

CITY OF NAPLES, FLORIDA
AGREEMENT
(CONSTRUCTION SERVICES)

Bid/Proposal No. **14-057**

Clerk Tracking No. 14-00143

Project Name: **Bembury Sanitary Sewer System**

THIS AGREEMENT (the "Agreement") is made and entered into this **19th day of November, 2014**, by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **Mitchell & Stark Construction Company, Incorporated, an Indiana Corporation**, located at: **6001 Shirley Street; Naples, Florida 34109** (the "CONTRACTOR").

W I T N E S S E T H:

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. 14-057** for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of 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 **Bembury Sanitary Sewer System** 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 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 employee 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 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 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, sub-consultants 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 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 **substantial completion of 180 days from the Notice to Proceed and Final Completion of 210 days from Substantial Completion. Project Close Out shall be performed within 90 days of Final Completion.** 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.

3.5 Liquidated Damages: Not applicable to this Agreement.

3.6 Bond. A Payment & Performance Bond with a surety insurer authorized to do business in this state as surety (check) one

_____ has been recorded in the public records of the County,

XX prior to commencement of work, will be recorded in the public records of the County, or

_____ is waived.

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services is **\$957,182.20 that includes Alternate B** 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:

Mitchell & Stark Construction Company, Incorporated
6001 Shirley Street
Naples, Florida 34109
Attention: **Brian Penner**, CEO
FEI/EIN Number: 35-0964820 **(State: IN)**

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:

CITY OF NAPLES, FLORIDA
A Municipal Corporation

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

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:

Mitchell & Stark Construction Company, Inc.
6001 Shirley Street
Naples, Florida 34109
Attention: **Brian Penner**, CEO
FEI/EIN Number: 35-0964820 (State: IN)
A **Indiana** Corporation

By: *Brian Penner*

Fred Harrison
Witness

Its: *LED*

Fred Harrison
Printed Witness Name

(CORPORATE SEAL)

Services Contract (not Architects/Engineers)

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services to be provided under this Agreement are included in Exhibit A-1 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.14-057, titled Bembury Sanitary Sewer System herein referenced and made a part of this Agreement.

This project is for the installation of a new sanitary sewer collection system for the Bembury subdivision. The project includes approximately 3,350 LF of 8" sanitary sewer main piping, 13 sanitary sewer manholes, one sanitary sewer pump station (lift station), 40 LF of 4" force main piping, approximately 1,300 LF of 6" sanitary sewer service piping and cleanouts, complete roadway restoration, and sanitary sewer service connections (alternate(s)).

END OF EXHIBIT A _____

SCOPE OF SERVICES

PROJECT OVERVIEW

This project is for the installation of a new sanitary sewer collection system for the Bembury subdivision. The project includes approximately 3,350 LF of 8" sanitary sewer main piping, 13 sanitary sewer manholes, one sanitary sewer pump station (lift station), 40 LF of 4" force main piping, approximately 1,300 LF of 6" sanitary sewer service piping and cleanouts, complete roadway restoration, and sanitary sewer service connections (alternate).

SECTION 01026

MEASUREMENT AND PAYMENT

Applies only to City of Naples' project identified as "Utility Upgrades for 14th Avenue North, 13th Avenue North and Bembury Subdivision".

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Explanation and Definitions
- B. Measurement
- C. Payment
- D. Schedule of Values

1.2 EXPLANATION AND DEFINITIONS

- A. The following explanation of the Measurement and Payment for the Bid Schedule items is made for information and guidance. The omission of reference to any item in this description shall not, however, alter the intent of the Bid Schedule or relieve the CONTRACTOR of the necessity of furnishing such as a part of the Contract. Measurement and payment for all Contract Items shall be made in accordance with this section or as modified by the Supplemental Terms and Conditions.

