

TAB 5



# City of Palmetto Agenda Item

Meeting Date

04/16/12

Presenter: Jim Freeman

Department: City Clerk

## Title: 5<sup>th</sup> Street Revitalization Project – RFP Award Recommendation

### Background:

On November 17, 2011 SWFWMD awarded the City a 50% matching funds grant in the amount of \$582,500 to help fund the 5<sup>th</sup> Street LID Implementation project. The CRA has budgeted a total of \$1,172,865 for this project of which \$1,157,500 is budgeted in FY2012 resulting in total available funding of \$1,755,365. \$254,450 has already been spent or is encumbered to be spent and would reduce the budget of \$1,755,365. These expenses are related to engineering, surveys, and other costs for the project. This leaves \$1,500,915 available budget for the project.

The City issued a Request for Proposal on March 5, 2012 with responses received April 2, 2012 from vendors NDC, Manasota, and Halfacre. An evaluation committee of 5 individuals was assembled to evaluate and rank all three proposals. Vendors were evaluated based upon qualifications & experience of proposer and project team, construction process and approach, proposal compliance, cost, and other factors. A copy of the ranking sheet is included for your review (individual ranking sheets as well as all responses are on file and can be provided if requested). The evaluation committee recommends award to NDC Construction Company in the amount of \$1,344,494.

Based on the current budget and the award of this contract to NDC, \$156,421 of budget remains in this project budget. Staff is also asking Commission to approve an additional \$90,000 for unforeseen Owner costs that would only be spent if needed and subject to the Mayor's consent.

<b>Budgeted Amount:</b>	\$1,755,365	<b>Budget Page No(s):</b>		<b>Available Amount:</b>	\$1,500,915	<b>Expenditure Amount:</b>	\$1,344,494
-------------------------	-------------	---------------------------	--	--------------------------	-------------	----------------------------	-------------

**Additional Budgetary Information:** SWFWMD Grant and 50% matching budget established via Resolution 2012-01 on 2/6/12.

<b>Funding Source(s):</b>	CRA / Grant	<b>Sufficient Funds Available:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Budget Amendment Required:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Source:</b>	
---------------------------	-------------	------------------------------------	--	-----------------------------------	--	----------------	--

<b>City Attorney Reviewed:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<b>Advisory Board Recommendation:</b>	<input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	<b>Consistent With:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
--------------------------------	--	---------------------------------------	--	-------------------------	---	--

**Potential Motion/ Direction Requested:** Action Request: Motion to award the 5th Street West Revitalization RFP to NDC Construction, Inc for an amount of \$1,344,494 and authorize the Mayor to execute the contract between NDC Construction and the City of Palmetto.

Action Request: Motion to approve \$90,000 for unforeseen costs associated with the 5th Street West Revitalization RFP to be used if needed and approved in

accordance with the contract document between NDC Construction, Inc. and the City of Palmetto.

**Staff Contact:**

Jim Freeman

City Clerk

**Attachments:**

NDC Proposal, RFP Evaluation Summary Form, Contract



**CITY OF PALMETTO**  
**Request for Proposals Summary Form**  
**5th Street West Revitalization**

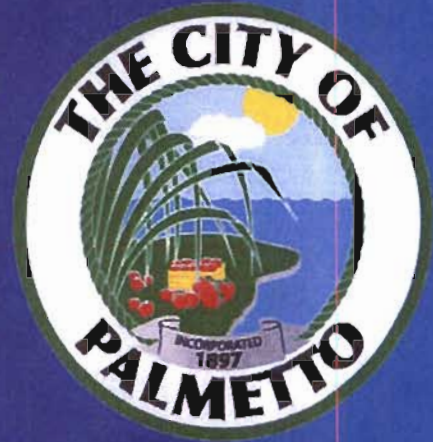
Firm	Allen	Charlie	John	Jim	Jeff	Total	Average
Halfacre	3.85	4.35	4.60	4.40	3.20	20.40	4.08
Manasota	4.20	4.00	4.25	4.63	3.75	20.83	4.17
NDC	4.13	4.50	4.35	4.63	3.65	21.26	4.25

# *"Building A Better Community"*

## **Request for Proposal 5<sup>th</sup> Street Lid Implementation**

**Project # CRA-12-02**

**April 2, 2012  
2:00 p.m.**



**Copy**

**Submitted By:**



**CONSTRUCTION COMPANY**

1001 3<sup>rd</sup> Ave West Suite 600  
Bradenton, FL 34205  
T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)  
Contact: Charles Scott



# *"Building A Better Community"*



## **Table of Contents**

### **Tab Description**

---

- 1. Qualifications & Experience of Proposer**
- 2. Qualifications & Experience of Project Team**
- 3. Construction Approach, Process & Ability to Meet Completion Deadline**
- 4. Proposal Compliance**
- 5. Proposed Cost**

**Attachment A**

**Appendix: Bond & Insurance**

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)

*"Building A Better Community"*



## **Qualifications & Experience**

NDC Construction Company employs a staff of seventeen. If awarded the 5<sup>th</sup> Street Lid Implementation project, a superintendent, project manager and project engineer would make up the project team. Operations would be based out of an on-site field office which would be occupied by a full time field superintendent. NDC's main office is less than two miles away from the proposed site at 1001 Third Avenue West in Bradenton.

Included in this tab are several projects in which NDC has worked with other government entities. NDC has not had the opportunity to work with the City of Palmetto on any construction projects; however we look forward to providing a first-rate project delivery.

NDC has not had any litigation or disciplinary action taken against the company in the past three years.

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)



# *"Building A Better Community"*

**NDC**  
CONSTRUCTION COMPANY

## **Cedar Hammock Fire Rescue Station No. 4**



### **Project Description**

Design Build Services for a new single-story fire station. This 5,300 SF building includes a two (2) bay Apparatus Bay, four (4) individual fireman bunk room, four (4) individual fireman restrooms, one (1) EMS bunkroom and restroom, office, dayroom, kitchen, generator, storage rooms, site improvements, outdoor patio and one (1) public restroom.

### **NDC Key Staff & Roles**

Ronald Allen and Gary Huggins  
Principals-In-Charge / Project Executives

Adam Phillips  
Project Manager

Nick Kloepper  
General Superintendent

Cody Lloyd  
Project Superintendent

### **Design Builder**

NDC Construction Company  
1001 3rd Ave West Suite 600  
Bradenton, FL 34205  
Phone: (941) 747-1062  
Fax: (941) 741-8027

### **Owner**

Cedar Hammock Fire Control  
District  
5200 26<sup>th</sup> Street West  
Bradenton, FL 34207  
Chief Randall Stulce  
Phone: (941) 751-7090  
Fax: (941) 751-7095

### **Architect**

Wannemacher Jensen  
Architects, Inc.  
180 Mirror Lake Drive North  
St. Petersburg, FL 33701  
Lisa Wannemacher  
Phone: (727) 822-5566  
Fax: (727) 822-5475

### **Project Location**

Bradenton, FL

### **Construction Cost**

Original GMP: \$1.3 million  
Final Cost: \$1.3 million

### **Completion Date**

September 2010



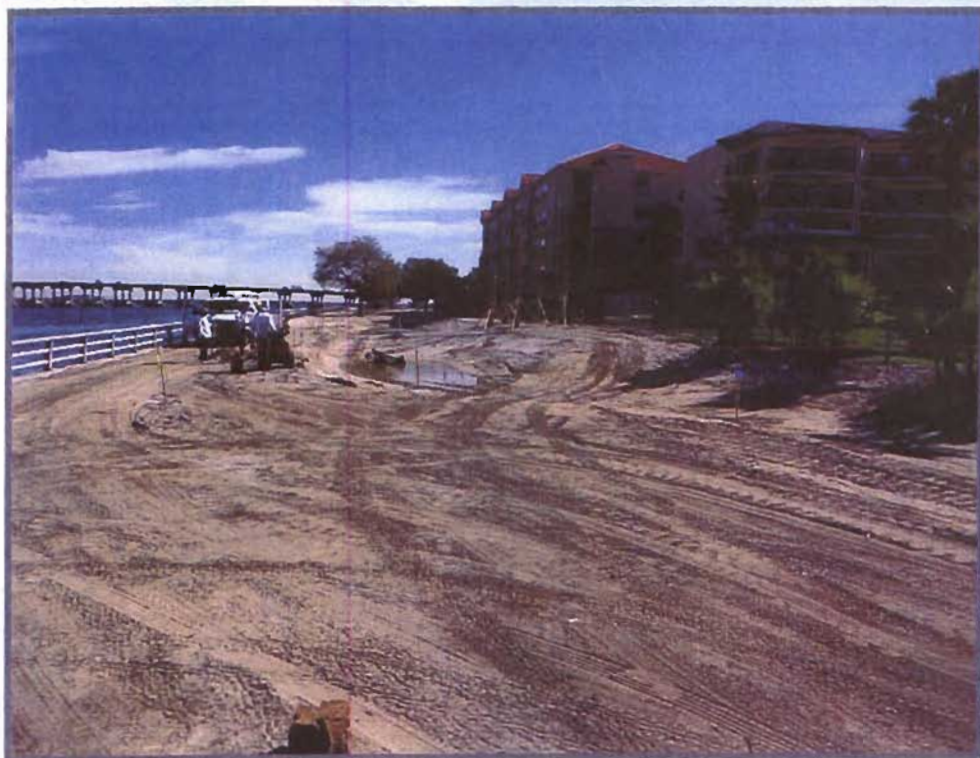
T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)



# Building A Better Community™



## Riverwalk



### Project Description

The Bradenton Riverwalk Project is a 1.25 mile long city park. The project has several key components including a kayak launch, event lawn, skate park, sand volleyball courts, tidal marsh, fishing pier, pavilion building, interactive fountain, butterfly garden, day docks and enhanced bridge underwalk. The park requires substantial sitework and underground electrical work.

Construction is currently ongoing and will be completed in Summer 2012.

### NDC Key Staff & Roles

**Ron Allen**  
Principal-In-Charge

**Adam Phillips**  
Project Manager

**Nick Kloepfer**  
General Superintendent

**Kevin Kloepfer**  
Project Engineer

### Construction Management

NDC Construction Company  
1001 3rd Ave West Suite 600  
Bradenton, FL 34205  
Phone: (941) 747-1062  
Fax: (941) 741-8027

### Owner

Downtown Development  
Authority  
101 Old Main Street  
Bradenton, FL 34205  
David Gustafson  
Phone: (941) 932-9441  
Fax: (941) 932-9552

### Architectural Firm

Kimley Horn  
James Pankonin  
2601 Cattlemen Road, Suite 200  
Sarasota, FL 34232  
Phone: (941) 379-7600  
Fax: (941) 379-4352

### Project Location

Bradenton, FL

### Construction Cost

Original GMP: \$6.2 million  
Final Cost: \$6.2 million

### Completion Date

Summer 2012 (Est.)



T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)



# Building A Better Community™



## Professional Support Center Sitework Improvements



### Project Description

This sitework improvements project includes the addition of one new access drive, reconfiguring existing parking to maximize vehicle parking, new signage, lighting and all associated drainage, landscaping and sitework elements required for the improvements.

Construction is scheduled to begin April 2009 and complete in June 2009

### NDC Key Staff & Roles

**Gary Huggins**  
Principal-in-Charge / Project Executive

**Nick Kloepper**  
General Superintendent

**Charles Scott**  
Reconstruction Services / Project Managing Executive



### Construction Management

NDC Construction Company  
1001 3rd Ave West Suite 600  
Bradenton, FL 34205  
Phone: (941) 747-1062  
Fax: (941) 741-8027

### Owner

1 Matzke Way  
Bradenton, FL 34208  
Jane Dreger  
Phone: (941) 708-8800  
Fax: (941) 708-8832

### Engineering Firm

Lombardo, Foley & Kolarik, Inc.  
Mike Blackrick  
825 4th Street West  
Palmetto, FL 34221  
Phone: (941) 722-4561

### Project Location

Bradenton, FL

### Construction Cost

Final Cost: \$268,000

### Completion Date

June 2009

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)



# *"Building A Better Community"*



## One Stop Community Resource Center



### Project Description

The One Stop Community Resource Center project is a Design-Build Services project that consisted of the selective demolition and remodeling of an existing building (the old Mather Furniture Store Building in Bradenton) into a 17,000 SF resource center for the homeless of Manatee County. This building houses the administration offices of multiple Non-Profit organizations, health and dental facilities, full commercial kitchen and dining hall, laundry facilities, job placement offices and counseling offices.

