

CITY OF NAPLES, FLORIDA
AGREEMENT
(CONSTRUCTION SERVICES)

Bid/Proposal No. **16-037**

ClerkTracking No. 16-00111

Project Name: **Utilities Repair and Maintenance Contract Library**

THIS AGREEMENT (the "Agreement") is made and entered into this **17th day of August 2016**, 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").

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 **(RFP) Request for Proposal No. 16-037** 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 the CONTRACTOR are generally described as **Utilities Repair and Maintenance Contract Library** 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, registration, 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. The 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 the 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 the CONTRACTOR hereunder, and the 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 including those requirements set out in ARTICLE FIVE, below.

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 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 Projects assigned to this Library and shall be performed through September 30, 2019 with the option of two (2) additional one (1) year renewals upon mutual consent of the CITY and CONTRACTOR. **Project Close-out shall be performed for each designated project within 30-days of its agreed upon completion date.** 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: 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 Projects assigned to this Library and 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 an amount consistent with the current Sec. 8-10.2 (FDOT) Florida Department of Transportation Standard Specifications will be assessed if indicated within each Project's Notice-to-Proceed.

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

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

☐ is waived

☐ is not applicable to this Agreement.

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services is not to exceed **\$200,000.00 per project** 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.

5.2 119.0701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES' CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE

If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR'S duty to provide public records relating to this contract, contact the City of Naples' Custodian of Public records, the City Clerk at Telephone: 239-213-1015, Email: PublicRecordsRequests@naplesgov.com; Address: 735 8th Street S.; Naples, Florida 34102. Mailing address: same as street address.

5.3 The CONTRACTOR shall:

1. Keep and maintain public records required by the CITY to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter 119.0701 F.S. or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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. The 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: On File

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 assumes toward the CITY a duty of care commensurate with that which is imposed upon persons or firms in contractor's profession. CONTRACTOR will make reasonable efforts to ensure that its employees and agents maintain a professional demeanor and that the work area is compliant with CITY property maintenance and Project standards.

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.

14.9 Dispute Resolution. Disputes under this Agreement shall be resolved through mutual consultation between the parties within 14 days after notice; and failing resolution through mutual consultation, through mediation within 30 days thereafter; and failing mediation, through Arbitration under the Florida Arbitration Code, by a single arbitrator. If the parties cannot agree on a mediator or arbitrator, within 14 days of failure of the previous method, they shall request the Chief Judge of the 20th Judicial Circuit to appoint a mediator, or an arbitrator, as the case may be. Time periods are waivable by mutual agreement of the parties, but shall not exceed 90 days for completion of the processes described herein, unless by mutual agreement. Costs of the mediator or arbitrator shall be shared equally.

14.10 Attorneys' fees. Except as otherwise provided herein, each party shall be responsible for its own attorneys' fees.

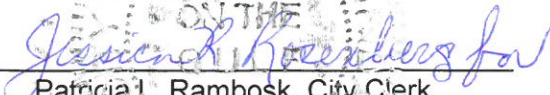
ARTICLE FIFTEEN APPLICABLE LAW

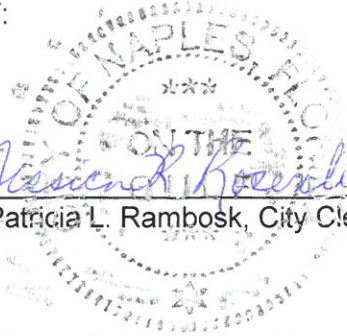
15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this 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.

END OF ARTICLE PAGE

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


ATTEST:

By: 
Patricia L. Rambosk, City Clerk




CITY:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

By: 
A. William Moss, City Manager

Approved as to form
and legal sufficiency:

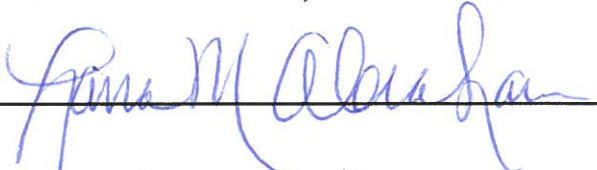
By: 
Robert D. Pritt, City Attorney

CONTRACTOR:

Kyle Construction, Incorporated
3636 Prospect Avenue
Naples, Florida 34104
Attention: **Charles Abraham**, Vice President


Witness

Kyle Abraham
Witness Printed Name

By: 
Printed Name: Lana M. Abraham
Title: President

FEI/EIN Number: On File
A Florida Profit Corporation (FL)

(CORPORATE SEAL)

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 Bid, any Issued Addendum(s) and Vendor's Submittal of (RFP) Request for Proposal No.16-037, titled Utilities Repair and Maintenance Contract Library herein referenced and made a part of this Agreement.

