

CONTRACT NO. 2020-40 FIRE STATION ALERTING SYSTEM

THIS CONTRACT FOR FIRE STATION ALERTING SYSTEM (the "Contract") is made by and between the CITY OF NORTH PORT, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and **BRYX, INC.**, a Delaware Corporation registered to conduct business in the State of Florida, with a business address of 120 East Avenue, Suite 300, Rochester, NY 14604, hereinafter referred to as "Contractor."

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

1. CONTRACTOR'S SERVICES

- A. Contractor agrees to diligently and timely perform services for the City relating to the installation of fire station alerting system(s) as identified in the Request for Proposal (RFP) No. 2020-40 and Contractor's proposal submitted **March 3, 2020**. The overall Scope of Services is described in **Exhibit "A,"** with detailed tasks and associated fees provided in **Exhibit "B" (the "Station Alerting System").** Both exhibits are attached hereto and incorporated as if set forth fully herein. These items are collectively referred to as the Project.
- B. This CONTRACT shall commence immediately upon the execution of this CONTRACT by both the CITY and CONTRACTOR and upon CONTRACTOR'S receipt of a written Notice to Proceed from the CITY'S Purchasing office and shall continue through the completion of the project. The completion date is **December 11, 2020**.

2. COMPENSATION AND PAYMENT FOR CONTRACTOR'S SERVICES

A. COMPENSATION

1. Contractor shall receive a not to exceed amount of **ONE HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00)** as compensation for its services. This compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this CONTRACT.
2. 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 the City is a party, are and shall remain subject to the provisions of Florida Statutes Section 166.241, as amended, regardless of whether a particular obligation has been expressly so conditioned. The City will 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, the City's legal liability for the payment of any costs will 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 officer, employee, director, member or other natural person or agent of City shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by City under this Section. This Contract does not constitute an indebtedness of City nor an obligation for which the City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

1. The City will pay Contractor through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Florida Statutes Section 218.70, *et seq.*, upon receipt of Contractor's invoice and written approval of same by the City's Administrative Agent, indicating that services have been rendered in conformity with this Contract. Contractor must submit an invoice for payment to the City for those specific tasks as described in the Scope of Services that were completed during that invoicing period.
2. For those specific services that were partially completed, progress payments will be paid in proportion to the percentage of completed work on those specific services approved in writing by the City's Administrative Agent based on the percentage of the amount for those specific services.
3. Contractor's invoices must be in a form satisfactory to the City of North Port Finance Department.

3. INDEMNIFICATION

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONTRACTOR MUST INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES, AND COSTS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONALLY WRONGFUL CONDUCT OF THE CONTRACTOR AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONTRACTOR IN THE PERFORMANCE OF THE AGREEMENT. THE AGREEMENT 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 (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.**
- C. THIS AGREEMENT FOR INDEMNIFICATION SHALL SURVIVE TERMINATION OR COMPLETION OF THE AGREEMENT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL 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 AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.

E. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.

F. FURTHER, THE CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA, FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.

4. CONTRACTOR'S INSURANCE

A. Before performing any work pursuant to this Contract, Contractor must procure and maintain during the life of this Contract, the insurance listed below, 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 of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific 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 written CONTRACT with Contractor.

B. 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 under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as it may determine necessary.

i. **Workers' Compensation and Employer's Liability:** Coverage must apply for 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 each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for disease.

ii. **Comprehensive Commercial General Liability Insurance:** Occurrence form is required. Aggregate must apply separately to this Contract. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.

iii. **Automobile Insurance:** Must include all vehicles owned, leased, hired, and non-owned vehicles of Contractor with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Contract.