The facility was a government funded project. Construction began September 2008 and was completed on schedule in February 2009.

### NDC Key Staff & Roles

**Gary Huggins**  
Principal-in-Charge

**Charles Scott**  
Preconstruction Services / Project Manager

**Nick Kloepper**  
General Superintendent

**Adam Phillips**  
Project Manager

### Design Builder

NDC Construction Company  
1001 3rd Ave West Suite 600  
Bradenton, FL 34205  
Phone: (941) 747-1062  
Fax: (941) 741-8027

### Owner

Community Coalition on  
Homelessness  
701 17<sup>th</sup> Avenue West  
Bradenton, FL 34205  
Adele Erozer  
Phone: (941) 747-1509  
Fax: (941) 741-3250

### Architect

Fawley Bryant  
Rick Fawley  
1001 Manatee Avenue West  
Bradenton, FL 34205  
Phone: (941) 750-0009  
Fax: (941) 749-5747

### Project Location

Bradenton, FL

### Construction Cost

Original GMP: \$2 Million  
Final Cost: \$2 Million

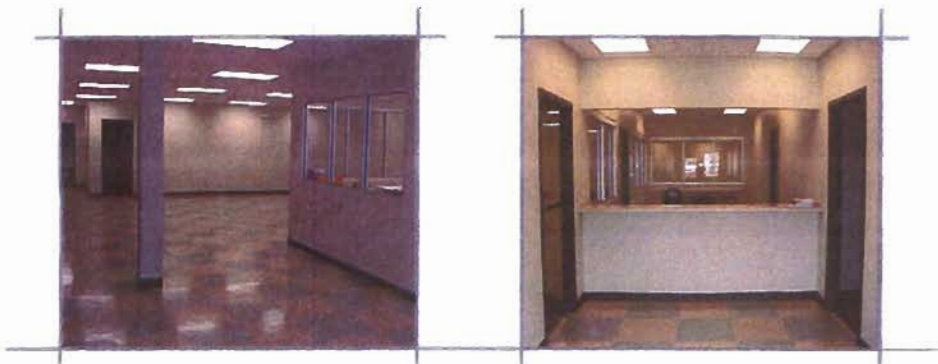
### Completion Date

February 2009



T 941.747.1062  
F 941.741.8027

[www.ndcconstruction.com](http://www.ndcconstruction.com)





# Building A Better Community™



## Palmetto Elementary School



### Project Description

This new elementary school located in Palmetto, Florida consists of 7 two-story buildings (approximately 80,000SF) including classrooms, a media center, kitchen, cafeteria/auditorium, and administration. This prototype design by Hoffman and Associates, P.A. has an exterior corridors and center courtyards included in their design.

This site is shared with the Boys and Girls Club and will require special attention to the construction process to allow the Boys and Girls Club to maintain all their activities simultaneously to building.

### NDC Key Staff & Roles

Gary Huggins

Principal-in-Charge / Project Executive

Charles Scott

Preconstruction Services / Project Managing Executive

Nick Kloepper

General Superintendent

Jennifer McAlister

Project Manager



### Owner

School District of  
Manatee County  
2802 A 27<sup>th</sup> Street East  
Bradenton, FL 34208  
Mr. Larry Roemer  
Phone: (941) 708-8800  
Fax: (941) 708-8832

### Architect

Hoffman Architects, P.A.  
29 West Orange Street  
Tarpon Springs, FL 34689  
Todd Willsie  
Phone: (727) 938-2835  
Fax: (727) 938-2836

### Project Scope

Educational Facility  
80,000 SF

### Project Delivery Method

CM at Risk - GMP

### Construction Cost

\$18 million

### Completion Date

August 2010

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)



# *"Building A Better Community"*

## **Gary Huggins, Executive Vice President**

Mr. Huggins is Executive Vice President and Co-Owner of NDC Construction Company. Gary is a licensed Certified General Contractor in the State of Florida. With more than 39 years of construction experience Mr. Huggins brings invaluable knowledge and expertise to your Project. Gary has been with NDC Construction as an Owner for 15 years following a highly successful 23 year career with an ENR 400 Company based in South Florida.

As an Owner of NDC Construction, Gary has complete responsibility and authority to commit company resources necessary to insure timely commencement and completion of every project. With over \$500 million dollars of successfully completed new construction and renovation projects, Gary's leadership and guidance brings tremendous value to our team and the clients on every NDC Construction Company Project from start to finish.

### **PROFESSIONAL EXPERIENCE**

<b>Oasis Charter School</b>	<b>\$6.75 Million</b>
<b>Tampa Health Clinic</b>	<b>320,000</b>
<b>Cedar Hammock Fire Station No. 4</b>	<b>1.2 Million</b>
<b>Palmetto Elementary School</b>	<b>17.1 Million</b>
<b>Braden River Elementary Renovations</b>	<b>8.1 Million</b>
<b>United Community Center</b>	<b>2 Million</b>
<b>Palmetto Elementary School</b>	<b>17.1 Million</b>
<b>Palma Sola Elementary School</b>	<b>11.2 Million</b>
<b>Manatee High School Addition</b>	<b>7.5 Million</b>
<b>Pittsburgh Pirates McKechnie Field Renovations</b>	<b>3 Million</b>
<b>Bayshore High School Addition</b>	<b>5.1 Million</b>
<b>Palmetto High School Addition</b>	<b>3.5 Million</b>
<b>Manatee Chamber of Commerce/United Way</b>	<b>1.8 Million</b>
<b>Pirate City Training Facility</b>	<b>17 Million</b>
<b>Lakewood Ranch Medical Office Building II</b>	<b>12 Million</b>
<b>Lakewood Ranch Medical Office Building I</b>	<b>11 Million</b>
<b>Judicial Parking Garage, Bradenton</b>	<b>8 Million</b>
<b>BHS, MHS, PHS – High School Athletic Facilities</b>	<b>4.3 Million</b>
<b>Lake Erie College of Osteopathic Medicine</b>	<b>22 Million</b>
<b>Lakewood Ranch High School</b>	<b>33 Million</b>



### **Education**

University of Florida  
Bachelor of Building  
Construction 1976

### **Professional & Community Affiliations**

M.E. Rinker, Sr. School of  
Building Construction  
-Advisory Board

U.S. Green Building Council  
-Member

Manatee Education Foundation  
- Chairman

City of Safety Harbor  
-Personnel Review Board

### **Professional Experience** 39 Years

### **Professional Registrations**

Certified General Contractor  
State of Florida  
CGC006547

T 941.747.1062  
F 941.741.8027

[www.ndcconstruction.com](http://www.ndcconstruction.com)

# *"Building A Better Community"*



**Charles Scott, Senior Vice President, PM, LEED® AP**

Charles Scott is the NDC Construction Company proposed Pre-Construction Manager and Vice President of Operations for the Project. Charles brings over 25 years of experience in the Construction Industry to you project Charles has successful project delivery experience on projects as large as \$200 million. Mr. Scott relocated to Florida in 2004 and joined NDC Construction Company after a successful 20 year career with a top 50 ENR ranked Contractor based in Boston, Massachusetts.

As the Senior Vice President of NDC Construction, Mr. Scott will bring his vast knowledge and expertise to all aspects of the pre-construction and construction phases of the USFSP Minor Projects to insure a timely delivery with superior quality and cost efficiency.

## **PROFESSIONAL EXPERIENCE**

<b>Oasis Charter School</b>	<b>\$6.75 Million</b>
<b>Palmetto Elementary School</b>	<b>17.1 Million</b>
<b>Braden River Elementary</b>	<b>8.1 Million</b>
<b>Palma Sola Elementary School</b>	<b>10.9 Million</b>
<b>Bayshore High School Wing Addition</b>	<b>5.1 Million</b>
<b>Manatee High School Wing Addition</b>	<b>7 Million</b>
<b>Bayshore High School Athletic Facilities</b>	<b>1.2 Million</b>
<b>Manatee High School Athletic Facilities</b>	<b>928,875</b>
<b>Palmetto High School Field House</b>	<b>851,502</b>
<b>Pirate City Training Facility</b>	<b>17 Million</b>
<b>Manatee Chamber of Commerce/United Way</b>	<b>1.8 Million</b>
<b>Gompertz Family Regional Headquarters</b>	<b>7 Million</b>
<b>Judicial Parking Garage</b>	<b>8.3 Million</b>
<b>Logan Airport Terminal E Reconstruction</b>	<b>200 Million</b>
<b>Central Artery Tunnel Project Viaducts &amp; Ramps</b>	<b>200 Million</b>
<b>MBTA North Station Parking Garage</b>	<b>109 Million</b>



## **Education**

Wentworth Institute  
of Technology  
Bachelor of Science  
Civil Engineering

Vermont Technical College  
Associates Degree  
Architectural Engineering

## **Professional Affiliations**

US Green Building Council,  
Member

## **Professional Certifications** LEED® AP

## **Professional Experience** 25 Years

T 941.747.1062  
F 941.741.8027

[www.ndcconstruction.com](http://www.ndcconstruction.com)



# *"Building A Better Community"*

## **Kevin Kloefer, Project Engineer, LEED® AP**

Mr. Kloefer, a resident of **Manatee County**, is a Project Engineer with NDC Construction Company and has eight years of experience in the construction industry.

He is responsible for assisting the Project Manager in tasks such as document control, writing subcontracts, estimating and submittal review. As well as, maintaining as-builts, tracking RFI's, material procurement and project close out documents.

### **PROFESSIONAL EXPERIENCE**

<b>Riverwalk Park Project</b>	<b>\$6.2 Million</b>
<b>Oasis Charter School</b>	<b>6.75 Million</b>
<b>Pirate City</b>	<b>17 Million</b>
<b>Lakewood Ranch Medical Office Building II</b>	<b>12 Million</b>
<b>Manatee County High School Athletic Facilities</b>	<b>4.3 Million</b>
<b>Lake Erie College of Osteopathic Medicine</b>	<b>22 Million</b>
<b>School District of Manatee County Continuing Works Miscellaneous Projects</b>	<b>1.5 Million</b>
<b>Lakewood Ranch Medical Office Building I</b>	<b>11 Million</b>
<b>West Church Street Development</b>	<b>32 Million</b>
<b>Celebration High School</b>	<b>50 Million</b>
<b>CNL Tower</b>	<b>30 Million</b>
<b>Lakewood Ranch High School</b>	<b>33 Million</b>



### **Education**

Manatee Community College  
Applied Associates in Science  
Building Construction  
Technology

### **Professional Affiliations**

U.S. Green Building Council  
Member

### **Professional Experience**

8 Years

### **Professional Certifications**

LEED® AP

T 941.747.1062

F 941.741.8027

[www.ndcconstruction.com](http://www.ndcconstruction.com)

# *"Building A Better Community"*



## **Approach to Project**

**National Development Corporation** was founded in Pittsburgh, Pennsylvania in 1968 as a Design-build Development firm also specializing in Construction Management and General Contracting. Over the past 37 years, National Development has expanded to include operation in Boston, Washington D.C. and Florida. To present, this expansion has provide over \$3.5 billion of office, commercial and residential facilities for such varied customers as The University of Pittsburgh, U.S. Steel, Aetna, Fischer Scientific and Deloitte & Touché.