1.3 MEASUREMENT

- A. The quantities set forth in the Bid Schedule are approximate and are given to establish a uniform basis for the comparison of bids. The CITY reserves the

right to increase or decrease the quantity of any class or portion of the work during the progress of construction in accord with the terms of the Contract.

1.4 PAYMENT

- A. Make payment for the items listed on the Bid Schedule on the basis of the work actually performed and completed, such work including but not limited to, the furnishing of all necessary labor, materials, equipment, transportation, clean up, restoration of disturbed areas, and all other appurtenances to complete the construction and installation of the work as shown on the drawings and described in the specifications.
- B. Unit prices are used as a means of computing the final figures for bid and Contract purposes, for periodic payments for work performed, for determining value of additions or deletions and wherever else reasonable.

1.5 SCHEDULE OF VALUES

- A. Approval of Schedule: Submit for approval a preliminary schedule of values, in duplicate, for all of the Work. Prepare preliminary schedule in accordance with the Supplemental Terms and Conditions. Submit preliminary schedule of values within 10 calendar days after the Effective Date of the Agreement. Submit final schedule of values in accordance with the Supplemental Terms and Conditions.
- B. Format: Utilize a format similar to the Table of Contents of the Project Specifications. Identify each line item with number and title of the major specification items. Identify site mobilization, bonds and insurance. Include within each line item, a direct proportional amount of CONTRACTOR's overhead profit.
- C. Revisions: With each Application for Payment, revise schedule to list approved Change Orders.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.1 MEASUREMENT AND PAYMENT

- A. Make payment on the basis of work actually performed completing each item in the Bid, such work including, but not limited to, the furnishing of all necessary labor, materials, equipment, transportation, cleanup, and all other

appurtenances to complete the construction and installation of the work to the configuration and extent as shown on the drawings and described in the specifications. Payment for each item includes compensation for cleanup and restorations. Cost of cleanup and surface restorations (including pavement replacement) will be considered as the percentage retained in accordance with the Contract Documents, and complete payment will not be made until cleanup, restorations and as-builts are completed.

PART 1 – MOBILIZATION & MAINTENANCE OF TRAFFIC

- 1-1. Mobilization: Payment for mobilization will be made for at the Contract lump sum price.
- 1-2. Maintenance of Traffic: Payment for maintenance of traffic in accordance with the CITY's Maintenance of Traffic Policy will be made for at the Contract lump sum price.
- 1-3. Pre-construction Audio-Video Recording: Payment for providing preconstruction audio-video recording in accordance with the CITY's Utilities Specifications and Standard Manual will be made for at the Contract lump sum price. This work includes necessary documentation of existing conditions on public and private properties. The CONTRACTOR may be required to restore private properties to conditions better than existing, at no additional cost to the CITY, if the CONTRACTOR fails to sufficiently document existing conditions.
- 1-4. Survey Layout & Record Drawings: Payment for providing all survey and record drawings will be made at the Contract lump sum price in accordance with the CITY's Utilities Specifications and Standards Manual.

PART 2 – SANITARY SEWER COLLECTION & TRANSMISSION

- 2-1 Gravity Sewer Main: Payment for furnishing and installing gravity sewer lines will be made at the Contract unit price per lineal foot for the pipe in place. This item includes clearing and disposal of trees and bushes, all necessary fittings, pipe coatings and linings, connections to existing mains, labor, equipment and materials for the furnishing and laying of the pipe, signs, maintenance of traffic, dewatering, compaction, density testing, pipe bedding, backfilling, sheeting, restrained joint piping, detectable tape, clamps, harnessing, plugs and caps, adapters, excavation of all material encountered, including rock, backfill, replacement of grass, sod, clearing and grubbing, landscaping, pavement, driveways, sidewalks, mailboxes, culverts, storm sewers, and other surface materials not specifically designated in the Bid,

coordination with other contractors, stubs and valves for future connections to existing pipes, clean-up, disinfection and sterilization, temporary facilities for testing and tests. Measure pipe to the nearest foot along the centerline including the lengths of manholes, valves and fittings. Measure lineal footage horizontally. Measure cuts from proposed grade to the invert elevation of the pipe. Pipe installed within casing pipe is included in this item.

