

This **Contract No. 2020-15** ("Contract"), is entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and, David Kuxhausen Construction LLC, a Florida Limited Liability Company registered to do business in the State of Florida, whose principal place of business is 4321 Midland Road, Sarasota, Florida 34231, hereinafter referred to as the "Contractor," for roadway culvert replacements.

WITNESSETH

That the parties to this Contract, in consideration of their mutual agreements and promises hereinafter contained, bind themselves, their partners, successors, assigns, and legal representatives to all covenants, agreements, and obligations contained in the agreements and bid documents executed between the parties, and do hereby further agree as follows:

1. RESPONSIBILITIES OF THE CONTRACTOR:

A. Responsibility for Supervision:

1. The Contractor shall supervise and direct all work performed pursuant to this Contract to the best of its ability, give it all the attention necessary for such proper supervision and direction and not employ for work on the project any person without sufficient skill to perform the job for which the person is employed.
2. The Contractor assumes full responsibility for any and 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 such subcontractor as the Contractor shall hire, must conform to the provisions of this Contract and bid documents and must incorporate in them the relevant portions of this Contract.

B. Furnishing of Labor and Materials:

1. The Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment and machinery, and all transportation and all other facilities and services necessary for the proper completion of the work performed in furtherance of this Contract in strict conformity with the provisions herein contained, and with the Request for Bid No. 2020-15 ("RFB"), plans and/or drawings and specifications, addenda and with the proposal submitted by the Contractor and on file with the City.
2. The Contractor represents and warrants to the City that all equipment and materials used in such work, and made a part of the structures thereon, or placed permanently in connection therewith, will be new unless otherwise specified in this Contract and bid documents, of good quality, free of defects, and in conformity with this Contract and bid documents. It is understood between the parties thereto that all equipment and materials not in conformity are defective.

C. Incorporation of Bid Documents: The RFB, including plans and/or drawings, specifications, and addenda, and the Contractor's response to RFB, are specifically made a part of this Contract and are incorporated herein. 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 (Contract No. 2020-15) approved by the City Commission, and any attachments.
2. The RFB, including any and all attachments and addenda.
3. Contractor's response to the solicitation.

4. Specific direction from the City Manager.
- 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.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 shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon the completion of the Contract, the Contractor shall 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 shall be a material breach of this Contract. Further, Contractor may be subject to penalties under Florida Statutes, Section 119.10.

2. CONTRACT PRICE:

- A. In consideration of the foregoing services, work, labor, and materials to be furnished by the Contractor as per said plans, specifications and addendums, the City agrees to pay, and the Contractor agrees to receive payments in accordance with the prices set forth in the RFB as amended from time to time to account for actual field conditions.
- B. The Contract Price is **Two Hundred Eighty-Eight Thousand Five Hundred Dollars (\$288,500.00)**.

3. PAYMENT:

- A. One (1) original request for payment must be submitted 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 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. Contract price is net, and all invoices 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. Prior to fifty-percent (50%) completion, the Contractor will be paid monthly the total value of the work completed and accepted during the preceding month, less ten-percent (10%) retainage. After fifty-percent (50%) completion of the construction services purchased pursuant to this Contract, the City must reduce to five-percent (5%) the amount of retainage withheld from each subsequent progress payment made to the Contractor upon request of the Contractor. For purposes of this subsection, the term "fifty-percent (50%) completion" is the point at which the City has expended fifty-percent (50%) of the total cost of the construction services purchased as identified in this Contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this Contract. The City must inform the Contractor's Surety of any reduction in retainage.
- D. 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.

4. CONTRACT TIME:

- A. This Contract shall become effective on the date the last party signs it (the "Effective Date"), and shall terminate upon the completion of the work or as otherwise detailed herein.
- B. 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 **One**

Hundred Eighty (180) calendar days from the notice to proceed; subject only to delays caused through no fault of the Contractor or acts of God. The work must be substantially completed within **One Hundred Sixty (160) calendar days**, with final completion within **Twenty (20) calendar days** after attaining Substantial Completion. Time is of the essence in the performance of this Contract.