In the mid 1970-s, NDC commenced its Florida operations headquartered in Bradenton. Through it Design-Build entities, including **NDC CONSTRUCTION COMPANY**, **NDC** has completed **notable projects**, including 2,500 residential homes and apartments; LECOM (Lake Erie College of Osteopathic Medicine), Lakewood Ranch Medical Office Buildings I & II, City of Bradenton Judicial Parking Garage, Bradenton Village, Salvation Army Center for Worship & Service. Other notable projects include: The City Centre Office Center, Lakewood Ranch High School, Manatee County Detention Facility, Cancer Care Center, Pointe West Medical center, The Salvation Army Day Care Center, The Salvation Army Headquarters and residential facility, and Ellenton Ice and Sport Complex formally named J.P. Igloo Skating Complex.

With the completed ownership transition from National Development Corporation to Ronald J. Allen and Gary L. Higgins, **NDC** approaches each client with a **commitment** to the highest standard of service and work excellence. Project leadership, communication, collaboration, and innovation contribute to success in meeting this standard. We retain the same management team from project initiation to construction completion. Our success is best illustrated by the fact that our work is comprised of referrals, repeat customers and reputation.

The City of Palmetto is embarking on one of the most significant public projects that is under design today. The 5<sup>th</sup> Street Lid Implementation will forever be a gem to the City of Palmetto and in turn to all those that will frequent the complex.

Each and every time NDC has the opportunity to be involved in such a worthwhile community project, we strive to bring to bear the best of the best in design, construction, and post construction professionals to guarantee the success of the project.

Once construction is completed the NDC Team will work diligently to provide the City all close out information and/or documents necessary for the City to take control of the project.

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)

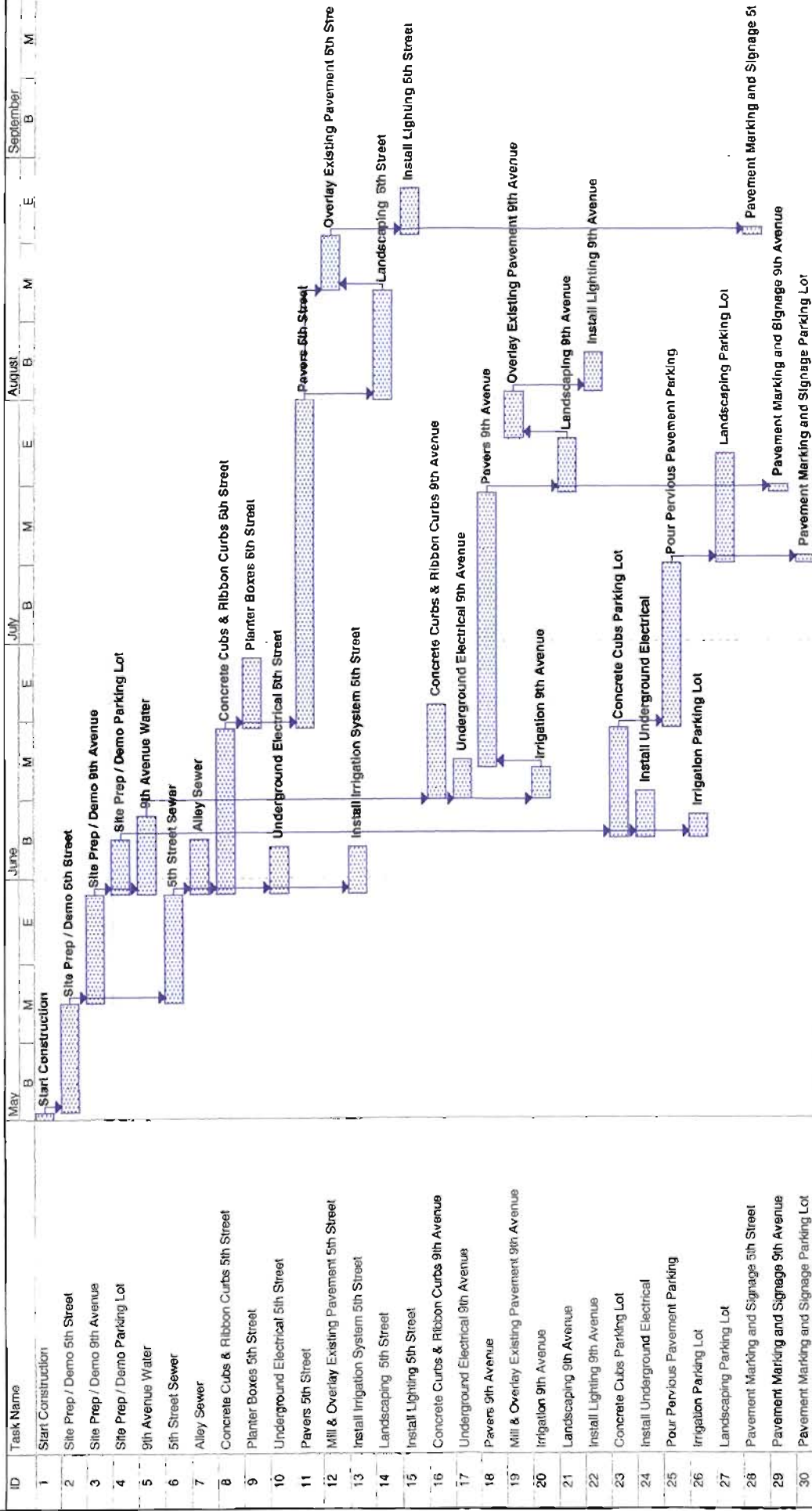


5<sup>th</sup> St. Lid Implementation





# City Of Palmetto Request For Proposal Project # CRA - 12-02 5th STREET LID IMPLEMENTATION





*"Building A Better Community"*



**Disadvantaged Business Enterprises**

NDC Construction Company has a history of utilizing Disadvantaged Business Enterprises. In December of 2011, NDC completed a pediatric doctor office for Manatee County Rural Health Services, Inc. The value of the work was approximately \$700,000 and a major effort was put into DBE participation. At the completion of the project, over 50% of the subcontracted work value had been with Disadvantaged Business Enterprises. NDC will put forth efforts to obtain as much DBE participation as possible in the 5<sup>th</sup> Street Lid Implementation project for the City of Palmetto.

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)

*"Building A Better Community"*



### **Local Preference**

**NDC Construction Company's main office is located in downtown Bradenton at 1001 Third Avenue West. This is less than two miles from the proposed job site. As a local contractor, NDC will make every effort to subcontract with other local businesses. As a member of the local community, it is important to support local business.**

**T 941.747.1062**

**F 941.741.8027**

**[www.ndcconstruction.com](http://www.ndcconstruction.com)**

**CITY OF PALMETTO  
REQUEST FOR PROPOSAL  
5<sup>th</sup> STREET LID IMPLEMENTATION**

**CHECKLIST**

Company Name: NDC Construction Company

This check list is provided to assist Proposers in the preparation of their bid response. Included in this checklist are important requirements that are the responsibility of each Proposer to submit with their response in order to make their bid response fully compliant. This check list is only a guideline; it is the responsibility of each Proposer to read and comply with the Request for Proposal in its entirety.

- ☐ Package has been addressed to:
  - City of Palmetto
  - Attn: Nixa Haisley, CPPB
  - 516 8<sup>th</sup> Avenue W
  - Palmetto, FL 34221
- ☐ Package is sealed and identified with:
  - Bid Title "RFP# CRA-12-02"
  - Bid Opening Date and Time -Monday, April 2, 2012 - 2:00pm
- ☐ One (1) Original, six (6) copies are included as required
- ☐ Bid Form
- ☐ Proposer's Certification Form
- ☐ No Lobby Affidavit Form
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Certification Form
- ☐ Contractor's Questionnaire
- ☐ List of Proposed Subcontractors
- ☐ OSHA Acknowledgment Form
- ☐ Checklist Form Signed & Sealed

This RFP is submitted and signed by the individual duly authorized to enter into agreement. I certify that this RFP is made without prior understanding, agreement or connection with any corporation, firm or person submitting bid for the same materials, supplies or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences and civil damage awards. I have read and agree to abide by all requirements, specifications, terms and conditions of this RFP.

Witnesses:

Luan L. Hines  
Kelvin L. Hines

GARY L. HUGGINS  
Print Name  
Gary L. Huggins  
Signature



## PROPOSERS CERTIFICATION

STATE OF FLORIDA

COUNTY OF MANATEE

I, Gary L. Huggins, of NDC Construction Company (name of company),  
proposing to furnish the following described materials, equipment, and/or services to the City of Palmetto (the "CITY")  
Construction Management Services

### HEREBY CERTIFIES THAT:

1. Bidder/Proposer has thoroughly inspected the specifications or request for proposal and understands the terms and conditions thereof and they are incorporated by reference in the bid or proposal for said goods or services, and have verified measurements, if applicable.
2. The bid or proposal is Contractor and binding and shall be valid for not less than sixty (60) days from the date of bid opening. A longer time may be set out in the bid, the proposal, or as negotiated between the Bidder/Proposer and the CITY.
3. The bid or proposal is made by a person authorized to bind the Bidder/Proposer.
4. The bid or proposal is made without unlawful collusion between another Bidder/Proposer or potential Bidder/Proposer, or with any officer or employee of the CITY.
5. The bid or proposal is in full compliance with the Copeland Anti-kickback statute.
6. The bidder does not discriminate on the basis of race, color, national origin, sex, religion, age, or handicapped status in employment or in the provision of services.

Gary L. Huggins  
Print Name: Gary L. Huggins

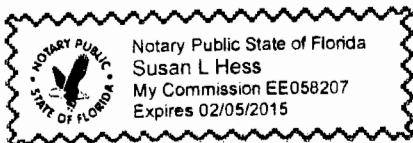
STATE OF FLORIDA

COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 2nd day of April, 2012, by  
Gary L. Huggins, as Executive Vice President (title) of NDC Construction  
Company (name of company), on behalf of Contractor (type of entity).

☒ who is personally known to me,  
☐ who produced \_\_\_\_\_ as identification, who did take an oath, and who acknowledged  
before me that he executed the same freely and voluntarily for the purposes therein expressed.

(Notary Seal)



Susan L. Hess  
Signature

Susan L. Hess  
Print Name

NOTARY PUBLIC-STATE OF Florida

My Commission Expires: 02/05/2015

Commission No. EE058207

# NO LOBBYING AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MANATEE

This, 2nd, of April, 2012 Gary L. Huggins (Print Name)

being first duly sworn, deposes and says that he or she is the authorized representative of NDC Construction Company

(Name of the authorized Contractor, Contractor or individual), maker of the attached request for proposal released by the City of Palmetto, and that the proposer and any of its agents agrees to abide by the City of Palmetto's no lobbying restrictions in regards to this solicitation.

Gary L. Huggins  
Affiant

The foregoing instrument was acknowledged before me this 2 day of April, 2012, by

Gary L. Huggins (name of person, officer, or agent, title of officer or agent), of NDC

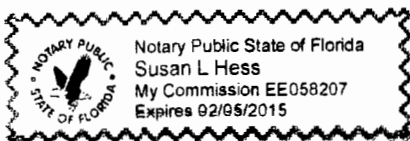
Construction Company (name of corporation or partnership, a Corporation (state of incorporation or partnership, if applicable).

☒ who is personally known to me,

☐ who produced \_\_\_\_\_ as identification, who did take an oath, and who acknowledged

before me that he executed the same freely and voluntarily for the purposes therein expressed.

(Notary Seal)



Susan L. Hess  
Signature

Susan L. Hess  
Print Name

NOTARY PUBLIC-STATE OF Florida

My Commission Expires: 02/05/2015

Commission No. EE058207

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the City of Palmetto (the "CITY") by:

Gary L. Huggins, Executive Vice President

(Print individual's name and title)

For: NDC Construction Company

(Print name of entity submitting sworn statement)

Whose business address is: 1001 Third Avenue West, Suite 600, Bradenton, FL 34205

And (if applicable) its Federal Employer Identification Number (FEIN) is: 59-3423927

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement  
\_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), FLORIDA STATUTES, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), FLORIDA STATUTES, means a finding of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), FLORIDA STATUTES, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one (1) person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arms length agreement, shall be a prima facie case that one (2) person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), FLORIDA STATUTES, means any natural person or entity organized under the laws of any state of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.