- 2-2a-c. **Sanitary Sewer Manholes**: Payment for furnishing and installing standard precast concrete sanitary manholes will be made at the unit price per manhole acceptably installed. This item includes all excavation, backfilling, compacted gravel or crushed stone bedding, sheeting, shoring, dewatering, concrete work and reinforcing, protection of adjacent facilities, manhole frames and covers, coatings and linings, manhole joints, bottom channels and sanitary sewer connections. Conform manholes to the CITY's Utilities Specifications and Standard Manual. This item does not include outside drop manholes or standard precast shallow manholes. Measure cuts from proposed grade to the invert elevation of the sewer.
- 2-2d. **Sanitary Sewer Drop Manhole**: Payment for furnishing and installing pre-cast concrete sanitary drop manhole will be made at the unit price per drop manhole acceptably installed. This item includes all excavation, backfilling, compacted gravel or crushed stone bedding, sheeting, shoring, dewatering, concrete work and reinforcing, protection of adjacent facilities, coatings and linings, manhole frames and covers, coatings and linings, manhole joints, bottom channels and sanitary sewer connections. Conform Drop Manhole to the appropriate Sanitary Sewer Precast Drop Manhole detail shown on the Plans. Measure cuts from proposed grade to the invert elevation of the sewer.
- 2-3. **Lift Station**: Payment for the furnishing and installing the lift station will be made for at the Contract lump sum price for the lift station acceptably installed. This item includes pumps, wet well structure, valve vault structure, telemetry, fence, stainless steel hardware, aluminum wet well cover, aluminum valve vault cover, coatings, valves, pipe, fittings, water service, panel, electrical hardware, electrical connection, electrical controls, and all necessary materials and labor to complete the pump station in accordance with the project plans. All site work and fencing is included. Also included is the coordination and cost to connect electrical power to the lift station. The CONTRACTOR shall schedule with Florida Power & Light to place the lift station into service.
- 2-4. **Sewer Force Main**: Payment for furnishing and installing sewer force main will be made at the Contract unit price per lineal foot for the pipe in place. This item includes clearing and disposal of trees and bushes, all necessary fittings, pipe coatings and linings, connections to existing mains, labor, equipment and materials for the furnishing and laying of

the pipe, signs, maintenance of traffic, dewatering, compaction, pipe bedding, backfilling, sheeting, restrained joint piping, detectable tape, polyethylene clamps, harnessing, plugs and caps, adapters, excavation of all material encountered, including rock, backfill, replacement of grass, sod, clearing and grubbing, landscaping, pavement, driveways, sidewalks, mailboxes, culverts, storm sewers, and other surface materials not specifically designated in the Bid, coordination with other contractors, stubs and valves for future connections to existing pipes, clean-up, disinfection and sterilization, temporary facilities for testing and tests. Measure pipe to the nearest foot along the centerline including the lengths of manholes, valves and fittings. Measure lineal footage horizontally. Measure cuts from proposed grade to the invert elevation of the pipe. Pipe installed within casing pipe is included in this item.

- 2-5. 6" Lateral and Cleanout: Payment for furnishing and installing PVC lateral services and cleanouts will be made at the appropriate Contract unit price per linear foot acceptably installed. This item includes all labor, equipment and materials for furnishing and installing all necessary pipe, fittings, connections, solids sleeves and adapters, protection of existing utilities and facilities, excavation, pipe bedding, sheeting, shoring, dewatering, compaction, cleanouts, service markers, plugs, removal and replacement of grass, sod, shrubs, pavement, driveways, culverts and storm sewers, mailboxes, sidewalks and other surface materials not specifically designated in the Bid, cleanup, testing, and other work for a complete installation.
- 2-6. Connection to Existing Force Main: Payment for furnishing and installing all pipe and fittings required to connect to existing force main will be made at the Contract lump sum price for the interconnection acceptably installed. This item includes all labor, equipment and materials to install all necessary pipe, fittings, connections, tapping sleeve and valve with valve box, field measurements, protection of existing facilities, excavation, pipe bedding, dewatering, compaction, surface restoration, testing, cleanup and all other work for a complete installation.