5. LIQUIDATED DAMAGES:

- A. The work performed pursuant to this Contract must be completed within the times specified herein. 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. The City must issue a Notice of Substantial Completion when it has determined that the work identified in this Contract is substantially complete, record drawings are submitted and approved by the City, and that the facility is operating satisfactorily. The Contract Time also includes up to **fourteen (14)** calendar days for the review of submittals, excluding pay requests, by the City. The City must provide the Contractor a punch list within **two (2)** business days after the Notice of Substantial Completion is issued. The punch list must identify the remaining items to be addressed to the satisfaction of the City in order for the Contractor to meet its obligations under this Contract. The Contractor must complete the items on the punch list to the satisfaction of the City within **twenty-eight (28)** additional calendar days following the issuance of the Final Punch List or Notice of Substantial Completion, whichever is later, 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 **twenty-eight (28)** calendar day period must be charged to the Contractor.
- C. The City and the Contractor hereby agree that time is of the essence on this Contract and the City will suffer damages if the work is not substantially completed within the Contract time, plus any extensions thereof allowed by Change Order. 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 costly process. It is therefore hereby agreed by the City and the Contractor that it is in their mutual interest to establish a figure of **ONE THOUSAND, TWO HUNDRED FORTY-ONE DOLLARS AND ZERO CENTS (\$1,241.00)** 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.
- D. 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. Bond Requirements:

1. The successful bidder must provide the required performance and payment bond or other acceptable security to the City within **ten (10)** business days of being awarded the bid. Failure by the successful bidder to provide the bond within **ten (10)** business days shall be considered a default under 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. Such 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 said recording and certified copy of the 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 amount, the costs of which are to be paid by the Contractor. The bond will 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. 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 the Contract Documents, 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. By execution of the bond, the Surety Company acknowledges that it has read the surety qualifications and surety obligations imposed by the Contract Documents 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 work hereunder, 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 Insurance Department in the State of Florida and meet a minimum financial AM Best and Company 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 contained herein 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 such 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 (Per Chapter 440, Florida Statutes): Coverage must apply at 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 such 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: Coverage must apply to all employees at the statutory limits provided by state and federal laws. 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 \$2,000,000 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 such 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 such insurance must be filed by the Contractor with the City within **ten (10)** days after the Effective Date of this Contract.
 - E. Waiver of Subrogation: All required insurance policies, with the exception of Workers' Compensation, are to be endorsed with a Waiver of Subrogation. The insurance companies, by proper endorsement or thru 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 arises 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.

F. Policy Form:

1. All policies required by this Contract, with the exception of Workers' Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Office, are to be written on an occurrence basis, 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 will be accepted for professional liability and hazardous materials and such other risks as are authorized by the City's Purchasing Office. 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 Office of such an 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 contributing to the satisfaction of 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 to which such policies are subject, whether or not 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 certificates of insurance required herein 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 Office (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 Office before the Contractor will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting

department of the insurance carrier must certify compliance with the insurance requirements provided herein.

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 Office as soon as practicable after notice to the insured.

8. INDEMNITY:

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, 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 SUCH 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, THE 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 SHALL PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONTRACTOR MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY SHALL PROMPTLY NOTIFY THE CONTRACTOR IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS CONTRACT.
- C. THIS AGREEMENT FOR INDEMNIFICATION SHALL SURVIVE TERMINATION OR COMPLETION OF THE CONTRACT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS CONTRACT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE SHALL 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. NOTHING IN THIS CONTRACT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.
- E. 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. **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 shall furnish to the City, a Contractor's Affidavit in a form acceptable to the City. Signed affidavits of payment are required from any and 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) has 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.

10. TERMINATION:

- A. Termination with or without Cause: The performance of work under this Contract may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the City's best interest. Any such termination shall 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 such termination becomes effective. Except as otherwise directed, the Contractor shall 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. Upon delivery of the documents, the City shall 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 the Contract. Under no circumstances shall the City make any payment to Contractor for services that have not been performed or that are performed subsequent to the termination date.
- B. Non-Appropriation: The parties acknowledge and agree that the obligations of the City to fulfill financial obligations of any kind pursuant to any and all provisions of this Contract, or any subsequent contract entered into pursuant to this Contract or referenced herein to which City is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. City agrees to exercise all lawful and available authority to satisfy any financial obligations of City that may arise under this Contract; however, since funds are appropriated annually by the City Commission on a fiscal year basis, City's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such 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 shall have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by City under this Section. This Contract shall not constitute an indebtedness of City nor shall it constitute an obligation for which City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation. It is expressly understood by the parties that funding for any subsequent fiscal year of the Contract is contingent upon appropriation of monies by the City Commission. In the event that funds are not available or appropriated, the City reserves the right to terminate the Contract. The City will be responsible for payment of any outstanding invoices and work completed by the Contractor prior to such termination.
- C. Abandonment: In the event that 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. 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. 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 received 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 being such that, in the City's opinion, substantial or final completion, or both, may be 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 which will constitute a material breach of this Contract.