6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement (indicate which statement applies).

X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one (1) or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICE FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Date: \_\_\_\_\_

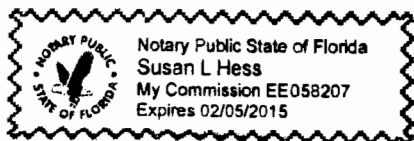
Gary L. Huggins  
Signature

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 2 day of April, 2012, by \_\_\_\_\_  
Gary L. Huggins, as Executive Vice President of NDC Construction Company  
\_\_\_\_\_, on behalf of Contractor.

☒ who is personally known to me, or ☐ who produced \_\_\_\_\_ as identification, who did take an oath, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

(Notary Seal)



Susan L. Hess  
Signature

Susan L. Hess  
Print Name

NOTARY PUBLIC-STATE OF Florida

My Commission Expires: 02/05/2015

Commission No. EE 058207

## DRUG FREE WORK PLACE CERTIFICATION

SWORN STATEMENT PURSUANT TO ORDINANCE NO. 505, AMENDING CHAPTER 2, SECTION 2-57, PALMETTO CODE OF ORDINANCES, ON DRUG FREE WORK PLACES.

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICAL AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted to the City of Palmetto (the "CITY"), by:

Gary L. Huggins

(Print individuals name and title)

For: NDC Construction Company

(Print name of entity submitting sworn statement)

Whose business is: 1001 Third Avenue West, Suite 600, Bradenton, FL 34205

and (if applicable) its Federal Employer Identification Number (FEIN) is 59-3423927. (If the entity has no FEIN, include the social security number of the individual signing this sworn statement: \_\_\_\_\_).

I understand that no person or entity shall be awarded or receive a CITY contract for public improvements, procurement of goods or services (including professional services) or a CITY lease, franchise, concession or management agreement, or shall receive a grant of CITY monies unless such person or entity has submitted a written certification to the CITY that it will provide a drug free work place by:

1. Providing a written statement to each employee notifying such employee that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined by §893.02(4), Florida Statutes, as the same may be amended from time to time, in the person's or entity's work place is prohibited specifying the actions that will be taken against employees for violation of such prohibition. Such written statement shall inform employees about:
  - I. The dangers of drug abuse in the work place;
  - II. the person's or entity's policy of maintaining a drug free environment at all its work places, including, but not limited to, all locations where employees perform any task relating to any portion of such contract, business transaction or grant;
  - III. any available drug counseling, rehabilitation, and employee assistance programs; and
  - IV. the penalties that may be imposed upon employees for drug abuse violations.
2. Requiring the employee to sign a copy of such written statement to acknowledge his or her receipt of same and advise as to the specifics of such policy. Such person or entity shall retain the statements signed by its employees. Such person or entity shall also post, in a prominent place at all of its work places, a written statement of its policy containing the foregoing elements I through IV.
3. Notifying the employee in the statement required by subsection 1 that this is a condition of employment the employee will:
  - I. Abide by the terms of the statement; and
  - II. Notify the employer of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such a conviction.
4. Notifying the CITY within ten (10) days after receiving notice under subsection 3 from an employee or otherwise receiving actual notice of such conviction.



5. Imposing appropriate personnel action against such employee up to and including termination; or requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
6. Making a good faith effort to continue to maintain a drug free work place through implementation of sections 1 through 5 stated above.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE CITY OF PALMETTO IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT ANY CONTRACT OR BUSINESS TRANSACTION SHALL PROVIDE FOR SUSPENSION OF PAYMENTS, OR TERMINATION, OR BOTH, IF THE CONTRACTING OFFICER OF THE PALMETTO CITY CLERK DETERMINES THAT:

1. Such person or entity has made false certification;
2. such person or entity violates such certification by failing to carry out the requirements of sections 1, 2, 3, 4, 5 or 6 or Ordinance No. 505, amending Chapter 2, Section 2-57, Palmetto Code of Ordinances, or
3. such a number of employees of such person or entity have been convicted of violations occurring in the work place as to indicate that such person or entity has failed to make a good faith effort to provide a drug free work place as required by Ordinance No. 505.

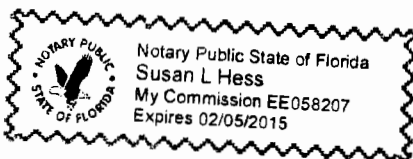
(Signature)

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 2 day of April, 2012, by Gary L. Huggins, as Executive Vice President of NDC Construction Company, on behalf of Contractor.

☒ who is personally known to me, or ☐ who produced \_\_\_\_\_ as identification, who did take an oath, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

(Notary Seal)



Signature

Susan L. Hess

Print Name

**NOTARY PUBLIC-STATE OF FLORIDA**

My Commission Expires: 02/05/2015

Commission No. EE 058207

## QUESTIONNAIRE SHEET

Submitted by: NDC Construction Company (printed name of Company)

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a contractor?

15

2. What is the last project of this nature that you have completed? (Please provide a contact name and telephone number)

Professional Support Center, Jane Dreger, 941-708-8800 ext.1070 (Completed)

Riverwalk, David Gustafson, 941-932-9441 (In Progress)

3. Have you ever failed to complete work awarded to you? If so, where and why?

No

4. The following are named as three cities or counties for which you have performed work and to which you refer (Please provide a contact name and telephone number for each):

1. Carl Callahan, City of Bradenton, 941-932-9400

2. Jane Dreger, Manatee County School District, 941-708-8800

3. Mark Ridenour, City of Cape Coral, 239-574-0839

5. Have you personally inspected the proposed work and have you a complete plan for its performance?

Yes

6. Will you sublet any part of this work? If so, give details:

100% of the work will be subcontracted. NDC does not self-perform any work.

7. What equipment do you own that is available for the work?

100% of the work will be subcontracted. NDC does not self-perform any work.

8. What equipment will you purchase for the proposed work?

100% of the work will be subcontracted. NDC does not self-perform any work.



9. What equipment will you rent for the proposed work?

100% of the work will be subcontracted. NDC does not self-perform any work.

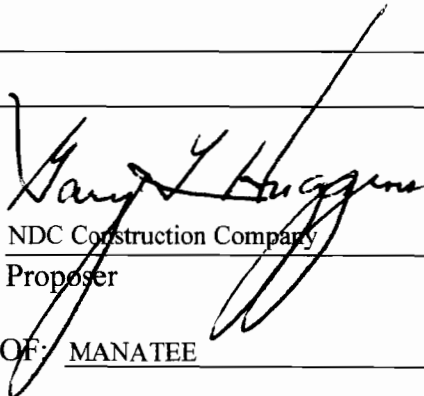
10. The following is given as a summary of the Financial Statement of the undersigned. (list assets and liabilities and use insert sheet if necessary.)

NDC Construction Company is a privately held corporation and will provide an audited financial statement upon request.

11. List the type(s) of Contractor Licenses that you/your firm have registered with the state:

CGC006547

CGC1511361

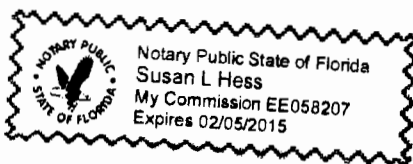
  
NDC Construction Company  
Proposer

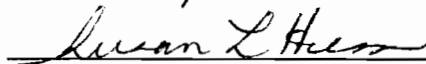
STATE OF: FLORIDA COUNTY OF: MANATEE

PERSONALLY APPEARED BEFORE ME, the undersigned authority, Gary L. Huggins  
\_\_\_\_\_, who, after first being duly sworn by me, affixed his/her

Signature in the space provided above on this the 2 day of April, 2012.

(Notary Seal)



  
Signature  
Susan L. Hess  
Print Name  
**NOTARY PUBLIC-STATE OF FLORIDA**  
My Commission Expires: 02/05/2015  
Commission No. EE 058207

## LIST OF PROPOSED SUBCONTRACTORS

Contractor shall list all Proposed Subcontractors to be used on this project if they are awarded the contract.

[illegible]

If, prior to Notice of the Award, the City or the Contractor has reasonable objection to and refuses to accept any Contractor, Supplier, person or organization listed, the Contractor may, prior to Notice of Award, submit an acceptable substitute without an increase in their bid price.

\* Subcontractors selection contingent upon the award of the project to NDC Construction Company



**ACKNOWLEDGEMENT OF CONFORMANCE  
WITH OSHA STANDARDS**

To The City of Palmetto,

We NDC Construction Company, hereby acknowledge and  
(Prime Contractor Company)

agree that we, as the Prime Contractor for the City of Palmetto, Sutton Park Renovations Project, as specified, have the sole responsibility for compliance with all the requirements of the Federal Occupational Safety and health Act of 1970, and all State and local safety and health regulations, and agree to indemnify and hold harmless the City of Palmetto, against any and all liability, claims, damages losses and expenses they may incur due to the failure of:

\*See below to comply with such act or regulation.

(Subcontractor's Name)

Gary L. Huggins

(Contractor's Name)

(Signature)

(Date)

4.2.12

One form must be completed for each Subcontractor being used. Thank you

**\*Subcontractor OSHA forms to be completed and submitted prior to any work commencing; subcontractors currently TBD.**

**CITY OF PALMETTO  
REQUEST FOR PROPOSAL  
5<sup>th</sup> STREET LID IMPLEMENTATION**

**BID FORMS**

**1. SCOPE**

The awarded firm will be responsible for providing construction services for the project, fulfilling all requirements as agreed upon and contracted with the City of Palmetto. The project will consist of the following:

The renovation of 5<sup>th</sup> Street West between 8<sup>th</sup> Avenue West and 10<sup>th</sup> Avenue West as per the contract documents dated 03.01.12. The work includes, but is not limited to, demolition, concrete, site utilities, grading and paving, landscaping and irrigation, pervious concrete, and pervious clay pavers. The new work will largely comply with current Low Impact Development standards. The project includes an off-street parking facility and improvements to 9th Avenue West.

**2. PROPOSAL**

The undersigned, having inspected the project site for 5<sup>th</sup> Street LID Implementation in Palmetto, FL, and familiarized himself with all conditions likely to be encountered affecting the cost and schedule of work and having examined all of the contracts and documents dated 03.01.12, hereby propose to furnish all labor, materials, tools, equipment, and services required to perform all of the work in strict accordance with the contract documents for a stipulated sum of One Million Three Hundred Twenty Six Thousand Five Hundred Thirty Eight Dollars and Zero Cents dollars (\$ 1,326,538.00 ) and if this proposal is accepted will execute a formal contract with the City of Palmetto to this effect.

**3. BREAKDOWN OF BASE SUM**

The following schedule of values in the base bid sum is submitted for the purpose of the owner's evaluation of proposals only and is not intended as a basis establishing prices for additions to or deletions from the contract sum. The amounts shown include all labor, materials, tools, equipment and services required to perform each of the stated items of work and include taxes, insurance, other general expenses, overhead and profit, performance and payment, and labor and material bond fees.

	Name of Sub-contractor	Price
Division 1 Administration	<u>NDC Construction</u>	\$ <u>See Attachment "A"</u>
Division 2 Site Work	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Division 3 Concrete	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Division 9 Finishes	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Division 10 Specialties	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Division 15 Mechanical	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Division 16 Electrical	<u>TBD</u>	\$ <u>See Attachment "A"</u>
Performance and Payment Bond cost	<u>Travelers</u>	\$ <u>See Appendix</u>

Please note that the owner reserves the right to include or exclude, at their discretion, any and/or all subconsultant's proposed on this project.

4. SCHEDULE

Time being of the essence, the undersigned will provide a detailed schedule of performance and will perform the work for the entire contract in conformance with that schedule.