PART 3 – ROAD RESTORATION

- 3-1. Road Restoration: Payment for furnishing and performing entire road restoration activities, including Type B Stabilization (12"), 8" limerock, Type S-1 (150#/SY), 1-1/2" thick and Type S-III, (100#/SY), 1" thick, shall include the following: Materials and installation shall be per latest FDOT specifications. Contract unit price per square yard for pavement surface, base and sub-grade installed in the work. All pavement surface and base shall be replaced in accordance with the detail shown on the Construction Plans. This item includes, but is not limited to restoration of all pavement and crosswalk striping, signs, bituminous material tack

coats, fire hydrant reflective markers and any other items required to restore the road to its operational level.

- 3-2. Sidewalk: Payment for replacement of concrete sidewalk due to Installation of utilities will be made at the appropriate Contract unit price per lineal foot for concrete sidewalk installed in the work.
- 3-3. General Site: Payment for general restoration will be made at the appropriate Contract unit price per linear foot. This item includes all labor and materials required for clearing and grubbing, sodding of rights-of-way, existing above ground obstructions, re-installation of fence lines, clean-up and re-grading of areas disturbed along the construction corridor, driveways, mailboxes and other surface materials not specifically designated in the Bid.
- 3-4. Pump Station Driveway Allowance: A \$5,000 allowance has been set aside for the installation of a 12'- wide sodded, stabilized driveway to provide access to the pump station. Owner, Engineer and Contractor will determine the best alignment for the driveway on-site during construction. Once the alignment is determined and submitted to Contractor in writing, Contractor will submit a proposal for costs of material and labor in writing to Engineer for approval.

ALTERNATE BID ITEMS

- A-1 Sanitary Sewer Services: Payment for re-establishing existing sanitary sewer services on private property from the right-of-way line to the resident/business will be made at the appropriate Contract unit price for each service acceptably installed.
- i. This item includes all labor, equipment and materials for furnishing and installing the slip-liner, pipe, fittings, connections, protection of existing utilities and facilities, excavation, pipe bedding, sheeting, shoring, dewatering, compaction, service markers, plugs, detectable tape, removal and replacement of grass, sod, shrubs, pavement, driveways, culverts and storm sewers, mailboxes, sidewalks and other surface materials not specifically designated in the Bid, cleanup, testing, and other work for complete installation and all investigation and verification needed to insure that all fixtures in the business/residence has been connected to the new facilities.
 - ii. This price and payment shall include, but not be limited to exploration to locate the existing sewer service on private property, all pipe and fittings required to make the connections on private property, including any necessary clean-outs at pipe bends,

trenching and excavation related items, bedding, jointing, and performance testing.

- iii. The price and payment shall include all costs associated with the restoration of private property for sewer construction including, but not limited to, sod, asphalt & concrete driveways and pads, sidewalks, landscaping, trees, irrigation systems, other utilities, fences, structures, lighting, cleanup, etc.

A-2 Abandon Existing Septic Tanks: Payment for abandonment of existing septic tanks per the Florida Administrative Code (Chapter 64E-6.011 Abandonment of Systems) will be made at the appropriate Contract unit price per each septic tank acceptably abandoned.