PROJECT REQUIREMENTS AND SPECIFICATIONS

I. INTRODUCTION

The City of Naples desires to enter into a contractual relationship with vendors capable of providing general underground utilities maintenance, capable of undertaking and completing utility/drainage/street projects of a defined scope and capable of providing a combination of manpower, equipment and materials to perform non-emergency and emergency repairs and new systems for the City of Naples' water distribution, reclaimed water, sanitary sewer and stormwater systems, including some limited above ground facilities. It is the City's intent to award to multiple vendors and to designate vendors in terms of primary service providers and standby service providers. The general routine maintenance work, capital improvement work and/or emergency repair work will be included under one or more of the areas of work described in Section III below.

No amount of work is or will be guaranteed or implied. The contract(s) to be awarded under this RFP will be annual contracts that will be utilized only in the event that specified projects under \$200,000 consisting of new projects, repair, replacement, and maintenance tasks are issued. As such, no compensation will accrue to the CONTRACTOR unless and until the contract is utilized in anticipation of a requested project. Potential CONTRACTORS are solely responsible for their own costs of developing the proposal associated with this RFP.

II. BACKGROUND

The City of Naples's 5-year Capital Improvement Plan (CIP) and operating budgets includes appropriated funds for the on-going maintenance and repair of the underground utilities systems owned and operated by the City of Naples. The planning approach is formulated in part on the concept of strategic pre-positioning of resources necessary for timely and coordinated efforts for repair and maintenance operations. A copy of the CIP is available at www.naplesgov.com/finance.

III. SCOPE

It is imperative that the City of Naples be prepared for all necessary repair and maintenance services associated with underground utilities and surface drainage in order to maintain an adequate and expected level of service for the residents of the City of Naples.

The City of Naples seeks to establish contractual arrangements with qualified Contractor(s), on an as needed basis, for a three-year period, with the City's option to renew for two additional one-year periods, to provide underground utilities repair and maintenance services for the City of Naples' Water Distribution, Reclaim Water, Sanitary Storm and Sewer systems, and above ground utility maintenance in full compliance with regulatory agency requirements and consistent with current City of Naples Standards, Occupational Safety and Health Administration (OSHA) regulations, American Water Works Association (AWWA), the Florida Administrative (F.A.C.) Code and the Florida Department of Transportation (FDOT) Construction Standards.

Those services would include:

- Main line and Service line repairs associated with all utilities systems (water, sewer, reclaim water, and stormwater) with pipe sizes ranging from one (1) inch to seventy-two (72) inches.
- Stormwater system repairs consisting of underdrain replacements, catch basin box repairs/replacements, check valve installation and maintenance, outfall pipe maintenance and cleaning, drain pipe extensions/replacements, weir upgrades and repair (within City lakes), swale and ditch enhancements (grading), new line installations, and etc.
- Sewer collection system repairs consisting of force main replacements and repairs, gravity main repairs and replacements (depths up to 15'), manhole installations, lateral installations, clean-out installations, valve repairs and replacements, line-stop installations, and etc.
- Reclaim water system repairs, replacements, and maintenance consisting of service and main line repairs, valve repairs, new line extensions, service line installations, and etc.
- Water distribution system repairs, replacements, and maintenance consisting of service and main line repairs, valve repairs, valve installations, new line extensions, service line installations, line-stop installations, backflow assembly installations, large meter installations, and etc.
- Lift station maintenance, repairs, replacements, and upgrades consisting of pipe replacements, wet well repairs, bypass pumping, and etc.
- Dewatering capabilities in order to accommodate excavation operations within low lying areas that are impacted by groundwater and tidal activities.
- Managing and operating the Maintenance of Traffic (MOTs) associated with repairs on City, County, and State roadways and right-of-ways within the City.
- Site restoration activities associated with any projects or excavation activities requiring sod installation, irrigation system repairs, landscape installation/ replacement, road repairs (per FDOT Construction Standards), asphalt patching, concrete work (driveways and sidewalks), brick paver repairs, grading, and etc.
- New utility projects.
- As directed, perform other underground repair and maintenance activities as necessary.