5. UNIT PRICES

Contractor shall provide unit prices in accordance with Schedule of Values included as "Attachment A". It is the Contractor's responsibility to verify all bid quantities prior to bidding. Any discrepancies between bid quantities provided and the Contractor's calculated amount shall be submitted in the form of an RFI. Unit prices shall be used to establish prices for additions to or deletions from the contract scope.

6. ALLOWANCES

None required at this time.

7. ACKNOWLEDGEMENT OF ADDENDA

Addenda No. 1 Dated <u>3/8/12</u>	Addenda No. 3 Dated <u>3/15/12</u>
Addenda No. 2 Dated <u>3/13/12</u>	Addenda No. 4 Dated <u>3/23/12</u>
	Addenda No. 5 Dated <u>3/29/12</u>

8. BID STATEMENT

The bidder understands that they are invited to submit a bid for this project based on his representation to the owner of his familiarity and experience with this specific project type. The bid shall include all those items of material, equipment, and construction necessary to build and complete the project whether shown on the construction documents or not.

9. PROJECT RESPONSIBILITIES

- A. The awarded firm will be responsible for developing and maintaining a strong line of communication with the Project Representative, which includes but is not limited to: utilization of a project tracking system that displays both scheduled critical and actual events of the project; submission of progress reports on a monthly basis at the minimum; hold regular project meetings as required by the Project Representative for the purpose of discussing the current status, overall project schedule, delays, design changes, etc.
- B. The awarded firm will be responsible for the performance of the project, which includes but is not limited to: quality assurance of progress and craftsmanship; correction of delays; integrity of products use and the installation thereof.
- C. The awarded firm will be responsible for maintaining the proper level of qualified personnel and operational equipment necessary to carry out the responsibilities assumed within this bid request.
- D. Bids shall be signed above the typed or printed name and title of the signer. The signer shall have the authority to bind the proposer to the submitted submittal.



## 10. RESERVED RIGHTS

The City of Palmetto reserves the right to accept or reject any and/or all bids, and holds the following other rights:

- A. The City of Palmetto reserves the right to be the sole judge of the bids, whose decision shall be final; and
- B. No bid packages will be returned.

The contractor shall have an English-speaking, licensed supervisor/representative on the work site at all times, who shall be thoroughly knowledgeable of all plans, specifications, and other contract documents and has the authority to act in the contractor's behalf.

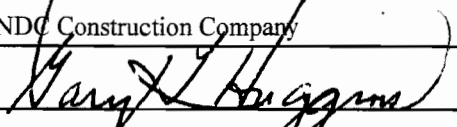
## 11. SUBMITTAL FORM DELIVERY REQUIREMENTS

- A. **TIMELY** - Any submittals received after the stated time and date will not be considered. It shall be the sole responsibility of the proposer to have their submittal delivered on time whether by hand delivery or U.S. Postal Service. Any submittal that is delivered late or is delayed shall not be considered.
- B. **SEALED AND MARKED** - Proposers shall submit original signed submittals, executed in blue ink in one sealed package, clearly marked on the outside "RFP #CRA-12-02".
- C. **ADDRESS VIA HAND DELIVERY AND/OR U.S. POSTAL SERVICE** - The address for delivery, which ever form the proposer chooses is as follows:

City of Palmetto Purchasing Agent  
516 8<sup>th</sup> Avenue W  
Palmetto, FL 34221

12. SIGNATURE OF AUTHORIZATION

Name of Firm: NDC Construction Company

Signature: 

Printed Name: Gary L. Higgins

Address: 1001 3rd Ave. W., #600, Bradenton, FL

Zip Code: 34205

Tax I.D. 59-3423927

Phone: 941-747-1062

Fax No: 941-741-8027

Seal if a Corporation

**5<sup>th</sup> STREET LID IMPLEMENTATION**

Bid Form  
Page 4 of 4

DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

Attachment "A"

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
2050-01	Mobilization	LS	1	\$ 160,000.00	\$ 160,000.00
2050-02	Maintenance of Traffic	LS	1	\$ 25,000.00	\$ 25,000.00
2050-03	Survey	LS	1	\$ 10,000.00	\$ 10,000.00
2050-10	Silt Fence (Type III)	LF	1,458	\$ 1.50	\$ 2,187.00
2050-20	Tree Protection Details	LS	1	\$ 1,200.00	\$ 1,200.00
2050-30	Clearing and Grubbing	AC	1.19	\$ 20,000.00	\$ 23,800.00
2110-01	Removal of Existing Pavement	SY	4,309	\$ 3.50	\$ 15,081.50
2110-02	Saw cut Pavement	LF	2,465	\$ 1.00	\$ 2,465.00
2110-10	Disposal of Unsuitable Materials	CY	4,265	\$ 9.00	\$ 38,385.00
2225-01	Regular Excavation	CY	4,265	\$ 2.75	\$ 11,728.75
2225-10	Fill Dirt	CY	458	\$ 5.50	\$ 2,519.00
2510-01	Asphalt Type S-1 (1.5") (Site)	SY	1,741	\$ 9.45	\$ 16,452.45
2510-02	Asphalt Overlay FC-12.5 (1.5")	SY	1,900	\$ 12.60	\$ 23,940.00
2510-10	Remove and Reinstall Existing Non-Asphalted Brick	SY	10	\$ 45.00	\$ 450.00
2510-11	Deliver all excess brick from demo (as-is) to the City	LS	1	\$ 1,200.00	\$ 1,200.00
2510-20	8" Lime rock Base (Site)	SY	1,741	\$ 15.95	\$ 27,768.95



DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
2510-25	12" Stabilized Subbase (Site)	SY	1,828	\$ 8.30	\$ 15,172.40
2510-30	Sand Bedding (Sidewalks)	CY	5	\$ 10.00	\$ 50.00
2510-31	Joint/Bedding Sand	LS	1	\$ 1,500.00	\$ 1,500.00
2510-35	Sand Bedding (Drive Area, ASTM C33)	CY	9	\$ 10.00	\$ 90.00
2510-80	Filter Fabric	SY	1,851	3.15	5,830.65
2511-01	6" Double Yellow Pavement marking	LF	60	\$ 10.00	\$ 600.00
2511-02	24" Stop Bar	LF	23	\$ 10.00	\$ 230.00
2511-03	6" Single White Pavement Marking, Parking Lot	LS	1	\$ 800.00	\$ 800.00
2511-04	Pavement Marking, Directional Arrows	EA	2	\$ 75.00	\$ 150.00
2511-05	ADA Sidewalk Truncated Domes Detectable Warning	EA	12	\$ 300.00	\$ 3,600.00
2515-01	2 1/4 Pervious Brick Pavers	SF	12,688	\$ 5.30	\$ 67,246.40
2515-02	21/4 Pervious Brick edging	SF	7,162	\$ 5.62	\$ 40,250.44
2515-03	21/4 ADA Brick	SF	160	\$ 17.85	\$ 2,856.00
2515-04	2/3/4 Vehicular Brick Pavers	SF	2,400	\$ 7.75	\$ 18,600.00
2515-05	12X12 Concrete Pavers	SF	9,138	\$ 4.10	\$ 37,465.80
2515-50	1/4" to 3/8" Sized, Washed #89 Stone Aggregate	CY	146	\$ 16.50	\$ 2,409.00
2515-51	3/4" Sized, Washed #57 Stone Aggregate	CY	469	\$ 21.20	\$ 9,942.80
2515-52	1-1/2" to 3" Sized, Cleaned, #2 Stone Aggregate	CY	1,204	\$ 27.20	\$ 32,748.80

DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
2515-53	#9 Joint Aggregate	LS	1	\$ 3,500.00	\$ 3,500.00
2515-60	Granite Screenings	LS	1	\$ 3,500.00	\$ 3,500.00
2710-01	Trench Drain, 12"W x 6"D	LF	82	\$ 451.00	\$ 36,982.00
2710-02	18" beehive grates	EA	3	\$ 443.57	\$ 1,330.71
2710-10	6" roof drains with 6 atrium grates/caps	EA	6	\$ 239.67	\$ 1,438.02
2710-20	8" PVC under drain w/bedding and fabric	LF	230	\$ 22.30	\$ 5,129.00
2730-01	Core Bore New Manhole Invert	LS	1	\$ 771.00	\$ 771.00
2730-02	Patch Existing Manhole Invert	LS	1	\$ 189.00	\$ 189.00
2730-03	Manholes	EA	2	\$ 3,017.00	\$ 6,034.00
2730-04	8" PVC Gravity Sewer	LF	40	\$ 49.76	\$ 1,990.40
2730-05	Single Service	LS	1	\$ 568.42	\$ 568.42
2730-06	Service Connection	LS	1	\$ 266.27	\$ 266.27
2730-07	8" to 6" Reducer	LS	1	\$ 76.89	\$ 76.89
2730-08	8" Cap	LS	1	\$ 63.69	\$ 63.69
2730-09	Remove Existing Sewer Pipe	LS	1	\$ 4,176.00	\$ 4,176.00
2730-10	Remove Existing Manhole	LS	1	\$ 854.74	\$ 854.74
2760-01	Tie to existing main with 6 x 6 x 6 Tee - Cut in	LS	1	\$ 1,158.69	\$ 1,158.69
2760-02	6" PVC, C-900 Pipe	LF	250	\$ 20.70	\$ 5,175.00

DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
2760-03	6" 45° Bends	EA	4	\$ 146.58	\$ 586.32
2760-04	6" x 6" x 6" Tee	EA	2	\$ 256.54	\$ 513.08
2760-05	6" Gate Valves	EA	3	\$ 953.48	\$ 2,860.44
2760-06	Temporary 4" Cap	LS	1	\$ 91.41	\$ 91.41
2760-07	Tie to existing main with 6" to 4" Reducer	LS	1	\$ 139.56	\$ 139.56
2760-08	Temporary Jumper	LS	1	\$ 2,036.39	\$ 2,036.39
2760-09	Abandon Existing 4" main	LS	1	\$ 454.40	\$ 454.40
2760-101	Tie to Existing Main with 4" Tapping Sleeve	LS	1	\$ 2,088.30	\$ 2,088.30
2760-102	4" PVC, C-900 Pipe	LF	315	\$ 16.64	\$ 5,241.60
2760-103	4" x 4" x 4" Tee	LS	1	\$ 238.42	\$ 238.42
2760-104	4" Gate Valves	EA	3	\$ 818.28	\$ 2,454.84
2760-105	Blow Off	LS	1	\$ 542.73	\$ 542.73
2900-01	Sodding	SY	1,793	\$ 3.00	\$ 5,379.00
2950-01	Landscape Grading/Misc Prep	LS	1	\$ 3,000.00	\$ 3,000.00
2950-02	Soil Amendment	LS	1	\$ 1,200.00	\$ 1,200.00
2950-03	Soil Testing	LS	1	\$ 100.00	\$ 100.00
2950-10	Soil Mix A	CY	349	\$ 39.00	\$ 13,611.00
2950-11	Soil Mix B	CY	623	\$ 39.00	\$ 24,297.00



DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
2950-12	Soil Mix C	CY	71	\$ 39.00	\$ 2,769.00
2950-13	Soil Mix D	CY	6	\$ 39.00	\$ 234.00
2950-14	Fertilization Tablets	LS	1	\$ 878.00	\$ 878.00
2950-15	Organic Mulch	CY	60	\$ 39.00	\$ 2,340.00
2950-16	Washed shell Mulch	CY	46	\$ 55.00	\$ 2,530.00
2950-20	Landscape Plant Material	LS	1	\$ 79,495.00	\$ 79,495.00
2950-30	Root Path Detail	LF	1,260	\$ 9.00	\$ 11,340.00
2950-40	Staking and Guying	LA	1	\$ 2,500.00	\$ 2,500.00
2950-50	Root Barrier Detail	LF	680	\$ 9.00	\$ 6,120.00
2955-01	Milling Existing Asphalt	SY	1,900	\$ 4.40	\$ 8,360.00
3300-01	6" Thick Concrete Driveway	SY	129	\$ 34.37	\$ 4,433.73
3300-20	Type D Curb	LF	3,538	\$ 7.41	\$ 26,216.58
3300-30	Ribbon Curb	LF	1,808	\$ 12.38	\$ 22,383.04
3300-35	2' Wide Valley Gutter	LF	30	\$ 15.00	\$ 450.00
3300-40	Concrete Wheel stops	EA	44	\$ 30.00	\$ 1,320.00
3300-50	Seating Walls - Cast Concrete/Brick Cap	LF	60	\$ 100.00	\$ 6,000.00
3300-52	Concrete Forebay Spash pads	EA	35	\$ 80.00	\$ 2,800.00
3300-53	4X8 conventional brick for vaults	LS	1	\$ 1,200.00	\$ 1,200.00

DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
3300-60	Miscellaneous Concrete Work - 3000 psi	LS	1	\$ 2,800.00	\$ 2,800.00
3400-01	Planter Vaults - Large	EA	4	\$ 3,842.00	\$ 15,368.00
3400-02	Planter Vaults - small	EA	5	\$ 1,920.00	\$ 9,600.00
3500-01	6" Thick Pervious Concrete Pavement	SY	983	\$ 39.61	\$ 38,936.63
3500-20	Embedded Ring Infiltrrometer Kit (ERIK)	EA	9	\$ 2,300.00	\$ 20,700.00
10000-01	SN-4 Stop sign	EA	4	\$ 945.02	\$ 3,780.08
10000-02	SN-2 Stop and Street Signs	EA	1	\$ 1,221.73	\$ 1,221.73
10000-03	SN-1 Keep Right Sign	EA	1	\$ 1,009.37	\$ 1,009.37
10000-04	SN-3 Stop Sign/Do not Enter	EA	1	\$ 1,339.34	\$ 1,339.34
10000-05	SN-5 One Way Sign	EA	1	\$ 1,250.00	\$ 1,250.00
10000-06	Handicap Parking Sign	EA	2	\$ 200.00	\$ 400.00
26000-01	Electrical Wiring to Street Lights	LS	1	\$ 5,800.00	\$ 5,800.00
26000-02	Electric meter Installation (including riser wiring)	LS	1	\$ 150.00	\$ 150.00
26000-03	SA Light	EA	9	\$ 3,398.00	\$ 30,582.00
26000-04	SB Light	EA	17	\$ 3,398.00	\$ 57,766.00
26000-05	SC Light	EA	4	\$ 3,138.00	\$ 12,552.00
26000-10	3/4" Schedule 80 PVC	LF	875	\$ 5.58	\$ 4,882.50
26000-11	3/4" Schedule 40 PVC	LF	550	\$ 3.85	\$ 2,117.50

DISCLAIMER: The bidder is responsible for verifying all of the quantities, totals and formulas contained in the electronic file. The Design professional shall not assume liability for any errors, incorrect use or manipulation of this electronic file.

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Est Qty</u>	<u>Unit Price</u>	<u>Total Price</u>
26000-12	1" Schedule 80 PVC	LF	150	\$ 9.45	\$ 1,417.50
26000-13	#14 Copper THHA	LF	330	\$ 0.08	\$ 27.39
26000-14	#13 Copper THHA	LF	1,650	\$ 0.16	\$ 259.05
26000-15	#10 Copper THHA	LF	3,850	\$ 0.19	\$ 743.05
26000-16	#8 Copper THHA	LF	275	\$ 0.35	\$ 96.25
26000-17	Electrical Meter	EA	1	\$ 300.00	\$ 300.00
26000-18	Concrete Meter Pedestal	EA	1	\$ 115.00	\$ 115.00
26000-19	100 amp Exterior Breaker Panel	EA	1	\$ 1,254.00	\$ 1,254.00
328400-01	Irrigation System	LS	1	\$ 47,443.00	\$ 47,443.00
328400-02	Irrigation Water Meter	LS	1	\$ 3,500.00	\$ 3,500.00
50000-00	Other	LS	1	\$ 140,000.00	\$ 140,000.00
				SUB-TOTAL	\$ 1,326,538.00
				TOTAL CONSTRUCTION COST	\$ 1,326,538.00





**NDC**  
CONSTRUCTION COMPANY

ACORD<sup>®</sup>

DATE (MM/DD/YYYY)  
4/2/2012

[www.ndcconstruction.com](http://www.ndcconstruction.com)

*"Building A Better Community"*



## Bonding

### **Surety:**

The Travelers Companies, Inc.  
112 Washington Place, Suite 910  
Pittsburgh, PA 15219

Account Executive: Roger P. Pieto  
(Ph) 412.338.3037  
[rppieto@travelers.com](mailto:rppieto@travelers.com)

### **Surety Agent:**

Marsh USA Inc.  
Six PPG Place, Suite 300  
Pittsburgh, PA 15222

Surety: Marjorie A. Altemus  
(Ph) 412.552.5101  
[Marjorie.a.altemus@marsh.com](mailto:Marjorie.a.altemus@marsh.com)  
OR  
James Bly

### **Bonding Account Rate:**

<u>Contract Value</u>	<u>Rate per Thousand</u>
\$0 - \$2,500,000	\$11.04
\$2,500,001 - \$5,000,000	\$9.60
\$5,000,001 - \$7,500,000	\$8.45
\$7,500,001 - and greater	\$7.88

T 941.747.1062  
F 941.741.8027  
[www.ndcconstruction.com](http://www.ndcconstruction.com)

**THE CITY OF PALMETTO  
MANATEE COUNTY, FLORIDA**

**AGREEMENT BETWEEN OWNER & CONTRACTOR**

COP PROJECT NO: COP#11-641

PROJECT NAME AND LOCATION: 5th Street West Revitalization

**PROJECT DESCRIPTION:**

This is the Low Impact Development (LID) redevelopment of 5<sup>th</sup> Street West between 8<sup>th</sup> and 10<sup>th</sup> Avenues to enhance the aesthetics and improve public access and reduce existing slum and blight (Florida Statute 163 Part III). The scope of services for General Construction will include the following: masonry and pavers, concrete, electrical, plumbing, paving, grading carpentry, millwork, framing, hardware, demolition, excavation and fill. Project will include furnishing all labor, materials, and equipment to complete the work as specified and in accordance with drawings, specifications, and other contract documents.

Total Contract Price: \$1,344,494

SUBSTANTIAL COMPLETION: 8/31/2012

FINAL COMPLETION: 9/30/2012

ENGINEER:  
LOMBARDO, FOLEY & KOLARIK, INC.  
P.O. BOX 188  
825 4TH STREET WEST  
PALMETTO, FL 34221

ARCHITECT:  
UGARTE AND ASSOCIATES  
434 9TH AVENUE WEST  
PALMETTO, FL 34221

CONTRACTOR: NDC CONSTRUCTION COMPANY  
1001 THIRD AVENUE WEST, SUITE 600  
BRADENTON, FL 34205

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT**, made this the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2012, by and between THE CITY OF PALMETTO, FLORIDA, hereinafter referred to as the "Owner", and NDC Construction Company hereinafter referred to as the "Contractor".  
**CONTRACTOR**

FEDERAL TAX I.D. NUMBER: 593423927

The Owner and Contractor agree as set forth below:

### **ARTICLE 1** **THE CONSTRUCTION TEAM AND THE EXTENT OF THE AGREEMENT**

- 1.1 The Contractor agrees to furnish its professional skill and judgment and to cooperate with the Architect-Engineer (A-E) in furthering the interests of the Owner. The Contractor agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the project in an expeditious and economical manner consistent with the interests of the Owner.
- 1.2 The Construction Team - Contractor, the Project Manager and the A-E.
  - 1.2.1 The Construction Team and Owner shall work as a team throughout the entire project.
    - 1.2.1.1 The Contractor shall provide leadership to the Construction Team on all matters relating to construction.
    - 1.2.1.2 The A-E shall provide leadership to the Construction Team on all matters relating to design.
- 1.3 The Contract Documents:
  - 1.3.1 The Contract Documents consist of this Agreement, Request for Proposal documents: General Conditions, Scope of Services, Instructions, Bid Form and Plans, the Contractor Clarifications to the Bid Proposal, and all addenda issued by the Owner prior to the execution of this Agreement, other documents listed in this Agreement and changes executed and issued by the Owner after execution of this Agreement, or as provided herein. These form the Contract between the parties and are as fully a part of the Contract as if attached to this Agreement and repeated herein.
  - 1.3.2 The Contract (as defined above) represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or



agreements, either written or oral. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

- 1.3.3 This Agreement may be amended only by a written instrument signed by the Owner and the Contractor, and approved by the City Commission. Both parties agree that they will not hereafter contend that subsequent oral statements will modify the terms of this Agreement.

1.4 Definitions:

- 1.4.1 Project or the Work - The total work to be performed under this Agreement. The terms Project and the Work are used interchangeably. The project consists of planning, design, construction and associated site work to build the components of the projects. The Project Description on the cover sheet of this Agreement is incorporated by reference as if fully set forth herein.

- 1.4.2 Owner - The City of Palmetto, Florida as represented by its Project Manager, unless specifically stated otherwise herein.

- 1.4.3 Project Manager - Person designated by the Owner to provide direct interface with the A-E in respect to the Owner's interest and responsibilities. Bob Gause with Allison-Gause, Inc. will serve as Project Manager.

- 1.4.4 Contractor or CONTRACTOR - NDC Construction Company  
1001 Third Avenue West, Suite 600  
Bradenton, FL 34205

- |       |  |   |
|-------|--|---|
| 1.4.5 | A-E, or A-E - ENGINEER:<br>ENGINEER:<br>LOMBARDO, FOLEY & KOLARIK, INC.<br>P.O. BOX 188<br>4TH STREET WEST<br>PALMETTO, FL 34221 | ARCHITECT:<br>ARCHITECT:<br>Ugarte and Associates<br>434 9th Avenue West825<br>Palmetto, FL 34221 |
|-------|--|---|

- 1.4.6 Project Contract Price. Project Contract Price is \$1,344,494 for the project, including all fees and cost of the work; provided that where appropriate, Contractor shall investigate and discuss the possibility of direct purchase by Owner for lighting, pavers and other significant materials or equipment. In such event of a direct purchase, the original estimated cost of such material or equipment shall be deducted from the Project Contract Price.

- 1.4.7 Date of Commencement: The date of commencement of the Work shall be April 17, 2012, unless a different date is stated below or a different date is to be fixed by a Notice to Proceed to be issued by the Owner.

- 1.4.8 The Contract Time is to be measured from the Date of Commencement.

- 1.4.9 Substantial Completion - "Substantial completion" shall mean that the project under this contract is sufficiently completed in accordance with the contract documents, so that the owner can occupy or utilize the work or designated portions thereof for the use for which it is intended, as expressed in the contract documents and a certificate of occupancy has been issued by the permitting authority. (Note: the issuance of a certificate of occupancy, in itself, does not constitute "substantial completion").
- 1.4.11 Final Completion - The term "Final completion" shall mean all of the following events have occurred:
- 1) Pursuant to the terms of the contract, an Architect or Engineer as appropriate certifies that the project is substantially complete and, within the time provided in the contract between the Owner and the Contractor, the Owner submits a written punch list to the Contractor and the Contractor substantially completes all of the items on the punch list.
  - 2) The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the Owner and the Contractor, the owner submits a written punch list to the contractor and the Contractor substantially completes all of the items on the punch list.
  - 3) The owner takes possession of the Project and, within the time provided in the contract between the Owner and the Contractor, the owner submits a written punch list to the contractor and the contractor substantially completes all of the items on the punch list.

## **ARTICLE 2**

### **CONTRACTOR'S BASIC SERVICES**

- 2.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the A-E and exercise the Contractor skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.
- 2.2. Project Construction and Warranty
- 2.2. 1. The Project shall be constructed:
- (1) In strict accordance with Construction Documents and approved plans specifications as recommended by the A-E and approved by the City of Palmetto.