- B. Prior to submitting first monthly Application for Payment, Contractor shall submit to Engineer, for review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the Engineer, this schedule of values shall be used as the basis for the Contractor's monthly Applications for Payment.
- C. Prior to submitting first monthly Application for Payment, Contractor shall submit to The City a complete list of all its proposed subcontractors and materialmen, showing the work and materials involved and the dollar amount of each proposed subcontract and purchase order. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Commencement Date.
- D. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the City in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the City has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which shall be subject to the City's satisfaction.
- E. Contractor shall submit six (6) copies of its monthly Application for Payment to the Engineer on or before the 25th day of each month for work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) calendar days after receipt of each Application for Payment, the Engineer shall either:

1. indicate for his approval of the requested payment;

2. indicate his approval of only a portion of the requested payment, stating in writing his reasons therefore; or
3. return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment.

In the event of a total denial and return of the Application for Payment by the Engineer, the Contractor may make the necessary corrections and resubmit the Application for Payment. The City shall, within thirty (30) calendar days after the Engineer's approval of an Application for Payment, pay the Contractor the amounts so approved. Provided, however, in no event shall the City be obligated to pay any amount greater than that portion of the Application for Payment approved by the Engineer.

- F. The City shall retain ten (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the Engineer for payment, whichever is less. Such sum shall be accumulated and not released to the Contractor until final payment is due.
- G. Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's work.
- H. Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule. Accordingly, prior to submitting its first monthly Application for Payment, Contractor shall prepare and submit for the Engineers review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by the City to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Project Funding Schedule.

3.2 PAYMENTS WITHHELD

- A. The Engineer may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The Engineer may nullify the whole or any part of any approval for payment previously issued and the City may withhold any agreement between the City and Contractor, to such an extent as may be necessary in the City's opinion to protect it from loss because of:
 - 1 Defective Work not remedied;
 - 2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
 - 3 Failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment;

- 4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount;
- 5 Reasonable indication that the Work will not be completed within the Contract Time;
- 6 Unsatisfactory prosecution of the Work by the Contractor; or
- 7 Any other material breach of the Contract Documents.

- B. If these conditions in Subsection 5.1 are not remedied or removed, the City may, after three (3) days written notice, rectify the same at Contractor's expense. The City also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor whether relating to or arising out of this Agreement or any other agreement between Contractor and the Engineer.

3.3 FINAL PAYMENT

- A. The City shall make final payment to Contractor within thirty (30) calendar days after the Work is finally inspected and accepted by both the City and the Engineer in accordance with Section 20.1 herein provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished the City with any and all documentation that may be required by the Contract Documents and the City.
- B. Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against the City arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by the City shall be deemed to be a waiver of the City's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Engineer at the time of final inspection.

END OF SECTION

CITY OF NAPLES UTILITIES AND STANDARDS MANUAL 060414

The City of Naples Utilities and Standards Manual is included in this Invitation to Bid by reference and can be found in its entirety at the following link:

<http://www.naplesgov.com/DocumentCenter/View/39189>

#

EXHIBIT B

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-1, which is attached and made part of this Agreement.

Retainage: 10% Retainage will apply for the duration of this Agreement and its pay requests.

END OF EXHIBIT B

Attachment 1 Revised Bid Schedule

CITY OF NAPLES
Utility Upgrades for 14th Avenue North,
13th Avenue North and Bembury Subdivision