- iv. **General requirements:** The City of North Port, Florida, must be named as additional insured on the Comprehensive Commercial General Liability Policy. Certification of same is required. All certificates of insurance must be on file with and approved by the City before commencement of any work done pursuant to this Contract.
- C. **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 through other means, agree to waive all rights of subrogation against the City, its officers, officials, employees, and 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 under this Contract. This waiver also applies to any deductibles or self-insured retentions the Contractor or its agents may be responsible for.
- D. **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 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.
 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 subcontractors.
 3. Each insurance policy required by this Contract must:
 - a. Apply separately to each insured against whom a claim is made, and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall 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 Purchasing Office by written notice via certified mail, return receipt requested.
 4. The City has the right to review, at any time, coverage, form, and amount of insurance.
 5. **The procuring of required policies of insurance shall not be construed to limit Contractor's liability nor to fulfill the indemnification provisions and requirements of this Contract. 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.

6. 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 and retentions 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. Contractor is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
7. Claims Made Policies will be accepted for 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 shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the 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.
8. All certificates of insurance must be on file with and approved by the City before commencement of any work under 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 work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall 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 shall certify compliance with the insurance requirements provided herein.
9. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Contract must be provided to the Contractor's insurance company and the City's Purchasing Office as soon as practicable after notice to the insured.
10. The Certificate of Insurance must include the following:

In the "Description of Operations/Special Provisions" section - "City of North Port, Florida, is named as an additional insured, as its interests may appear on Commercial General Liability Policy."

In the "Certificate Holder" section

City of North Port, Florida
4970 City Hall Boulevard
North Port, FL 34286

5. RESPONSIBILITY OF CONTRACTOR

- A. Contractor is responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of Contractor under this Contract. Contractor must, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If Contractor is comprised of more than one legal entity, each entity is jointly and severally liable hereunder.
- C. Contractor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Contractor), to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award of this Contract.
- D. Contractor must perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent Contractor firms in effect at the time Contractor's services are rendered. Contractor covenants and agrees that it and its employees shall be bound by the standards of conduct in Florida Statutes Section 112.313, as it relates to work performed under this Contract. Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. Contractor must comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and must not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Contract. Contractor shall 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.
- F. Contractor must maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Contract which must be available and accessible at Contractor's offices for inspection, audit, and copying during normal business hours by the City, or any of its authorized representatives. Such records must be retained by Contractor for a minimum of three (3) years after completion of the services.
- G. **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 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 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 Contractor does not transfer the records to the City following completion of the contract, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
4. Upon completion of the Contract, transfer to the City, at no cost, all public records in Contractor's possession or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon the completion of the Contract, Contractor shall meet all applicable requirements for retaining public records.
5. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO 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 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.

6. OWNERSHIP AND USE OF DOCUMENTS

- A. It is understood and agreed that all the documents, or reproducible copies, developed by Contractor in connection with its services, including but not limited to reports, designs, specifications, and data specific to this fire station alerting system project, shall be delivered to, and shall become the property of the City as they are received by the City and when Contractor has been fully compensated as set forth herein. Contractor may keep copies of all work products for its records. Specific written authority is required from the City's Administrative Agent for Contractor to use any of the work products of this Contract on any non-City project.
- B. Notwithstanding the above, any reuse of the work products by the City on other projects will be at the risk of the City.

7. TIMELY PERFORMANCE OF CONTRACTOR'S PERSONNEL: The timely performance and completion of the required services is vitally important to the interest of the City. Contractor must assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Contract. Contractor's personnel assigned to perform the services of this Contract must comply with the information presented in the professional services response proposal made a part hereof by reference. Contractor must ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to Contractor's key personnel must receive the City's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by Contractor must commence within two (2) calendar weeks of Contractor's receipt of written Notice to Proceed from the City.
- B. Contractor specifically agrees that all work performed under the terms and conditions of this Contract will be completed within the time limits as set forth, subject only to delays caused through no fault of Contractor or the City. Time is of the essence in the performance of this Contract.
- C. Contractor must provide to the City's Administrative Agent, monthly written progress reports concerning the status of the work. The City's Administrative Agent may determine the format for this progress report. The City is entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by Contractor.
- D. In the event unreasonable delays occur on the part of the City or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by Contractor which delay the Project Schedule completion date, the City will not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay. The Project Schedule is attached as Exhibit "C," which is attached hereto and incorporated as if set forth fully herein.

8. OBLIGATIONS OF THE CITY

- A. The City's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Contract. If necessary, the City may authorize a specific program manager to perform the responsibilities of the City's

Administrative Agent. The City shall designate any specific program manager in the Notice to Proceed. The responsibility of the City's Administrative Agent shall include:

1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by Contractor, and render in writing, decisions pertaining thereto within a reasonable time.
 2. Transmission of instructions, receipt of information, interpretation and definition of the City's policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Contract.
 3. Review for approval or rejection all Contractor's documents and payment requests.
- B. The City shall, upon request, furnish Contractor with all existing data, plans, studies and other information in the City's possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the City and shall be returned to the City's Administrative Agent upon completion of the services to be performed by Contractor.
- C. The City's Administrative Agent shall conduct periodic reviews of the work of Contractor necessary for the completion of Contractor's services during the period of this Contract, and may make other City personnel available, where required and necessary to assist Contractor. The availability and necessity of said personnel to assist Contractor shall be determined solely within the discretion of the City. The City's technical obligations to this Project, if any, are stated in Specific Authorizations and Work Authorizations.
- D. The City shall not provide any services to Contractor in connection with any claim brought on behalf of or against Contractor.

9. 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 under the Contract is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the Contractor shall stop 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 the 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 Contractor abandons performance under this Contract, the City Manager or designee may terminate this Contract upon three (3) calendar days' written notice to Contractor indicating its intention to do so. The written notice shall state the evidence indicating Contractor's abandonment.
- D. Contractor may terminate this Contract only in the event of the City failing to pay 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 and cancel this Contract in the event Contractor is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for Contractor or an assignment is made for the benefit of creditors.
- F. **BREACH**: In the event Contractor breaches this Contract, the City must provide written notice of the breach and Contractor shall have ten (10) days from the date the notice is received to cure. If Contractor fails to cure within the ten (10) 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 Contractor's work not being in accordance with the requirements of this Contract;

2. The quantity of Contractor's work not being as represented in Contractor's Payment Request, or otherwise;
 3. Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
 4. Contractor's failure to use Contract funds, previously paid 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 arising out of Contractor's performance;
 6. Loss caused by Contractor arising out of Contractor's performance;
 7. 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.
- H. In the event that the City makes written demand upon Contractor for amounts previously paid by the City as contemplated in this section, 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.

10. INDEPENDENT CONTRACTOR

Contractor is and shall be, in the performance of all work services and activities under 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 Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects 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. Contractor does not have the power or authority to bind the City in any promise, Contract or representation other than as specifically provided for in this Contract. 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. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

11. ENTIRE CONTRACT

This Contract incorporates and includes all prior negotiations, correspondence, contracts, or understandings between the parties and the parties agree that there are no commitments, CONTRACTs or understandings concerning the subject matter of this Contract that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.

12. AMENDMENT

No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. 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.

13. ASSIGNMENT

Contractor shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Commission.

14. 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.

15. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Contract shall be 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 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. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

16. 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.

17. NO HIRE

Contractor shall not hire any City employee associated with this project throughout the duration of the Contract and for a period of one (1) year after completion.

18. NOTICES

Any notice, invoice, report, demand, or other type of documentation required by this Contract shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONTRACTOR'S REPRESENTATIVE:

Dave E. Thomas
President
Bryx, Inc.
120 East Avenue, Suite 300
Rochester, NY 14604
TEL 585.364.2799
EMAIL: david@bryx.com

THE CITY'S ADMINISTRATIVE AGENT:

Nick Herlihy
Division Chief Administration
City of North Port
4980 City Center Blvd.
North Port, FL 34286
TEL 941.240.8160
FAX 941.240.8182
EMAIL: nherlihy@cityofnorthport.com

WITH COPIES OF NOTICES TO:

City Attorney's Office
4970 City Hall Boulevard
North Port, FL 34286
EMAIL: northportcityattorney@cityofnorthport.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 Section shall be construed to restrict the transmission of routine communications between representatives of Contractor and City.

19. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

20. ATTORNEYS' FEES

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

21. CONFLICTS

In the event of any conflict between the provisions of this CONTRACT and RFP No. 2020-40 or CONTRACTOR'S response, which are made a part hereof by reference, the CONTRACT shall control.

22. 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, 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
 - 1. 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.

23. FORCE MAJEURE

- A. Should performance of any obligation created under this Agreement 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 any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided that:

6. The non-performing party provides written notice within five (5) 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 Agreement;
 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 will 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 Agreement 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 shall not be excused under this Section for a period exceeding two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term.
- D. The term of the Agreement will be extended by a period equal to that during which the nonperforming party's performance is suspended under this Section.
- 24. 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 shall not administer this Agreement 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.

25. E-VERIFY. Prior to execution of this Contract the **CONTRACTOR** and all subcontractors shall register and use the E-Verify system operated by the United States Department of Homeland Security as required by Sec. 287.137, Fla. Stat.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed the Contract as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA:

By: _____
Heather Taylor, CMC, City Clerk

By: _____
Peter D. Lear, CMGA, City Manager

Date: _____

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Amber L. Slayton, City Attorney

CONTRACTOR:

Bryx, Inc.

By: _____
David E. Thomas
President

Date: 10/7/20

STATE OF NEW YORK
COUNTY OF NY

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 7 day of October 2020 by David E Thomas.

Karen M Spinello
Notary Public – State of New York

Personally Known OR Produced Identification
Type of Identification Produced license

KAREN M. SPINELLO
Notary Public, State of New York
No. 01SP6074696
Qualified in Monroe County
My Commission expires on May 20, 2032

EXHIBIT A SCOPE OF SERVICES

This Contract is for the supply and installation of hardware, software, and implementation services for turnkey fire station alerting systems at various fire stations within the City. At the discretion of the City, one or more future add-on location(s) may be included in the services requested. The City reserves the right to increase or decrease the scope of services requested to be performed.

The desired system shall interface with the exiting P25 compatible Motorola radio system, and scalable to meet the needs of future technology advancements put in place by the dispatching center operated by Sarasota County. The scope of services shall include but not be limited to:

1. Contractor shall complete an initial evaluation of the existing station alerting system equipment to assess the system functionality and to determine what equipment and parts may be re-used with the proposed new system(s).
2. Review current station wiring to determine if the exiting speaker wire needs to be replaced. The price to replace the speaker wire should be included in the proposal.
3. "Heart-friendly" features such as escalating audio and subdued lighting at night. Respondent should highlight the "heart-friendly" features of the system in their proposal.
4. Two (2) Turnout Timers for each station that have an automatic reset after a determinate amount of time.
5. The Contractor shall ensure that all components of the System are supported by an uninterruptible power supply.
6. The Contractor shall provide all equipment, materials, consumables, station installation and supervision services to provide a turnkey fire station alerting system at each of the five (5) operational fire rescue stations.
7. All goods provided and work performed shall be in accordance with all applicable national, state and local electrical and/or building codes.
8. The system should be scalable to meet growth requirements of the fire department and alerting system.
9. Contractor shall provide initial training to the City's fire department designee(s) for the proper use, operation, and maintenance of the system.