- (2) Standard Warranties, as identified in the project documents, are in effect and strictly enforced.

2.3 Basic professional services to be provided:

- 2.3.1 The Contractor and the A-E shall jointly schedule regular meetings, weekly unless agreed to otherwise, with the Owner regarding site use and improvements. Contractor to provide recommendations on construction feasibility, actions to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and construction completion.
- 2.3.2 Utilize the project schedule that coordinates the Contractor's services, the A-E services and the Owner's responsibilities with anticipated construction schedules. If the project dates previously approved are found to be inaccurate, the Contractor will make appropriate recommendations to the Project Manager and A-E.
- 2.3.3 It is not the Contractor's responsibility to ascertain that drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes or other regulations. However, if the Contractor recognizes or should have recognized a non-compliance issue, the Contractor shall immediately notify the Project Manager and the A-E in writing.
- 2.3.4 During construction, the Contractor shall schedule and conduct regular meetings of the Construction Team and prepare and distribute minutes, as needed.
- 2.3.5 Equal Employment Opportunity (EEO) - The Contractor shall comply with applicable laws, regulations and special requirements of the contract documents affording equal employment opportunity and affirmative action programs.

2.4 Construction Phase

- 2.4.1 The construction phase shall commence on the earlier of the following:
  - (1) The Owner's previous stages and issuance of the Notice to Proceed; or,
  - (2) The Owner's first authorization to the Contractor to:
    - (a) Award a Subcontract;
    - (b) Undertake construction work with Contractor's forces;
    - (c) Issue a Purchase Order for materials or equipment required for the Work.
- 2.4.2 The Contractor shall not contract with anyone whom the Owner has a reasonable objection.
- 2.4.3 The master schedule shall be produced and updated monthly throughout the Project. The schedule shall graphically depict the sequence and duration of all activities required to satisfactorily finish the Project.

- 2.4.4 The Contractor shall manage, schedule and coordinate the work, including the work of trade contractors, and coordinate the work with the activities and responsibilities of the Project Manager, A-E and Contractor in order to complete the Project in accordance with the Owner's objectives of time, quality and cost. Maintain exclusively for this Project, a competent full-time staff at the Project Site to coordinate and direct the work. The Contractor's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Project Manager's consent. The Project Manager shall have the right to direct the Contractor to remove any on-site personnel whose performance is unsatisfactory to the Owner, in Owner's sole and absolute discretion. In such event, the Contractor shall promptly replace such personnel without additional compensation for that replacement.
- 2.4.5 The Contractor shall maintain Requests for Information Log (RFI) and Change Order Log (COL) and Potential Change Order Log (PCOL) to be reviewed at each meeting of the Construction Team who shall act on the disposition of these items. It is the Contractor's responsibility to insure that each RFI, COL or PCOL is acted on in a timely manner so that there is no delay in the schedule.
- 2.4.6 The Contractor shall establish on-site organization and lines of authority to implement the overall plans of the Construction Team.
- 2.4.7 Contractor shall be responsible for initiating, maintaining and supervising effective safety programs and requiring similar programs of trade contractors and subcontractors. OSHA guidelines shall serve as the basis for the safety program. Copies of the proposed program shall be distributed to the Construction Team.
- 2.5 Hazardous Materials - In the event hazardous materials such as asbestos or PCB's are encountered at the Project Site, and it was not specifically noted on drawings or job specifications, the Contractor shall immediately notify the Owner and the A-E in writing of the suspected substance and Contractor shall take all proper measures to contain any contamination. The Owner shall be responsible for obtaining the services of a licensed laboratory to determine absence or presence of the substance and whether it has been rendered harmless. If the material is found to be hazardous, the Owner will be responsible for the cost and time to render the substance harmless. If the Contractor complies with the requirements set forth in this paragraph the Owner shall indemnify and hold Contractor harmless from and against claims, damages, losses, and expenses arising out of or related to any hazardous materials at the site; provided, however, this indemnity shall not apply to hazardous materials brought to the site by Contractor or its subcontractors or release caused by Contractor's negligence.
- 2.6 The Contractor shall provide for all job-site facilities necessary to enable the Contractor, the Project Manager, Project Representative and the A-E to perform their respective duties in the management, inspection and supervision of construction.



**ARTICLE 3**  
**OWNER'S RESPONSIBILITIES**

- 3.1 The Owner shall provide full information, in a timely manner, regarding the requirements of the Project, including a program setting forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- 3.1.1 To the extent that the Owner is in possession of any reports, surveys, drawings or tests describing the conditions of the site, these will be promptly furnished to the CONTRACTOR for its information only, and not as a representation of the true conditions of the site. The CONTRACTOR shall not furnish any such documents to the trade contractors as a representation of the true conditions of the site. All trade contractors will be obligated in their respective contracts to accept the site "as is" without any representations by the Contractor or the Owner of its true condition.
- 3.1.1.1 Should the CONTRACTOR deem it necessary for its own information to engage the service of a geotechnical engineer to evaluate the site, the CONTRACTOR may do so at the Owner's expense and with Owner's written approval. However, any reports, etc., of such engineer shall not be presented to trade contractors as a representation of the true conditions of the site, unless required by any governmental authority having jurisdiction over said contamination.
- 3.2 The Owner will designate a Project Manager who will be fully acquainted with the Project and shall define the lines of Owner approved Scope of Work and Project Budget.
- 3.3 The Owner shall retain an A-E for design and to prepare construction documents for the Project. The duties and responsibilities of A-E are described in the Agreement between the Owner and the A-E. A copy will be furnished to the Contractor upon reasonable request.
- 3.4 If any new construction documents have been developed by the A-E prior to the date of this Agreement, these will be furnished to the Contractor.

**ARTICLE 4**  
**PERMITTING AND INSPECTIONS**

- 4.1 The Contractor shall be responsible to ensure a reviewing authority as identified by Owner must approve the construction documents for code compliance prior to beginning work and that all changes to the construction documents shall be reviewed and approved by the same authority. During Project Construction and Warranty, all work in place will be inspected for strict compliance with the applicable codes, the construction documents and generally accepted construction techniques by the

Owner's Project Representative or his designee and other code inspection authorities having jurisdiction.

- 4.2 The Contractor shall be responsible to ensure that all components of the Project require detailed code compliance and construction document inspections during construction. These areas normally include, but are not limited to, structural, mechanical, electrical, plumbing and general building.
- 4.3 The Owner or another inspecting authority identified by the Owner will provide inspection personnel. The Owner's Project Manager will provide to the Contractor names, addresses and telephone numbers of the inspecting authorities. The Contractor shall notify the appropriate inspector(s) no less than 24 hours in advance of the required inspection. All work scheduled for inspection shall be ready for inspection and inspected prior to the work being concealed. Work not inspected and not approved prior to concealment shall be revealed for inspection when directed by the Owner or designated inspecting authority. All costs associated with inspecting prematurely concealed work shall be borne by the Contractor. It is the Contractor's responsibility to insure that the work passes all required inspections in a timely manner.

## **ARTICLE 5**

### **SUBCONTRACTS**

- 5.1 Subcontracts:
- 5.2 Definition - A Subcontractor is a person or organization who has a direct contact with the Contractor to perform specific work at the jobsite. Nothing in the contract document shall create any contractual relationship between the Owner, A-E or any subcontractor.
- 5.3 Terms
- 5.3.1 The work on the Project may be performed under subcontracts or by other appropriate written agreements with the Contractor.
- 5.4 Requirements of Subcontractors
- 5.4.1 Subcontractors and trade contractors are used interchangeably in this Agreement. Subcontractors shall be required to comply with all of the requirements of this Agreement.
- 5.4.2 Each subcontract shall include a provision strictly limiting the Subcontractor's remedies against the Contractor as follows:
- 5.4.2.1 There shall be an enforceable "no damages for delay" clause making the Subcontractor's exclusive remedy for delays caused by others in the performance of

the Subcontractor's work, including claims of breach of contract, negligence or intentional acts, to an extension of the contract time.

- 5.4.2.2 Each subcontract shall contain enforceable provisions by which each Subcontractor agrees that the foregoing constitutes in sole and exclusive remedies for delays and changes in the work, and eliminating all other remedies.
- 5.4.3. Each Subcontractor must be licensed by the State in accordance with Section 489, Florida Statutes.

## **ARTICLE 6**

### **BASIS FOR PAYMENTS TO CONTRACTOR**

#### **6.1 CONTRACT SUM**

- 6.1.1 The Owner shall pay the Contractor the Project Contract Price, as defined in Section 1.4.6 under the procedure set forth in Article 9. The Project Contract Price shall consist of the Work, as defined herein, and all fees and costs, as provided below.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 OWNER INITIATED CHANGES**

- 7.1.1 Without increasing the project contract amount, the Owner, through the Project Manager, may, without invalidating this Agreement, order changes in the Work, which may consist of additions, deletions or other revisions. Change orders within the overall City project budget, including any contingency, may be approved at the discretion of the Owner through the Project Manager and with consent of the Mayor. All other change orders shall require City Commission approval.
- 7.1.2 The Owner may request the Contractor to submit a cost estimate for contemplated changes in the Work. The Contractor shall, in turn, obtain cost estimates from the affected Subcontractors. .
- 7.1.3 A Change Order shall be in writing and signed by the Owner's designated representative who has authority to change the Agreement, usually the Project Manager. Work on the changes may not proceed or be billed until the signed Change Order is received.
- 7.1.4 When the Owner issues a Change Order, the Contractor shall immediately issue a corresponding change to the affected Subcontractor(s), and proceed with the changed Work.

- 7.1.5 If the Owner's Change Order is not accommodated within an appropriate contingency fund, the Project Contract Price may be changed in the Change Order (which change must be signed by the Contractor).

7.2 **CONTRACTOR INITIATED CHANGES**

- 7.2.1 The Contractor may initiate a Request for a Change Order to the Owner. Such a request shall include a detailed breakdown of the costs and mark-up involved. The Contractor shall keep a log of all such requests and shall review them at each weekly job meeting. The Owner shall be specifically apprised of any deadlines per the schedule for making a decision on a Request for Change Order.

**ARTICLE 8**  
**LIQUIDATED DAMAGES**

- 8.1 When the Owner and the Contractor agree to a Change Order, the Contractor shall sign the Change Order. By signing this Change Order, the Contractor agrees that the Contract time for Substantial Completion of the Work set forth in this Change Order is a reasonable time period to achieve substantial completion of the Work.
- 8.2 If the Contractor fails to achieve Substantial Completion of the Work by August 31, 2012, the Owner shall be entitled to retain or recover from the Contractor and/or its Surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the contract date identified for Substantial Completion and continuing until the actual date of Substantial Completion. Liquidated Damages shall be \$1,200.00 per day. If the Contractor fails to achieve Final Completion of the Work by August 31, 2012, the Owner shall also be entitled to retain or recover from the Contractor and/or its Surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the contract date identified for Final Completion and continuing until the actual date of Final Completion. Liquidated Damages for Final Completion shall be \$300.00 per day. Additionally, any loss of cooperative funding awarded to the Owner by the South West Florida Water Management district as a result of the Contractor's inability to meet the substantial completion date shall the responsibility of the Contractor and reimbursed to the Owner.
- 8.3 The Liquidated Damages amount per calendar day are fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. The Owner will suffer financial damage if the Project is not substantially completed on the dates set forth in the Contract Documents. Therefore, it is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, additional costs of contract administration by the Architect and Owner.



