor submitted a false certification.

15. FORCE MAJEURE.

- A. Should performance of any obligation created under this Contract become illegal or impossible by reason of:
 - (1) A strike or work stoppage, unless caused by a negligent act or omission of either Party;

- (2) An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
- (3) An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
- (4) A declared emergency of the federal, state, or local government; or
- (5) Any other like event that is beyond the reasonable control of the non-performing party;

then the performance of the obligation is suspended during the period of, and only to the extent of, the prevention or hindrance, provided that:

- (6) The non-performing party provides written notice within **five (5) calendar days** of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has precluded the non-performing party from performing, and the means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Contract;
 - (7) The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;
 - (8) No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and
 - (9) The non-performing party uses all reasonable diligence to remedy its inability to perform.
- B. Economic hardship of a party does not constitute an event of *force majeure*. A party must not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.
- C. The non-performing party's affected obligations under this Contract will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance must not be excused under this Section for a period exceeding two (2) consecutive months, provided that in extenuating circumstances, the City may excuse performance for a longer term.
- D. The term of this Contract will be extended by a period equal to that during which the non-performing party's performance is suspended under this Section.

16. FEDERAL CONDITIONS.

In addition to other provisions required by law, FEMA, or the City, this Contract is entered into by the City under a Federal award and must contain the following provisions, as applicable. Should there be

any conflict between the provisions contained in the solicitation or any resulting contract the below provisions shall prevail.

A. Purpose.

The requirements under this Contract may be funded in whole or in part with federal funds and as such, is subject to federal requirements including, but no limited to, those set forth in 2 C.F.R. 200, Appendix II, and as otherwise may be listed herein.

B. Federal Funding.

(1) When property or services are procured using funds derived from a Federal grant or agreement, whether direct to the City or "pass-through" from another entity, the City is required to and will follow the Federal procurement standards set forth in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Sections 200.213 and 200.317 through 200.326.

(2) Contract Cost and Price. For every procurement in excess of \$100,000, including Change Orders or Contract Amendments greater than \$100,000, the City shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the City shall consider the complexity of work, the risk to be borne by the Contractor, the Contractor's investment, the amount of subcontracting necessary, the quality of the Contractor's record and past performance, and industry profit rates for the surrounding geographical area. "Cost Plus Percentage" methods for determining profit shall not be used.

C. Recipients and Sub-Contracts.

The Contractor and all sub-contractor(s) are also considered recipients and therefore, the provisions below must be included in all contract provisions including those of the sub-contractor(s) when and where applicable.

D. Adherence to State Energy Conservation Plan.

The Contractor will recognize and adhere to mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with Energy Policy and Conservation Act (Public Law 94-163).

E. Access to Records.

All books, documents, papers, information and records related to this Contract shall be made available to City of North Port, the State of Florida, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives, upon request, at any time during normal business hours, as often as deemed necessary, for auditing and monitoring purposes, and such records shall be subject to examination, copying, excerpting and transcription. This right of access to records also includes timely and reasonable access to the Contractor's personnel for the

purpose of interview and discussion related to such documents and information. Additionally, this right of access is not limited to the term of this Contract or the record retention period indicated herein, but last as long as the Contractor retains the records. Failure of the Contractor to comply with this paragraph constitutes a violation of this Contract and may result in the withholding of future payments, demand for Contractor's repayment of funds, termination of this Contract, or any other available remedies at law or in equity.

F. Records Retention.

The Contractor shall maintain all records required by the Federal regulations specified in 24 C.F.R. 570.506 that are pertinent to the activities to be funded under this Contract. Such records shall include but not be limited to:

- (1) Records required to demonstrate that the payment was for an eligible use under the funding program;
- (2) Copies of disbursements paid to Contractors;
- (3) Financial records as required by 24 C.F.R. 570.502, and 2 C.F.R. Subpart D and F and any applicable Appendices; and
- (4) Other records necessary to document compliance with the applicable provisions of 24 C.F.R. 570 and 24 C.F.R. 75.