G. In the event that 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 such demand. The City's rights hereunder survive the term of this Contract and are not waived by final payment and/or acceptance.

11. INDEPENDENT CONTRACTOR: The Contractor is, and shall be, in the performance of all work, services, and activities done pursuant to this Contract, an independent contractor and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. The Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Contract. The Contractor shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

- 12. SUBCONTRACTORS AND SUPPLIERS:** Contractor must furnish 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.
- 13. 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, paying any fees therefore. Violation of any local, state, or federal law in the performance of this Contract shall constitute a material 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 herein. If any of the Contract documents are at variance therewith, the Contractor must notify the City promptly on the discovery of such variance.
- 14. AMENDMENT:**
- A. Except as otherwise provided herein, this Contract constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change, or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract.
 - B. The City Manager or designee may agree to amendments that do not increase compensation to the Contractor. Only the City Commission can approve increases in compensation under this Contract. In the event the Contractor begins work on unauthorized changes to scope prior to receiving a signed Change Order by the City Manager or designee, the Contractor does so at its own expense and risk as unauthorized work shall not be paid for by the City.
- 15. EQUAL EMPLOYMENT OPPORTUNITY:** The City of North Port, Florida, in accordance with the provisions of Title VII of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Commerce (15 CFR, Part 8) issued pursuant to such Act, hereby notifies all bidders that it will ensure 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 ground of race, color or national origin in consideration for an award.
- 16. 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. 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.
- 17. ASSIGNMENT:** The Contractor must not assign any interest in this Contract and must not transfer any interest in same (whether by assignment or novation) without the prior written consent of the City Manager or designee, except that claims for the money due or to become due the Contractor from the City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy. Notice must be promptly given to the City.

18. 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 shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.

19. NOTICES:

Any notice, demand, communication, or request required or permitted hereunder must be sent by certified mail, return receipt requested, and mailed and e-mailed to:

As to the City: City of North Port Public Works
 Project Manager
 1100 N Chamberlain Blvd.
 North Port, Florida 34286
 (941) 240-8091
 gtraverso@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
 northportcityattorney@cityofnorthport.com

As to Contractor: David Kuxhausen Construction LLC
 4321 Midland Road
 Sarasota, FL 34231
 (941) 350-7595 (Phone)
 Davidd267@yahoo.com

Notices are effective when received at the addresses specified above. Changes to the respective addresses which such notice is to be directed may be made from time to time by either party by written notice to the other party. Nothing in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and City.

20. WAIVER: No delay or failure to enforce any breach of this Contract by either City or Contractor shall be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver must 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.

21. 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.

22. GOVERNING LAW, VENUE, AND SEVERABILITY: The rights, obligations, and remedies of the parties under this Contract are governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract is in 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. The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity or

enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void.

23. PARAGRAPH HEADINGS: Section headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

24. SCRUTINIZED COMPANIES:

- A. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or less, the Contractor shall certify on a form provide 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. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or more, the Contractor shall certify on a form provided by the City, that all of the following are true:
 - 1. 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; and
 - 2. It 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. It is not engaged in business operations in Cuba or Syria.
- C. 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 the Contract, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
 - 2. Shall 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.

25. AUTHORITY TO EXECUTE AGREEMENT: The signature by any person to this Contract shall 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.

(This area intentionally left blank.)

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

CONTRACTOR
DAVID KUXHAUSEN CONSTRUCTION LLC

By: [Signature]
SIGNATURE

DAVID Kuxhausen Manager
PRINT NAME AND TITLE

Date: 10/3/2019

STATE OF FLORIDA
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 3rd day of Oct, 2019, by David Kuxhausen who is personally known to me or who produced K225-163-63141-0 PDL as identification.



Karen A. Parr
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG185977
Expires 4/30/2022

Karena Parr
Notary Public

CITY OF NORTH PORT, FLORIDA

By: _____
PETER D. LEAR, CPA, CGMA
CITY MANAGER

Date: _____

ATTEST

HEATHER TAYLOR, CMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY