

**CITY OF NAPLES, FLORIDA
AGREEMENT
(PROFESSIONAL SERVICES)**

Bid/Proposal No. 14-031

Clerk Tracking No.

14-00041

Project Name: Option T-2 Reclaimed Water Distribution System Expansion

THIS AGREEMENT (the "Agreement") is made and entered into this 16th day of April, 2014, by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **Kyle Construction, Incorporated**, a Florida Profit Corporation, located at: **3636 Prospect Avenue; Naples, Florida 34104** (the "CONTRACTOR").

WITNESSETH:

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted an (ITB) Invitation to Bid No. 14-031 for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

**ARTICLE ONE
CONTRACTOR'S RESPONSIBILITY**

1.1. The Services to be performed by CONTRACTOR are generally described as **Option T-2 Reclaimed Water Distribution System Expansion** and may be more fully described in the Scope of Services, attached as **EXHIBIT A** and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified licensed professional to

serve as the CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. However, the CONTRACTOR shall comply with the Florida Public Records laws.

1.7 The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8 The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

ARTICLE TWO CITY'S RESPONSIBILITIES

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative

with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

Any such modifications or changes ((a) (b) or (c)) shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;
- (b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and
- (c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

ARTICLE THREE TIME

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and shall be performed and identified as Divisions 1 & 2 of the bid schedule as Phase 1 – GSBN with a contract time of Substantial Completion of 120 days from the Phase 1 – GSBN Notice to Proceed and Final Completion of 30 days from Substantial Completion. Project Close Out shall be performed within 90 days of Final Completion of Phase-1.

Division 3 of the bid schedule shall be performed and identified as Phase 2 – Harbor/Crayton/Mooring Line with a contract time of Substantial Completion of 150 days from the Phase 2 - Harbor/Crayton/Mooring Line Notice to Proceed and Final Completion of 30 days from Substantial Completion. Project Close Out shall be performed within 90 days of Final Completion of Phase-2. Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONTRACTOR's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule. Liquidated Damages: Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project must be completed by the contract dates specified within the Notice to Proceed for construction. Should CONTRACTOR fail to complete the project within this timeframe, daily liquidated damages in amount of \$250.00 will be assessed.

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services shall is **\$2,494,350.00** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **EXHIBIT B** and made a part of this Agreement.

ARTICLE FIVE MAINTENANCE OF RECORDS

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

ARTICLE SIX

INDEMNIFICATION

6.1. The CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

ARTICLE SEVEN INSURANCE

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **EXHIBIT C** and made a part of this Agreement.

ARTICLE EIGHT SERVICES BY CONTRACTOR'S OWN STAFF

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

ARTICLE NINE WAIVER OF CLAIMS

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

ARTICLE TEN TERMINATION OR SUSPENSION

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

ARTICLE ELEVEN CONFLICT OF INTEREST

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE TWELVE MODIFICATION

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples
735 Eighth Street South
Naples, Florida 34102-3796
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Kyle Construction, Incorporated
3636 Prospect Avenue

Naples, Florida 34104
Attention: **Charles Abraham**, Vice President
FEI/EIN Number: 65-0382582 (State: FL)

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE FOURTEEN MISCELLANEOUS

14.1. The CONTRACTOR, in representing the CITY, shall promote the best interest of the CITY and assume towards the CITY a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

14.7. The CONTRACTOR shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONTRACTOR shall execute the Certification of Compliance with Immigration Laws, attached hereto as **EXHIBIT D**.

14.8. To the extent that any provision in the Specifications or any other Contract Documents pertaining to this Project conflict with any provision of this Agreement, this Agreement controls.

ARTICLE FIFTEEN APPLICABLE LAW

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

CITY:

By: *Patricia L. Rambosk*
Patricia L. Rambosk, City Clerk

CITY OF NAPLES, FLORIDA,
A Municipal Corporation
By: *A. William Moss*
A. William Moss, City Manager

Approved as to form
and legal sufficiency:

By: *Robert D. Pritt*
Robert D. Pritt, City Attorney

CONTRACTOR:

KYLE CONSTRUCTION, INCORPORATED
3636 Prospect Avenue
Naples, Florida 34104
Attention: **Charles Abraham**, Vice President
FEI/EIN Number: 65-0382582 (State: FL)
A Florida Profit Corporation

Kyle Abraham
Witness

By: *Charles Abraham*

Kyle Abraham
Printed Witness Name

Its: Vice President

(CORPORATE SEAL)

General Contract (not Architects/Engineers)

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services to be provided under this Agreement are included in Exhibit A which is attached and made a part of this Agreement and those set out in the Vendor's Submittal of (ITB) Invitation To Bid No.14-031, titled Option T-2 Reclaimed Water Distribution System Expansion herein referenced and made a part of this Agreement.

END OF EXHIBIT A

EXHIBIT B

SECTION 01010

SUMMARY OF WORK

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Description of Work
- B. CONTRACTOR's Use of Site
- C. Work Sequence
- D. City Occupancy

1.2 DESCRIPTION OF WORK

- A. General: The Work to be done under this Contract is shown on the drawings and specified in Contract Documents.
- B. The Work includes:
 - 1. Furnishing of all labor, material, superintendence, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies, services and other means of construction necessary or proper for performing and completing the Work.
 - 2. Sole responsibility for adequacy of plant and equipment.
 - 3. Maintaining the Work area and site in a clean and acceptable manner.
 - 4. Maintaining existing facilities in service at all times.
 - 5. Protection of finished and unfinished Work.
 - 6. Repair and restoration of Work or existing facilities damaged during construction.
 - 7. Furnishing as necessary proper equipment and machinery, of a sufficient capacity, to facilitate the Work and to handle all emergencies normally encountered in Work of this character.
 - 8. Furnishing, installing, and protecting all necessary guides, track rails, bearing plates, anchor and attachment bolts, and all other appurtenances needed for the installation of the devices included in the equipment

specified. Make anchor bolts of appropriate size, strength and material for the purpose intended. Furnish substantial templates and shop drawings for installation.

- C. **Implied and Normally Required Work:** It is the intent of these Specifications to provide the City with complete operable systems, subsystems and other items of Work. Any part or item of Work, which is reasonably implied or normally required to make each installation satisfactorily and completely operable, is deemed to be included in the Work and the Contract Amount. All miscellaneous appurtenances and other items of Work incidental to meeting the intent of these Specifications are included in the Work and the Contract Amount even though these appurtenances may not be specifically called for in these Specifications.
- D. **Quality of Work:** Regard the apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished as meaning that only the best general practice is to prevail and that only materials and workmanship of the best quality are to be used. Interpretation of these specifications will be made upon this basis.

1.3 CONTRACTOR'S USE OF SITE

- A. In addition to the requirements of the Supplemental Terms and Conditions, limit use of site and premises for work and storage to allow for the following:
 - 1. Coordination of the Work under this CONTRACT with the work of the other contractors where Work under this CONTRACT encroaches on the Work of other contractors.
 - 2. City occupancy and access to operate existing facilities.
 - 3. Coordination of site use with ENGINEER.
 - 4. Responsibility for protection and safekeeping of products under this CONTRACT.
 - 5. Providing additional off site storage at no additional cost to the City as needed.
- B. **Use of Premises:** Contractor shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project Site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

1.4 WORK SEQUENCE

- A. Construct Work in stages to accommodate the City's use of premises during construction period and in accordance with the limitations on the sequence of construction specified. Coordinate construction schedules and operations with ENGINEER. The Contractor shall not open up work to conflict with work already in progress. The Engineer may, however require the Contractor to finish a section on which work is in progress prior to starting another section.
- B. Coordinate Work of all subcontractors.

1.5 CITY OCCUPANCY

- A. The City will occupy premises during entire period of construction in order to maintain normal operations. Cooperate with the City's Manager or designee in all construction operations to minimize conflict, and to facilitate City usage.
- B. Conduct operations with the least inconvenience to the general public.

1.6 PROTECTION OF EXISTING UTILITIES

- A. In case of damage to existing utilities caused by construction activities, contact the owner of the utility or appropriate City department (Water or Wastewater) immediately. Repair any damage to existing utilities caused by construction activities in coordination with or as directed by the owner of the utility.

Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section as the "utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. The Contractor shall conduct his work at all times such that adequate drainage is provided and shall not interfere with or block existing drainage facilities such as gutters, ditches, storm drains, or other drainage appurtenances. Existing fire hydrants adjacent to the project shall be kept accessible for fire apparatus at all times and no material or equipment shall be placed within 25 feet of any hydrant.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

- A. **Starting Work:** Start Work within 10 days following the date stated in the Notice to Proceed and execute with such progress as may be required to prevent delay to other contractors or to the general completion of the project. Execute Work at such items and in or on such parts of the project, and with such forces, material and equipment, as to complete the Work in the time established by the Contract. At all times, schedule and direct the Work so that it provides an orderly progression to completion within the specified time for completion. The Contractor shall obtain all necessary building permits prior to commencement of work. The Contractor shall become totally familiar with the requirements of all permits prior to start of work.
- B. **Intent of Contract Documents:** It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such works shall be interpreted in accordance with that meaning. Reference to standards specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

If before or during the performance of the Work Contractor discovers a conflict, error or discrepancy in the Contract Documents, Contractor immediately shall report same to the Engineer in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Engineer. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

Drawings are intended to show general arrangements, design and extent of work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the Engineer. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

- B. Investigation and Utilities:** Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.
- C. Schedule:** The Contractor, within ten (10) calendar days after receipt of the Notice of Award, shall prepare and submit to the Engineer, for review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.
- The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Engineer's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Engineer's review and approval of the submitted Progress Schedule updates shall be a condition precedent to the City's obligation to pay Contractor.
- D. Submittals and Substitutions:** Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by the City if sufficient information is submitted by Contractor to allow the City to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and

equipment will not be accepted by the City from anyone other than Contractor and all such request must be submitted by Contractor to the Engineer within thirty (30) calendar days after Notice of Award is received by Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Engineer for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the City for the Project) to adapt the design to the proposed substitute and whether or not the incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Engineer in evaluating the proposed substitute. The Engineer may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Engineer, if Contractor submits sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Engineer shall be the same as those provided herein for substitute materials and equipment.

The Engineer shall be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer shall be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Engineer's and the City's prior written acceptance which shall be evidenced by either a Change Order or an approved Shop Drawing. The City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

- I. **Daily Reports, As-Builts and Meetings:** Unless waived in writing, the Contractor shall complete and submit to the Engineer on a weekly basis a daily log of the Contractor's work for the preceding week in a format approved by the Engineer. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;
2. Soil conditions which adversely affect the Work;
3. The hours of operation by Contractor's and subcontractor's personnel;
4. The number of Contractor's and subcontractor's personnel present and working at the Project site, by subcontract and trade;
5. All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);
6. Description of Work being performed at the Project site;
7. Any unusual or special occurrences at the Project site;
8. Materials received at the Project site;
9. A list of all visitors to the Project site; and
10. Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Contractor to the City pursuant to the Contract Documents.

Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Engineer, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the Engineer for reference. Upon completion of the Work and as a condition precedent to the Contractor's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to the Engineer by Contractor.

Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The City, or any duly authorized agents or representatives of the City, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

- L. **Contract Time and Time Extensions:** Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of the Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the City in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whole or in part, shall relieve Contractor of his duty to perform or give rise to any right to damages or additional compensation from the City. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against the City will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

- N. **Changes in Work:** The City shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of the City, and the City shall not be liable to the Contractor for any increased compensation without such written order.
- O. **Claims and Disputes:** A claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the City and Contractor arising out of or relating to the Contract Documents.

The responsibility to substantiate a Claim shall rest with the party making the Claim.

Claims by the Contractor shall be made in writing to the City within forty-eight (48) hours after the first day of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the City within fifteen (15) calendar days after the occurrence of the event, unless the City grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim.

The Contractor shall proceed diligently with its performance as directed by the City, regardless of any pending claim, action, suit or administrative proceeding, unless otherwise agreed to by the City in writing. The City shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

- P. **Other Work:** The City may perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to the City within forty-eight (48) hours of being notified of the other work. If the Contractor fails to send the above required forty-eight (48) hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the City, if the City is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between the City and such utility owners and other contractors.

If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or the City), Contractor shall inspect and promptly report to the Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

- Q. **Compliance with Laws:** Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the Engineer in writing.
- R. **Assignment:** Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the City. If Contractor does, with approval,

assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the City.

- S. **Permits, Licenses and Taxes:** Pursuant to Section 218.80, F.S., the City will pay for all permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by The City of Naples, but is responsible for acquiring all permits.

All permits, fees and licenses necessary for the prosecution of the Work which are not issued by the City shall be acquired and paid for by the Contractor unless otherwise noted.

- T. **Termination for Default:** Contractor shall be considered in material default of the Agreement and such default shall be considered cause for the City to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the Engineer or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove material or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

The City shall notify Contractor in writing of Contractor's default(s). If the City determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice, then the City, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which the City, in its sole discretion, may choose.

If the City deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses (including Engineer and attorney's fees) or damages incurred by The City incident to such completion, shall be deducted from the Contract Amount, Contractor agrees to pay promptly to the City on demand the full amount (including appeals) and interest thereon at the maximum legal rate of interest until

paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the City to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor, shall be approved by the Engineer, upon application, and this obligation for payment shall survive termination of the Agreement.

The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by The City in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands suits, and judgments pertaining to or arising out of the work hereunder.

If, after notice of termination of contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that the City is not entitled to the remedies against Contractor provided herein, then Contractor's remedies against the City shall be the same as and limited to those afforded Contractor under "Completion" section below.

- U. Termination for Convenience and Right of Suspension: The City shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against the City shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against the City, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

The City shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

- V. Completion: When the entire Work (or any portion thereof designated in writing by the City) is ready for its intended use, Contractor shall notify the Engineer in writing that the entire Work (or such designated portion) is substantially complete and request that the Engineer issue a Certificate of Substantial completion (or Certificate of Partial Substantial Completion). Within a reasonable time thereafter, the City, Contractor and Engineer shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If the City and Engineer do not consider the Work (or designated portion) substantially complete,

the Engineer shall notify Contractor in writing giving the reasons therefore. If the City and Engineer consider the Work (or designated portion) substantially complete, the Engineer shall prepare and deliver to Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punchlist of items to be completed or corrected by Contractor before final payment. The City shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, but the City shall allow Contractor reasonable access to complete or correct items on the tentative punchlist.

Upon receipt of written certification by Contractor that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will make such inspection and, if he finds the Work acceptable and fully performed under the Contract Documents, he shall promptly issue a final Certificate for Payment, recommending that, on the basis of his observations and inspection, and the Contractor's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Contractor is due and payable. Neither the final payment nor the retainage shall become due and payable until Contractor submits: all data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by the City. The City reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Engineer may have issued his recommendations. Unless and until the City is completely satisfied, neither the final payment nor the retainage shall become due and payable.

- W. **Warranty:** Contractor shall obtain and assign to the City all express warranties given to Contractor or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the project. Contractor warrants to the City that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to the City that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after final completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from the City. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which the City is entitled as a matter of law.
- X. **Supervision and Superintendents:** Contractor shall plan, organize, supervise, schedule, monitor, direct and control the work competently and efficiently,

devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to the Engineer except under extraordinary circumstances. The superintendent shall be Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. The City shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

- Y. **Protection of Work:** Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor or any one for whom Contractor is legally liable for is responsible for any loss or damage to the Work, or other work or materials of the City or the City's separate contractors, Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Contractor shall not disturb any benchmark established by the Engineer with respect to the Project. If Contractor, or its subcontractors, agents or anyone for whom Contractor is legally liable, disturbs the Engineer's benchmark, Contractor shall immediately notify The City and Engineer. The Engineer shall reestablish the benchmark and Contractor shall be liable for all costs incurred by The City associated therewith.

- Z. **Emergencies:** In the event of an emergency affecting the safety or protection of persons or Work or property at the Project site of adjacent thereto, Contractor, without special instructions or authorization from the City or Engineer is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

- Z1. **Project Meetings:** Prior to the commencement of Work, the Contractor shall attend a preconstruction conference with the Engineer and others as appropriate to discuss the Progress Schedule, procedures for handling shop drawings and other

submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the Engineer or the City with respect to the Project, when directed to do so. Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by the City or Engineer.

- Z2. **Traffic Control Plan:** A traffic control plan to support the Contractor's operations shall be submitted at least 72 hours prior to commencing work that shall conform to the Florida Department of Transportation's "Manual on Traffic Control and Safe Practices" which shall be obtained by the Contractor at his expense.
- Z3. **Hours of Work:** Work within the travelled way of the project shall commence no earlier than 7:00 a.m. local time and be completed no later than 7:00 p.m. local time. Hours of work may be altered at any time at the discretion of the City.
- Z4. **Tax Exemption:** The City of Naples is exempt from the payment of sales or use tax. The tax exemption certificate number is: 85-8012621645C-0.

PART 4 SAFETY

A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Work and other persons and/or organizations who may be affected thereby;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and
3. Other property on Project site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

B. Contractor shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility-owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by The City has occurred.

- C. Contractor shall designate a responsible representative at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to The City.

END OF SECTION

NO TEXT FOR THIS PAGE

BASIS OF COMPENSATION

As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as indicated in Exhibit B, which is attached and made part of this Agreement.

The CITY and CONTRACTOR will negotiate an agreed upon price for Division 3's Allowance for Additional Reclaimed Water Improvements of the Bid Proposal Summary. Said Bid Proposal Summary is included in Exhibit B, which is attached and made part of this Agreement.

Retainage of (10%) ten percent will be a part of said agreement and future payments.

END OF EXHIBIT B

I. BID PACKAGE / SCHEDULE

Bidder submits the following prices to perform all the work as required by the Drawings and Specifications for the construction of the City of Naples, RECLAIMED WATER MAIN EXPANSION: OPTION T-2

DIVISION 1 - MOBILIZATION & MAINTENANCE OF TRAFFIC					
<i>Item</i>	<i>Item Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Cost</i>	<i>Extended Price</i>
1-1	Mobilization/Demobilization	LS	1	75,000. ⁰⁰	75,000. ⁰⁰
1-2	Preconstruction Audio/Video Recording	LS	1	10,000. ⁰⁰	10,000. ⁰⁰
1-3	Maintenance of Traffic	LS	1	26,000. ⁰⁰	26,000. ⁰⁰
1-4	Preparation of As-built Drawings	LS	1	18,000. ⁰⁰	18,000. ⁰⁰
<i>Place sub-total at right, and also on Summary of bid proposal</i>				DIVISION 1 SUB- TOTAL	\$129,000.⁰⁰

DIVISION 2- RECLAIMED WATER					
Item	Item Description	Unit	Quantity	Unit Cost	Extended Price
2-1 Furnish & Install Reclaimed Water Main (RWM)					
2-1A	4" HDPE RWM DR-11 (directional drill method)	LF	260	46. ⁰⁰	11,960. ⁰⁰
2-1B	6" HDPE RWM DR-11 (directional drill method)	LF	1,950	48. ⁰⁰	93,600. ⁰⁰
2-1C	8" PVC RWM DR-14, Class 200 (trench method)	LF	5,700	60. ⁰⁰	342,000. ⁰⁰
2-2 Furnish & Install Valves & Boxes					
2-2A	4" Gate Valve	EA	3	700. ⁰⁰	2,100. ⁰⁰
2-2B	6" Gate Valve	EA	4	900. ⁰⁰	3,600. ⁰⁰
2-2C	8" Gate Valve	EA	12	1400. ⁰⁰	16,800. ⁰⁰
2-3 Furnish & Install Reclaimed Water Fire Hydrant Assemblies					
2-3A	Fire Hydrant Assembly (NEW)	EA	7	4,200. ⁰⁰	29,400. ⁰⁰
2-4 Furnish & Install Reclaimed Water Services					
Short-Service is located on same side of roadway as main or in median Long-Service is located on opposite side of roadway from main					
2-4A	1" Reclaimed Water Services (Short)	EA	1	640. ⁰⁰	640. ⁰⁰
2-4B	2" Reclaimed Water Services (Short)	EA	40	1440. ⁰⁰	57,600. ⁰⁰
2-4C	1" Reclaimed Water Services (Long)	EA	1	2200. ⁰⁰	2,200. ⁰⁰
2-4D	2" Reclaimed Water Services (Long)	EA	11	3100. ⁰⁰	34,100. ⁰⁰
2-5 Furnish & Install Connections to Existing Reclaimed Water Main					
2-5A	Connect to Existing 12-inch Main at Park Shore Drive	LS	1	3800. ⁰⁰	3,800. ⁰⁰
2-5B	Connect to Existing 12-inch Main at Harbour Drive	LS	1	3800. ⁰⁰	3,800. ⁰⁰
2-6 Disposal of Unsuitable Material					
2-6A	Disposal of Unsuitable Material	CY	250	15. ⁰⁰	3,750. ⁰⁰
2-7 Surface Restoration					
2-7A	Surface Restoration	LS	1	160,000. ⁰⁰	160,000. ⁰⁰
Place sub-total at right, and also on Summary of bid proposal			DIVISION 2 SUB- TOTAL	765,350.⁰⁰	

DIVISION 3 – ALLOWANCE FOR ADDITIONAL RECLAIMED WATER IMPROVEMENTS (PLANS/SPECIFICATIONS TO BE PROVIDED AFTER BID AWARD)					
<i>Item</i>	<i>Item Description</i>	<i>Unit</i>	<i>Qty</i>	<i>Unit Cost</i>	<i>Extended Price</i>
3-1 Allowance for Additional Reclaimed Water Improvements					
3-1A	Allowance for Additional Reclaimed Water Improvements	Allowance	1	1,500,000	1,500,000.00
<i>Place sub-total at right, and also on Summary of bid proposal</i>				DIVISION 3 SUB-TOTAL	\$ 1,500,000.00

BID PROPOSAL SUMMARY		
DIVISION 1 - Mobilization & Maintenance of Traffic	Sub-total	\$ 129,000.⁰⁰
DIVISION 2 - Reclaimed Water Main	Sub-total	\$ 765,350.⁰⁰
DIVISION 3 – Allowance for Additional Reclaimed Water Improvements	ALLOWANCE	1,500,000.00
City Controlled Contingency	ALLOWANCE	100,000.00
TOTAL AMOUNT BID		\$ 2,494,350.⁰⁰

Descriptions of the various payment items are more fully described in Exhibit A, Section 01026- Measurement and Payment.

EXHIBIT C

GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples must be named as Additional Insured on the insurance certificate and the following must also be stated on the certificate. "These coverage's are primary to all other coverage's the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. The Certificate Holder shall read as follows:

The City of Naples
735 Eighth Street South
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.
No other format will be acceptable.

The Certificate must state the bid number and title.

When using the ACORD 25 – Certificate of Insurance only the most current version will be accepted.

The City of Naples requires a copy of a cancellation notice in the event the policy is cancelled. The City of Naples shall be expressly endorsed onto the policy as a cancellation notice recipient.

[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1 through C-__]

EXHIBIT D

CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS

The undersigned, is the **Vice President of the Kyle Construction Incorporated** company ("the CONTRACTOR"), and hereby certifies to the following:

1. The CONTRACTOR is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONTRACTOR has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONTRACTOR in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONTRACTOR in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONTRACTOR to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONTRACTOR's files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONTRACTOR will have its contractors, subcontractors, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONTRACTOR being liable for any violation of the law by such third parties.


4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONTRACTOR, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONTRACTOR has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONTRACTOR will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONTRACTOR acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours notice, to examine the CONTRACTOR's books and records to confirm that the CONTRACTOR is in compliance with the terms of this certification.

Executed this 10th day of April, 2014.

By: 
Charles Abraham

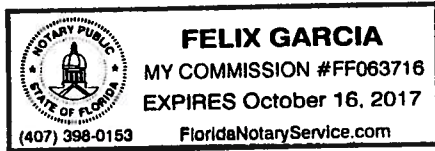
ACKNOWLEDGMENT

STATE OF Florida

COUNTY OF Collier

SWORN TO AND SUBSCRIBED before me this 10th day of April, 2014.

The Affiant, Charles Abraham, is [] personally known to me or [] has produced _____ as identification, which is current or has been issued within the past five years and bears a serial number of other identifying number.



Felix Garcia
Print Name: _____

[Signature]
NOTARY PUBLIC, - STATE
OF Florida

Commission Number: _____

My Commission Expires: _____

(Notary Seal)