Item No.	Item Description	Estimated Quantity	Unit	Unit Cost	Total Expanded Cost
1-1	Mobilization	1	LS	66100	\$ 66100 -
1-2	Maintenance of Traffic	1	LS	8000	\$ 8000 -
1-3	Preconstruction Audio/Video Recording	1	LS	4400	\$ 4400 -
1-4	Record Drawings	1	LS	3520	\$ 3520 -
PART 1 SUBTOTAL					\$ 82020 -
Item No.	Item Description	Estimated Quantity	Unit	Unit Cost	Total Expanded Cost
2-1	Gravity Sewer Main				
a	8" PVC Gravity Main (0'-6' Cut)	2,044	LF	31	\$ 63364 -
b	8" PVC Gravity Main (6'-8' Cut)	560	LF	55	\$ 30800 -
c	8" PVC Gravity Main (8'-10' Cut)	651	LF	59	\$ 38409 -
2-2	Sanitary Sewer Manholes				
a	Manhole (0'-6' Cut)	7	EA	4480	\$ 31360 -
b	Manhole (6'-8' Cut)	3	EA	5550	\$ 16650 -
c	Manhole (8'-10' Cut)	2	EA	6740	\$ 13480 -
d	Drop Manhole (8'-10' Cut)	1	EA	8540	\$ 8540 -
2-3	Lift Station	1	EA	185000	\$ 185000 -
2-4	Sewer Force Main				
a	6" PVC C900 DR14	40	LF	36	\$ 1440 -
2-5	6" Lateral and Cleanout	1,250	LF	26	\$ 32500 -
2-6	Connection to Existing Force Main	1	EA	3780	\$ 3780 -
PART 2 SUBTOTAL					\$ 425323 -

CITY OF NAPLES
Utility Upgrades for 14th Avenue North,
13th Avenue North and Bembury Subdivision

Item No.	Item Description	Estimated Quantity	Unit	Unit Cost	Total Expanded Cost
3-1	Road Restoration				
a	Type B Stabilization (12")	8,300	SY	5	\$ 41500 -
b	Optional Base Group 6 (8" Limerock)	7,200	SY	11	\$ 79200 -
c	Type S-I (150#/SY), 1-1/2 inches thick	6,900	SY	10.25	\$ 70725 -
d	Type S-III (100#/SY), 1-inch thick	6,900	SY	8	\$ 55200 -
3-2	Sidewalk	60	LF	30	\$ 1800 -
3-3	General Site Restoration	3,250	LF	10	\$ 32500 -
PART 3 SUBTOTAL					\$ 280925 -

BID PROPOSAL SUMMARY

PART 1 - Mobilization & Maintenance of Traffic	\$ 82020 -
PART 2 - Sanitary Sewer Collection & Transmission	\$ 425323 -
PART 3 - Restoration	\$ 280925 -
15% CONTINGENCY	\$ 118240 -20
TOTAL BID PRICE	\$ 90650820

ALTERNATE BID ITEMS

Item No.	Item Description	Estimated Quantity	Unit	Unit Cost	Total Expanded Cost
A-1	Sanitary Sewer Services				
a	Front Service Replacement		LF	21.50	\$ -
b	Rear Service Replacement		LF	23.00	\$ -
A-2	Abandon Existing Septic Tanks	50	EA	1185	\$ 44559250 ^{sk}
					\$ 59250.00

B-1	Water System Improvements				
a	8" C900 PVC WM Piping (DR18)	700	LF	25.54	\$ 17878 -
b	Connection to Existing WM	1	LS	2930	\$ 2930 -
c	Fire Hydrant Assembly	2	EA	4650	\$ 9300 -
d	Single Water Service (Long Side) (1)	9	EA	1380	\$ 12420 -
e	Single Water Service (Short Side)	9	LF	905	\$ 8145 -
					\$ 50673 -

(1) Five single services will be located at 1480 Bembury

CITY OF NAPLES
Utility Upgrades for 14th Avenue North,
13th Avenue North Bembury Subdivision
City of Naples

ITB 14-057

10/6/2014
Bid Tabulation
6

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-1through C-__]

EXHIBIT D

CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS

The undersigned is the **CEO of the Mitchell & Stark Construction Company, Incorporated** ("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.

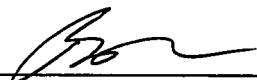
4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in 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 19 day of Nov., 2014.

By:  _____

ACKNOWLEDGMENT

STATE OF Florida

COUNTY OF Collier

SWORN TO AND SUBSCRIBED before me this 19 day of November, 2014.

The Affiant, Brian Penner, 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.

Print Name: _____

Brian Penner

NOTARY PUBLIC – STATE
OF _____

Commission Number: _____

My Commission Expires: _____

(Notary Seal)