The Contractor shall retain all records, supporting documents, statistical records, and all other documents and information pertinent to this Contract for the longer of: a period of 5 years from the date of submission of City of North Port's final expenditure report to the U.S Treasury regarding the moneys paid to Contractor from federal funds, or, if there is litigation, claims, audit, negotiation or other actions related to the these funds during said 5-year period, until completion of the action and final resolution of all issues which arise from it. Records for activities subject to the reversion of assets provisions at 24 C.F.R. 570.503(b)(7) or the change of use provisions at 24 C.F.R. 570.505 must be maintained for 3 years after those provisions no longer apply.

G. Federal Equal Opportunity Laws.

The Contractor agrees to comply with all federal equal opportunity laws and implementing regulations, including but not limited to:

- (1) Certification of Non-segregated Facilities (for contracts over \$10,000);
- (2) Title VI of the Civil Rights Act of 1964 and implementing regulations thereof;
- (3) Section 109 of the Housing & Community Development Act of 1974;
- (4) Section 503 Handicapped (for contracts \$2,500 or over);
- (5) Age Discrimination Act of 1975, as amended;

(6) Section 504 of the Rehabilitation Act of 1973, as amended; and

(7) Fair Housing Act, Title VIII-IX of the Civil Rights Act of 1968.

H. Data Universal Numberings.

All Contractors participating in this project must have a Data Universal Numbering System (DUNS) number and be registered on the federal System for Award Management (SAM) at sam.gov.

I. Restriction on all Public Works Projects.

No Contractor, or subcontractor, of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) may be awarded a contract or a subcontract for public works projects. Nor may any product of a country included on this list be provided under a public works project. Any offeror unable to certify compliance with this provision shall submit with its offer a written explanation fully describing the reasons for its inability to comply.

J. Drug-Free Workplace Requirements.

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. The Contractor is required to comply with drug-free workplace requirements in accordance with the Act.

K. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. 200.216; Public Law 115-232, Section 889; 2 C.F.R. 200.471).

(1) Contractor and subcontractors are prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

L. Domestic Preference for Procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The Contractor must include this section in all subcontracts and purchase orders for work or products related to the Contract.
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

M. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 C.F.R. 200.321).

- (1) The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps must include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and,
- (f) Requiring the prime Contractor, if subcontracts are to be let, to take the affirmative steps listed in (a) — (e) above.

N. ADA Requirements.

The Contractor must comply with the Americans With Disabilities Act (Public Law 101-338, 42 U.S.C. 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

The Contractor must comply with Title II, Subtitle A of the Americans with Disabilities Act (ADA) (1990).

O. Program Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

P. Dispute Resolution.

All claims, disputes, and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be resolved as follows:

- (1) To the extent Florida Statutes Chapter 558 is applicable, the parties expressly opt out of the requirements of Florida Statutes Chapter 558, within the meaning of Florida Statutes Section 558.005(1).
- (2) In the event of a dispute or claim arising out of this Contract, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Sarasota County, Florida, with the parties sharing equally in the cost of such mediation.
- (3) In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set for the below.
- (4) Any dispute, action or proceeding arising out of or related to this Contract will be exclusively commenced in the state courts of Sarasota County, Florida, or where subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non convenience.

- (5) The parties waive all rights to trial by jury for any litigation undertaken concerning this Contract.
- (6) This Contract and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- (7) Unless otherwise agreed in writing, the Contractor shall be required to continue its services and all other obligations under this Contract during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

Q. Procurement of Recovered Material (2 C.F.R. 200.323) for Contracts Over \$10,000.

The Contractor, and subcontractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

R. Debarment and Suspension (Executive Orders 12549 and 12689) for Contracts Over \$25,000.

The Contractor and subcontractors (see 2 C.F.R. 180.220) warrant that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

S. Equal Employment Opportunity for All Contracts that Meet the Definition of "Federally Assisted Construction Contract" in 41 C.F.R. 60-1.3.

Pursuant to 41 C.F.R. 60-1.4(b), during the performance of this Contract, the Contractor and subcontractors must adhere to the following:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices

to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in the furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary

of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, then the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

T. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) for Contracts Over \$100,000.

For compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), for Contracts over \$100,000, the Contractor and subcontractors must file the required certification that the Contractor will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection obtaining any federal award.

U. Contract Work Hours and Safety Standards for Contracts Over \$100,000.

For compliance with the Contract Work Hours and Safety Standards Act, 29 C.F.R. 5.5(b), the Contractor and subcontractors must comply with the clauses set forth in paragraphs (1) through (4) of this section.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

(5) The requirements of 40 U.S.C. § 3704 are applicable to construction work. The Contractor will not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

(6) The requirements of this subsection do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

V. Clean Air and Water Act for Contracts Over \$150,000.

The Contractor and subcontractor must comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contractor must report violations to the Federal awarding agency and the Regional office of the Environmental Protection Agency (EPA).

W. Davis-Bacon Requirements for Construction Contracts Over \$2,000.

The City encourages recipient Contractors to use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects, but also to support the economic recovery through strong employment opportunities for workers.

Y. Copeland "Anti-Kickback Act" for Construction Contracts Over \$2,000.

The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented in Department of Labor regulations (29 C.F.R. 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Sarasota County shall report all suspected or reported violations to the U.S. Dept. of Housing and Urban Development.

Z. Title VI of the Civil Rights Act of 1964.

The City, Contractor, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. 22, which are herein incorporated by reference and made a part of this Contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. 22, and herein incorporated by reference and made a part of this Contract.

AA. Text Messaging.

Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), the City encourages its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and the City establishes workplace safety policies to decrease accidents caused by distracted drivers.

BB. Seat Belt Policy.

To increase seat belt use and pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), the City encourages its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

CC. Duty of Disclosure.

Prior to execution of any contract, Contractor and all subcontractors must disclose a written statement to the City, including all recently closed (within the last year) or on-going civil or criminal litigation, investigations, arbitration, or administrative proceedings (collectively "Proceedings") involving the Contractor (and each subcontractor). Thereafter, Contractor has a continuing duty to promptly disclose all Proceedings upon occurrence. The Contractor shall promptly notify the City of any Proceeding relating to or affecting the Contractor's or subcontractor's business. If the existence of such Proceeding causes the City concern about the Contractor's ability or willingness to perform this Contract, then upon the City's request, Contractor shall provide to the City Manager or designee all reasonable assurances that: (i) Contractor will be able to perform this Contract in accordance with its terms and conditions; and (ii) Contractor/subcontractor(s) have not and will not engage in conduct in performing services for the City which is similar in nature to the conduct alleged in such Proceeding.

18. MISCELLANEOUS.

- A. Authority to Execute. The signature by any person to this Contract will be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Contract is binding upon and will inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Contract. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein must be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision, or any acts of the parties will be deemed to create any relationship between them other than that as detailed.
- E. Severability. In the event any court holds any provision of this Contract to be illegal, invalid, or unenforceable, the remaining provisions must be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant must not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Contract and do not affect its construction.
- G. Complete Contract. This Contract incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Contract that are not contained in this document. This Contract supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract. Any amendments changing the City's financial obligations under this Contract shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Contract amendments on behalf of City that do not change the City's financial obligations under this Contract.
- I. Assignment. The Contractor must not assign this Contract or any right or responsibility unless with the written consent of the City.

- J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The Contractor must not administer this Contract in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

[This space intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents, the year and date as written below.

CONTRACTOR
DBE MANAGEMENT LLC DBA DBE UTILITY SERVICES

By: [Signature]
SIGNATURE

DUSTIN ERTLE - PRESIDENT
PRINT NAME AND TITLE

Date: 06/08/2022

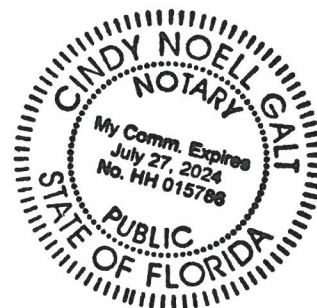
ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 8th day of June, 2022, by Dustin Ertle (name), as President (title) for DBE Management LLC dba DBE Utility Services (entity).

Cindy Noel Galt
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