Contractors need not be qualified for all of the requested services in this proposal. However, for those specific services identified, contractors must be qualified and have sufficient resources necessary to perform all aspects related to the area of expertise of this RFP including the ability to manage a major workforce including possibly multiple sub-contractors and cover the expenses associated with the operations prior to the initial payment and between subsequent payments, as well as providing the necessary bonding and insurance coverage.

Contractor experience with and knowledge of OSHA, AWWA, F.A.C., FDEP, and FDOT regulations and Industry and City of Naples Construction Standards and Procedures will be vital to the City of Naples's successful repair, replacement, and maintenance efforts. Each contractor should have specific knowledge and compliance with Traffic Management, Trench Safety, and Confined Space. A detailed scope of services will be negotiated with the successful proposer(s).

It is the City's intent that liquidated damages may be established based on the project. By submitting a bid response, the contractor is acknowledging that the City reserves the right to establish liquidated damages criteria on work order requests. The City will also reserve the right to terminate agreements if a Contractor consistently fails to submit a response to work orders.

END OF EXHIBIT A

BASIS OF COMPENSATION

As part of this Agreement, Project over \$100,000.00 may be subject to withholding of Retainage in the amount of (10%) ten percent and said Project's future payments.

3636 PROSPECT AVE NAPLES, FL 34104 Ph:643-7059 Fax:643-4679

JOB:

DATE:

** "To the best of Kyle Construction Inc. knowledge & experience, all proposed costs are reasonable and customary."**

EXHIBIT B

BASIS OF COMPENSATION (cont'd)

The CITY will have the ability to negotiate a work order's final price as stated in the below excerpt from the (RFP) Request for Proposal, Tab-3 specification and as outlined in Exhibit B which is attached and made a part of this Agreement.

RFP Specification: TAB 3 Compensation Schedule

Provide a pricing proposal to cover any and all underground construction services described herein on a time and material basis. The proposal will be required to provide a detailed Hourly Rate Schedule which shall include labor rates (and classifications), equipment rates, material, sub consultant mark-up, and unit pricing. The proposed fees shall include all overhead and expenses. Include a statement that, to the best of the proposer's knowledge and experience, all proposed costs are reasonable and customary. These work orders shall have the ability to be negotiated based on lump sum and unit price costs and be approved by the City Manager or designee contingent upon the user department obtaining competitive quotes from one or any number of the awarded contractors. The schedule to complete negotiated/ quoted work and the penalty for not completing the work within the schedule will be stated in the quote request sent to the contractor(s) and will become a condition of the contract amended for the work. Billing for negotiated/quoted tasks will be based on the lump sum or unit pricing schedule provided by the contractor.

END OF EXHIBIT B

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 authorized 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 C RFP ITEM-IV: ADDITIONAL INSURANCE REQUIREMENTS

IV. INSURANCE

Before performing any contract work, a CONTRACTOR shall procure and maintain, during the life of the contract, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the City of Naples (see EXHIBIT B) and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best Company rating of no less than "A-Excellent: FSC VII." No changes are to be made to these specifications without prior written specific approval by the Risk Manager.

1. WORKERS' COMPENSATION: CONTRACTOR will provide Workers' Compensation insurance on behalf of all employees who are to provide a service under this contract, as required under Florida Laws, Chapter 440, including, if applicable, coverage for the Jones Act and Longshoremen and Harbormasters Exposures, AND Employer's Liability with limits of not less than \$100,000 per employee per accident, \$500,000 disease aggregate, and \$100,000 per employee per disease. In the event the CONTRACTOR sublets any part or parts of its contract work to a sub-contractor(s), all of the employees of the CONTRACTOR and sub-contractors engaged on contract work shall be deemed to be employed in one and the same business and the CONTRACTOR shall be liable for, and shall secure, Workers' Compensation coverage for all such employees, except for employees of a sub-contractor who has secured its own Workers' Compensation coverage. The CONTRACTOR must require all sub-contractors to provide evidence of Workers' Compensation insurance or the "Purged Notice of Election to be Exempt." In the event the CONTRACTOR has "leased" employees, the CONTRACTOR or the employee leasing company must provide evidence of a Minimum Premium Workers' Compensation policy and the CONTRACTOR must be the named insured. All documentation must be provided to the City of Naples' Risk Manager
2. COMMERCIAL GENERAL LIABILITY: Including but not limited to bodily injury, property damage, contractual, products and completed operations, XCU, and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate covering all work performed under this contract.
3. AUTOMOBILE LIABILITY: Including bodily injury and property damage, including all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit covering all work performed under this contract (limits may be satisfied by combining an UMBRELLA form and AUTOMOBILE form for a combined total limit of \$5,000,000.
4. UMBRELLA LIABILITY: With limits of not less than \$5,000,000 per occurrence covering all work performed under this contract.
5. HAZARDOUS MATERIALS INSURANCE: For the purpose of this section, the term "hazardous materials" includes all materials and substances that are now designated or defined as hazardous by Florida or Federal law or by the rules or regulations of Florida or any Federal Agency. If work being performed involves hazardous materials, the need to procure and maintain any or all of the following coverage will be specifically addressed upon review of exposure. However, if hazardous materials are identified while carrying out this contract, no further work is to be performed in the area of the hazardous material until Risk Management has been consulted as to the potential need to procure and maintain any or all of the following coverage through an addendum to the contract:
 - a. CONTRACTORS POLLUTION LIABILITY– For sudden and gradual occurrences and in an amount no less than \$1,000,000 per claim and \$1,000,000 in the aggregate arising out of work performed under this contract, including, but not limited to, all hazardous materials identified under the contract.