FIRE RESCUE STATION LOCATIONS

1. Fire Station 81 – 4980 City Center Blvd., North Port, FL 34286
2. Fire Station 82 – 5650 North Port Blvd., North Port, FL 34287
3. Fire Station 83 – 3601 E. Price Blvd., North Port, FL 34288
4. Fire Station 84 – 1350 Citizens Parkway, North Port, FL 34288
5. Fire Station 85 – 1308 N. Biscayne Dr., North Port, FL 34291
6. Fire Station 86 - TBD

WARRANTY: All warranties express and implied, shall be made available to the City for goods and services covered by this solicitation. All goods furnished shall be fully guaranteed by the Contractor against factory and workmanship defects. At no expense to the City, the Contractor shall correct any and all apparent and

latent defects that may occur within the manufacturer's standard warranty period. The provisions of this solicitation may supersede the manufacturer's standard warranty.

Any faulty work or equipment will be fully corrected by the Contractor at no cost to the City and restored work will be warranted for one year from the date of acceptance, or as may be otherwise specified. This will not release additional warranties required by other sections or provided by individual suppliers.

Except as otherwise specified, all equipment and work shall be guaranteed by the Contractor against defects resulting from use of inferior materials, equipment or workmanship for one (1) year from the date delivery to and acceptance by the City. If any part of the equipment is guaranteed for a longer period, such longer period shall prevail. The making and acceptance of final payment shall not waive any claim for faulty equipment or work appearing after final payment or for failure to adhere strictly to the Contract

BRYX, INC. will provide the following:

1. The service and maintenance portion of the contract will commence year two (2). Annual service and maintenance fees are calculated at 10% of the negotiated contract price per station (minus the installation charge), thus \$12,500 is the total for all five (5) existing fire stations. The annual service and maintenance will increase an additional 10% of the negotiated contract price minus installation charge for each additional fire station that adopts the Bryx system.
2. Initial evaluation and assessment of existing systems and equipment will consist of our team performing a walk-through at each of the five fire station locations. This will involve determining the functionality of each existing system and pinpointing what equipment and parts may be reused with the proposed new system.
3. Review wiring and pricing for wires:
Our turnkey system connects to the existing PA system. During the walk-through, our team will determine if the speaker wire needs to be replaced in order to connect. Pricing will be included in the pricing part of the proposal. We will determine if wiring is suitable to use. If it is not, the wiring will be replaced at no additional charge.
4. Heart-friendly audio and lighting:
The Bryx Station alerting system starts alarms at a minimum volume, then gradually gets louder over a few seconds, gently waking and alerting first responders. The color changing lights wirelessly connect to the control unit, with a configurable and consistent set of colors for assignments and job types. The lights can be configured to dim at night. We will supply 10-15 lights per station. If a situation calls for more, we will include those lights at no additional charge.
5. Turnout timers:
Each job has a timer displayed on the job board that counts down with increasing urgency. Timers can be customized to set custom time limits and more. With display mirroring functionality, the robust data display with turnout timers can be mirrored onto any television in the station. We will be supplying 2 monitors per station to show the turnout timers. One monitor will be placed in the bay and the location of the other monitor is to be determined.

6. **Station Control Units:**
The Bryx Station alerting system requires a Station Control Unit at each fire station. The station control units will be installed by Bryx preferably in the telecom room at each Fire Station. Bryx will be responsible for running a CAT6 wire from the Station Control Unit to the 2 monitors in each station at no additional charge.
7. **Uninterruptible power supply:**
The Bryx Station alerting system will guard against unexpected power loss with its uninterruptible power supply that will be supplied by Bryx at no additional cost. If the power goes out at the station, the SCU will remain powered on using the backup battery.
8. **Equipment, materials, consumables, installation, and supervision:**
Bryx will provide all equipment, materials, consumables, station installation, and supervision services to provide our turnkey fire station alerting system at each of the 5 fire stations.
9. **Electrical and building codes:**
To ensure that all goods provided, and work performed are in accordance with all applicable national, state, and local electrical and building codes, we will seek a licensed contractor.
10. **Scalable system:**
The Bryx Station alerting system is completely scalable and utilizes commercial off-the-shelf (COTS) equipment to minimize costs. The system can easily be expanded to meet the growth requirements of the fire department and alerting system.
11. **Training:**
We are confident that our system offers the best user experience on the market today. Our intuitive processes are easy to learn and adopt. We will provide two one-hour training classes, as needed, for staff and staff trainers at no additional cost. We are committed to making the Bryx/City of North Port partnership a strong one.
12. **Bryx System Management Interface:**
Web management interface upgrades and services will be supported by Bryx as part of release #4 which will be immediately available upon completion of installation. Access to the interface will be provided to North Port Fire Rescue as part of our annual service and maintenance agreement.

WARRANTIES

Bryx Station includes an unlimited warranty for as long as a maintenance agreement is in place between Bryx and the City of North Port. If the Bryx Station system (Station Control Unit, wiring, lighting) fails or malfunctions for any reason whatsoever, Bryx will provide a replacement unit, free of charge; and whenever possible, the replacement will be shipped overnight with next day delivery.

Bryx will provide for Year 1 a full 100% warranty on all 5 control units as well as any and all wiring and lighting used for Bryx Station alerting. Bryx will warranty the turnout timer monitors in-line with the manufacturer's warranty guidelines. After the manufacturer's warranty has expired, Bryx will assume no responsibility for the monitors.

ADDITIONAL SERVICES

Full Station Automation

We understand that the task of returning the station to proper conditions before leaving on a call takes up valuable time and can go neglected in the fast pace of preparing to respond. Our system can perform tasks that responders have little time to complete-such as turning off stoves, opening/closing bay doors, securing the building, and more-allowing each station to focus on responding quickly and efficiently.

Mobile Alerting

Bryx 911, the best-in-class mobile alerting application on the market is free for all first responders. Receiving data directly from CAD, Bryx 911 delivers speed and reliability for every 911 call. From turn-by-turn directions to supplementals and messaging, Bryx 911 gives first responders all the info they need for each call. The app is used in 47 states, South America, Canada, Australia, the UK, and Ghana, Africa. Bryx 911 is available for iOS, Android, and our universal computer app.

END OF EXHIBIT A

**EXHIBIT B
 PRICE SCHEDULE**

Prices below are for all associated goods/services required for the supply and installation of turnkey fire station alerting systems at various fire stations within the City. The total price is inclusive of initial training to the City's fire department designee(s) for the proper use, operation, and maintenance of the system.

If it is determined during the Contractor's initial evaluation of the system(s) that existing equipment, components, wire, and hardware may be re-used with the new system the Contractor shall not bill the City for said equipment, components, wire, and hardware.

| Line Item # | Specifications/Item Description/Service | Unit of Measure | Price |
|--|---|-----------------|---------------------|
| 1 | Supply and installation of hardware, software, and implementation services for turnkey fire station alerting system for Station #81: | Lump Sum | \$30,000.00 |
| 2 | Supply and installation of hardware, software, and implementation services for turnkey fire station alerting system for Station #82: | Lump Sum | \$30,000.00 |
| 3 | Supply and installation of hardware, software, and implementation services for turnkey fire station alerting system for Station #83: | Lump Sum | \$30,000.00 |
| 4 | Supply and installation of hardware, software, and implementation services for turnkey fire station alerting system for Station #84: | Lump Sum | \$30,000.00 |
| 5 | Supply and installation of hardware, software, and implementation services for turnkey fire station alerting system for Station #85: | Lump Sum | \$30,000.00 |
| 7 | Replacement of speaker wire (if applicable) | Linear Foot | Included |
| Sub-Total | | | \$150,000.00 |
| Freight (IF NOT INCLUDED IN UNIT PRICES) | | | Included |

NOT TO EXCEED TOTAL PRICE: \$150,000.00

END OF EXHIBIT B

**EXHIBIT C
PROJECT SCHEDULE**

Shipping Method: **FED EX** Delivery/Lead Time (ARO): **6 WEEKS (INCLUDES INSTALLATION)**

Estimated Completion Date: **DECEMBER 11, 2020. Six (6) weeks from receipt of Notice to Proceed.**

END OF EXHIBIT C