- 8.4 Permitting the Contractor to continue to finish the work or any part of the work after time fixed for its completion or after date to which time for completion may have been extended shall, in no way, constitute a waiver on the part of the Owner of any of his rights under the Contract.
- 8.5 Liquidated Damages shall be assigned to the Contractor if punch list items have not been completed within ninety (90) days after Substantial Completion. The value of punch list items shall be determined by the Architect and Engineer and multiplied by two (2). This total value (actual value times two) shall be withheld until the item has been completed. In addition, the Owner may obtain the services of others to complete unfinished punch list items after ninety (90) days have expired. Costs for the work shall be deducted from the Contractor's final payment. Liquidated Damages for punch list items shall commence on the ninety-first (91<sup>st</sup>) day after Substantial Completion and accrue until the final Application for Payment has been approved by the Architect. The Contractor, shall pay to the Owner any sums hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay until the items are complete. Liquidated Damages under this Section 8.5 shall be \$300.00 per day. The Liquidated Damages amount per calendar day are fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. Therefore, it is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, additional costs of contract administration by the Architect and Owner.

## **ARTICLE 9**

### **METHOD OF PAYMENTS TO THE CONTRACTOR**

- 9.1 MONTHLY PROGRESS PAYMENTS
- 9.1.1 The Contractor shall prepare and submit to the Owner a monthly Contractor's Application for Payment in the form attached as Exhibit A to this Agreement. Said Certificate shall be sworn to and shall attach all cost reports and back-up required by Article 2. The Owner shall make payments on said Certificate as set forth herein.
- 9.1.2 The period covered by such Certificate shall be one calendar month ending on the last day of the month. If received on or before the 20<sup>th</sup> of the month, the Owner shall make payments on the 10<sup>th</sup> day of the following month, or on the next business day after the 10<sup>th</sup>, if the 10<sup>th</sup> is on a weekend or holiday. The Owner may seek the advice of the A/E in determining the correctness of the Certificate.
- 9.1.4 Certificate for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Certificate for Payment.
- 9.1.5 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed by taking that portion of the Project Contract Price

properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the Project Contract Price and subtract any previous payments made to the Contractor.

9.6 Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

9.7 In taking action on the Contractor's Application for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted; that the Owner has made exhaustive or continuous on-site inspections or that the Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required, will be performed by the Owner's accountants when the Certificate of Final Payment is audited.

## 9.2 FINAL PAYMENT

9.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor no later than thirty (30) days following the last of the following to be completed:

- (1) The Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond the final payment; and,
- (2) A final Certificate of Final Payment has been issued by the Architect; and,
- (3) A permanent certificate of occupancy has been issued and the Owner is permitted to occupy the facility; and
- (4) All punch list items have been completed.

9.3 Payments to Subcontractors - The Contractor shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of 10 percent (10%). Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

For extraordinary circumstances, final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval by the Owner, Contractor and A/E.

- 9.4 Delayed Payments by Owner - If the Owner should fail to pay the Contractor within thirty (30) days after the receipt of a Application of Payment approved by the Architect/Engineer, then the Contractor may, upon seven (7) additional days written notice to the Owner and the Architect/Engineer stop the Project until payment of the Amount owing has been received. Interest on funds delayed shall be at the rate specified in section 14.1.

## **ARTICLE 10**

### **INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

#### 10.1 Indemnity.

- 10.1.1 The Contractor agrees to indemnify and hold harmless the Owner, the Owner's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction contract.

#### 10.2 Contractor's Insurance

- 10.2.1 The Contractor shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- 10.2.2 Worker's Compensation Insurance - The Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- 10.2.3 Contractor's Public Liability and Property Damage Insurance - The Contractor shall take out and maintain during the life of this Agreement, Comprehensive General

Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

- (1) *Comprehensive Commercial General Liability Insurance:* Occurrence from required. Aggregate must apply separately to this contract/job. Minimum \$500,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 fire damage.
- (2) *Automobile Insurance:* To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this agreement.
- (3) Excess Liability, Umbrella Form: \$2,000,000 Each Occurrence; Combined Single Limit.
- (4) *Workers Compensation:* Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident; \$500,000 each employee; and \$500,000 policy limit for disease.

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

10.2.4 Subcontractor's Public Liability and Property Damage Insurance - The Contractor shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy in an amount that is appropriate for the work to be performed.

10.2.5 Owner's and Contractor's Protective Liability Insurance - The Contractor shall procure, as a cost of the Project, and furnish an Owner's and Contractor's Protective Liability Insurance Policy with the following minimum limits:

Bodily Injury Liability and Property Damage Liability - \$1,000,000 Each Occurrence, Combined Single Limit

10.2.6 "XCU" (Explosion, Collapse, Underground Damage) - The Contractor's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.

10.2.7 Broad Form Property Damage Coverage, Products & Completed Operations Coverage's - The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverage's.



- 10.2.8 Contractual Liability Work Contracts - The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Agreement to the extent covered by a standard Insurance Standards Office (ISO) General Liability policy.
- 10.2.9 Builder's Risk Coverage - Upon the City's request and at the City's cost, the Contractor shall arrange to maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverage's on an "all risk" basis including theft and stored materials. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to substantial completion of the Project. The policy shall have a deductible in an amount acceptable to the Owner and that meets the industry standards and any losses not covered by insurance shall be paid by the Owner out of unforeseen conditions and the Owner shall be listed as an additional insured. Unless specifically requested in writing by the City, there shall be no obligation for the Contractor to obtain Builder's Risk Coverage.
- 10.2.10 Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:
- (1) Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Department of Construction Services. This Certificate shall be dated and show:
    - (a) The name of the insured Contractor, the specific job by name and number, the name of the insurer, the number of the policy, its effective date, and its termination date.
    - (b) Statement that the Insurer will mail notice to the Owner and a copy to the A-E at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
    - (c) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (IS) and such Certificate shall clearly state all the coverage's required.
    - (d) The Owner shall be named as additional insured on all coverages, except Worker's Compensation.
  - (2) Indemnification Rider
    - (a) To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner and the Architect/Engineer and their agents from and against all liability, losses and costs, including but not limited to reasonable attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death, or injury to or destruction of tangible

property including loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, or anyone employed by them or utilized by them in the performance of this contract. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- (b) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the Contractor under this Section shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect/Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- (d) The Contractor hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect/Engineer in exchange for giving the Owner and Architect/Engineer, respectively, the indemnification provided above.

### 10.3 Waiver of Subrogation

- 10.3.1 The Owner and the Contractor waive all rights against each other, for damages caused by perils covered by insurances provided under this Article to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as Trustees. The Contractor shall require similar waivers from all subcontractors and their sub-contractors.
- 10.3.2 The Owner and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub-contractors.
- 10.3.3 The Owner waives subrogation against the Contractor on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

- 10.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation

## **ARTICLE 11**

### **TERMINATION**

- 11.1 Termination by the Contractor - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government other than the Owner as the contracting party, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make proper payments thereon, then the Contractor may, upon seven (7) days written notice to the Owner, terminate this contract and request payment for all work executed, the Contractor's fees earned to date, and for any proven loss sustained upon any materials, equipment tools, construction equipment, and machinery, including reasonable profit, damages and terminate expenses incurred by the Contractor.
- 11.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause
- 11.2.1 If the Contractor fails to perform any of his obligations under this Agreement including any obligation he performs with his own forces, the Owner may, after seven (7) days of such failure, produce a written notice to the Contractor allowing fourteen (14) days to cure the problem. If during the fourteen-day period, the Contractor fails to perform such obligations and make good such deficiencies, the Owner may give the Contractor written notice that the Contract is terminated for cause. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under this Agreement. Termination expenses and additional fees and costs related to completion of the Project incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).
- 11.2.2 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined a any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority

having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy, and after giving the Contractor and his surety, if any, seven (7) days written notice, during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under this Agreement. Termination expenses and additional fees and costs related to completion of the Project incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

- 11.2.3 If the Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Contractor or his Surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligation assumed under this Agreement. Expenses incurred by the Owner will be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

### 11.3 TERMINATION BY OWNER WITHOUT CAUSE

- 11.3.1 The Contract may be terminated by the Owner, without cause, and for the convenience of the Owner.
- 11.3.2 If the Owner terminates this Agreement without cause and for the Owner's convenience, he shall reimburse the Contractor for any unpaid Cost of the Project due him under Section 9.1.5. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article 11, execute and deliver all such papers and take all steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such obligations or commitments.
- 11.3.3 If lack of legislative funding makes the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Contractor his proportionate fee due in accordance with Section 9.1.5.

**ARTICLE 12**  
**ASSIGNMENT AND GOVERNING LAW**

- 12.1 Neither the Owner nor the Contractor shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 12.2 This Agreement shall be governed by the Laws of the State of Florida.
- 12.3 Jurisdiction and venue for any action brought under this Contract or any subcontract entered into by Contractor is agreed to be exclusively in the courts in and for Manatee County.

**ARTICLE 13**  
**FORCE MAJEURE, FIRE OR OTHER CASUALTY**

- 13.1 FORCE MAJEURE
- 13.1.1 Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.
- 13.1.2 The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the Contractor or to the Contractor, if with respect to the Owner, specifying its, actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis for Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.
- 13.2 CASUALTY; ACTIONS BY OWNER & CONTRACTOR



- 13.2.1 During the Construction Period, if the Project, or any part thereof, shall have been damaged or destroyed, in whole or in part, the Contractor shall promptly file a proof of loss and Owner and Contractor shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction.
- 13.2.2 The Contractor shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other charges, necessary for reconstruction of the Project substantially in accordance with the Project Plans and Specifications.
- 13.2.3 Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the Contractor covenants and agrees diligently to commence reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:
- (1) Receipt by the Owner or the Trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;
  - (2) Written agreement executed by the Contractor and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and
  - (3) Final Approval by the Owner of the Project Plans and specification for such repair or reconstruction and issuance of any required Building Permit
- 13.3 APPROVAL OF PLANS AND SPECIFICATIONS FOR RECONSTRUCTION
- 13.3.1 The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by the plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to be substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinance, codes and regulations.
- 13.3.2 The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the Contractor as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair to the Project.
- 13.4 Notice of Loss or Damage. The Contractor shall promptly give the Owner written notice of any significant damage or destruction to the Project, defined as loss or

damage which it is contemplated by Contractor extend the date of substantial completion, then expectations of Contractor as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage, which the Contractor determines, will not affect the GMP or date of substantial completion will be reported to the Owner and A-E immediately and associated corrective actions will be undertaken without delay.

#### **ARTICLE 14** **MISCELLANEOUS PROVISIONS**

- 14.1 INTEREST. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the rate of ten percent (10%) per annum.
- 14.2 PARTIES' REPRESENTATIVES.
- 14.2.1 The Owner's Representative is: Robert Gause  
Allison-Gause Engineering
- 14.2.2 The Contractor's Representative is: Ronald J. Allen, President  
NDC Construction Company
- 14.2.3 All written notices required or permitted under this Agreement shall be sent to the above by certified mail, return receipt requested. Receipts shall be retained as proof that the notice was received.
- 14.2.4 The parties' representatives may only be changed upon prior written notice to the other party.
- 14.3 DISPUTE RESOLUTION
- 14.3.1 Any dispute under this Agreement or otherwise concerning the Work of the Project must be resolved as specified herein or it is waived.
- 14.3.2 Within seven (7) days of the act giving rise to the claim, the party making the claim shall notify the other party and the A-E of the nature of the claim. Within seven (7) days of such notification, both parties and the A-E shall meet to attempt to resolve the claim. If the parties cannot resolve the claim, the A-E shall write a report and recommendation of how the claim should be resolved. This report is admissible in court proceeding.

THIS AGREEMENT is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect-Engineer for use in the administration of the Contract, and one to the Owner.

CONTRACTOR - NDC Construction Company

By: \_\_\_\_\_  
Corporate Secretary Signature

By: \_\_\_\_\_  
Corporate President Signature

\_\_\_\_\_  
Type Corporate President's Name

As Witnessed:

OWNER - CITY OF PALMETTO,  
CORPORATE SEAL  
MANATEE COUNTY, FLORIDA:

Attest:

City of Palmetto, by and through the City  
Commission

By: \_\_\_\_\_  
Shirley Groover Bryant, Mayor