- b. ASBESTOS LIABILITY– For sudden and gradual occurrences and in an amount no less than \$1,000,000 per claim and \$1,000,000 in the aggregate arising out of work performed under this contract.
- c. DISPOSAL– When applicable, the CONTRACTOR shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount not less than \$3,000,000 per claim and \$3,000,000 in the aggregate and shall include liability for non-sudden occurrences in an amount not less than \$6,000,000 per claim and \$6,000,000 in the aggregate.
- d. HAZARDOUS WASTE TRANSPORTATION– When applicable, the CONTRACTOR shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability Insurance with endorsement MCS90 for liability arising out of the transportation of hazardous materials with an amount not less than \$1,000,000 annual aggregate and provide a valid EPA identification number.
- e. CERTIFICATES OF INSURANCE– Shall clearly state the hazardous material exposure work being performed under the contract.

END OF EXHIBIT C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/10/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER VTC Insurance Group 4110 Center Point Drive Suite 215 Fort Myers, FL 33916	CONTACT NAME: Wendy Hingson PHONE (A/C, No. Ext): 239 275-8226 FAX (A/C, No): 239 275-8837 E-MAIL ADDRESS: whingson@vtcins.com														
INSURED Kyle Construction, Inc. 3636 Prospect Avenue Naples, Florida 34104	<table border="1"><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Continental Casualty</td><td></td></tr><tr><td>INSURER B: Continental Insurance Co.</td><td>35289</td></tr><tr><td>INSURER C: Transportation Insurance Company</td><td></td></tr><tr><td>INSURER D: Valley Forge Insurance Company</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Continental Casualty		INSURER B: Continental Insurance Co.	35289	INSURER C: Transportation Insurance Company		INSURER D: Valley Forge Insurance Company		INSURER E:		INSURER F:	
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INSURER D: Valley Forge Insurance Company															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: 2015-2016 GL, AU, WC, UMB

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>	402 721 9828	10/01/2015	10/01/2016	EACH OCCURRENCE	\$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
						MED EXP (Any one person)	\$ 15,000	
						PERSONAL & ADV INJURY	\$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$ 2,000,000	
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COM/OP AGG	\$ 2,000,000	
	OTHER:						\$	
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY		202 450 8942	10/01/2015	10/01/2016	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO					<input checked="" type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS					<input checked="" type="checkbox"/> NON-OWNED AUTOS	BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	202 450 8990	10/01/2015	10/01/2016	EACH OCCURRENCE	\$ 5,000,000	
	<input type="checkbox"/> DEF <input checked="" type="checkbox"/> RETENTION \$ 10,000					AGGREGATE	\$ 5,000,000	
						OVERRIDES ALL COVERAGES		\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	WC107 367 4577	10/01/2015	10/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E.L. EACH ACCIDENT	\$ 100,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE	\$ 100,000	
						E.L. DISEASE - POLICY LIMIT	\$ 500,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Where required by written contract, the City of Naples is additional insured on the General Liability policy with respect to liability arising out of ongoing and completed operations performed by the named insured. Coverages are primary to all other coverages the City possesses.

CERTIFICATE HOLDER

CANCELLATION

City of Naples
735 Eighth Street South
Naples, FL 34102

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Wendy Hingson/V510

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 20th day of July, 2016.

By: _____

Charles Abraham