

**CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT**

(IFB 75-18-19 – Water Main Improvements Project – N.W. 8th Avenue)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into this day of 4/22/2020, 2020, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida 33161 (“City”), and **DBF Construction, LLC**, a limited liability company registered and authorized to do business in the State of Florida, having its principal business office at 1850 NW 15th Avenue, #225, Pompano Beach, FL 33069 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on October 3, 2019, the City of North Miami (“City”) advertised *Invitation for Bids No. 75-18-19 – Water Main Improvement Project -N.W. 8th Avenue* (“IFB”), requesting bids from qualified and experienced contractors to furnish all labor, equipment, materials and expertise needed for the successful construction of a new 8-inch diameter C-900 Water Main to replace the existing 6-inch ACP and 2-inch Galvanized Steel Pipes along N.W. 8th Avenue, in accordance with the design, specifications and conditions contained in the IFB (collectively referred hereto as “Services”); an

WHEREAS, in response to the IFB, Contractor submitted its quotation expressing its capability, expertise and willingness to perform the Services; and

WHEREAS, Contractor was subsequently selected by City administration as the most responsive and lowest bidder of Services, whose qualifications and references demonstrated to be the most advantageous to the City; and

WHEREAS, the City Manager has determined that entering into this Agreement with Contractor is in the City’s best interest.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 The City’s *Invitation for Bids No. 75-18-19 – Water Main Improvement Project (N.E. 8th Avenue)*, attached hereto by reference;

2.1.2 Contractor's response to the IFB, attached hereto as "Exhibit A";

2.1.3 City's tabulation of recommended vendor, attached hereto as "Exhibit B"; and

2.1.4 All additional documents which are required to be submitted by Contractor under this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The Agreement.

ARTICLE 3 - TIME FOR PERFORMANCE

3.1 Subject to authorized adjustments, the Contractor warrants to complete the Services within two hundred ten (210) days from the date of the notice to proceed, unless terminated earlier by the City. Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Contractor and the acceptance of Services by the City.

3.2 Minor adjustments to the time for performance which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the time schedule for completion of Services will be modified accordingly.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

3.4 Contractor shall perform the Services Monday through Friday, between the hours of 7:30 a.m. and 5:00 p.m., excluding holidays. Hours beyond this timeframe must be requested in writing and approved by the City.

ARTICLE 4 - COMPENSATION

4.1 Contractor shall be paid an amount not to exceed Four Hundred Forty-One Thousand Forty-Nine Dollars (\$441,049.00) as full compensation for Services, pursuant to Contract Documents. Funding for this Agreement is contingent on the availability of funds and the

Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Contractor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 One or more changes to the Services within the general scope of this Agreement may be ordered by Change Order. A Change Order shall mean a written order to the Contractor executed by the Parties after execution of this Agreement. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and the terms and conditions described in this Agreement.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform Services shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a Party to this Agreement.

5.4 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the Services related to this Agreement shall be borne solely by Contractor. Any Services performed for Contractor by a subcontractor will be pursuant to an appropriate agreement between Contractor and subcontractor which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents.

5.5 Contractor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

5.6 Contractor shall furnish all labor, materials, supplies, equipment, supervision and services necessary for, and incident to the performance of the Services. Furthermore, Contractor warrants and accepts that any and all work, materials, services or equipment necessitated by the inspections of the City and/or Miami-Dade County agencies, or other regulatory agencies as are applicable, to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the City.

5.7 Contractor represents that it has examined the work site and accepts the Services and the conditions under which Services will be performed.

5.8 It is understood and agreed by the Contractor that the North Miami Building Department and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the City. For the purposes of this project, the Building Department is not a surrogate of the City. All decisions by the Building Department as to whether some aspect of the project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or a decision by the City. The Contractor agrees that it shall be the responsibility of the Contractor to ensure compliance with all applicable codes, regulations, law and ordinances. As noted in Section 5.6 of this Agreement, the Contractor warrants and accepts that any and all work necessitated by inspections which is not prescribed in the plans or specifications, but necessitated to bring the work into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the Contractor at no additional cost to the City.

ARTICLE 6 – ENVIRONMENTAL AND SAFETY REQUIREMENTS

6.1 Contractor shall comply and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry standards, and to ensure that such devices or protective clothing are properly used by its employees, agents and subcontractors at the work site.

6.2 Contractor shall assume full responsibility for any damage to any mangroves, land or areas or to the owner or occupant of any contiguous land or property, resulting from the performance of Services under this Agreement.

6.3 Contractor agrees to comply with training and any medical monitoring requirements regarding its employees, agents and subcontractors to the extent required by applicable laws, regulations, health and safety regulations, and to pay related costs and expenses. Contractor also warrants that its employees, agents and subcontractors shall be fit and qualified to carry out the Services.

6.4 Contractor shall provide any required signage for the work location as directed by the City. No work shall commence until the appropriate signage is secured in place.

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 The Contractor, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Contractor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 8 - CITY'S TERMINATION RIGHTS

8.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 9 - DEFAULT

9.1 In the event the Contractor fails to comply with any provision of this Agreement, the City may declare the Contractor in default by written notification. The City shall have the right to terminate this Agreement if the Contractor fails to cure the default within ten (10) days after receiving notice of default from the City. If the Contractor fails to cure the default, the Contractor will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Contractor shall return such sums due to the City within ten (10) days after notice that such sums are due. The Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 10 - INDEMNIFICATION

10.1 Contractor agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Contractor, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of Contractor's negligence within the scope of this Agreement, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation.

10.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 11 - INSURANCE

11.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured or additional insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the Contract Documents and

the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

11.2 All insurance policies required from Contractor shall be written by a company with a Best rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 13 - NOTICES

13.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor: DBF Construction, LLC
Attn: Mark Giannetti, Registered Agent
1850 NW 15th Avenue, #225
Pompano Beach, FL 33069

For the City: City of North Miami
Attn: City Manager
776 N.E.125th Street
North Miami, Florida 33161

With copy to: City of North Miami
Attn: City Attorney
776 N.E.125th Street
North Miami, Florida 33161

13.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

13.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice

ARTICLE 14 - FORCE MAJEURE

14.1 A “Force Majeure Event” shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

14.2 Contractor further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within 96 hours after such an occurrence.

ARTICLE 15 - PUBLIC RECORDS

15.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

15.2 Contractor shall additionally comply with the provisions of Section 119.0701, Florida Statutes, entitled “Contracts; public records”.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

16.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

16.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

16.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.13 All other terms, conditions and requirements contained in the Contract Documents, which have not been modified by this Agreement, shall remain in full force and effect.

16.14 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City, in connection with this Agreement, has any personal financial interest, direct or indirect, with contractors or vendors providing professional services on projects assigned to the Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

16.15 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.16 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: DocuSigned by:
Stephany Campo
F91C6C5C778C4DC...

Print Name: Stephany Campo

Date: 4/20/2020

DBF Construction, LLC, a Florida limited liability company
“Contractor”:

By: DocuSigned by:
Mark Giannetti
44E69DB9BB3F42D...

Print Name: Mark Giannetti

Date: 4/16/2020

ATTEST:

By: DocuSigned by:
Vanessa Joseph, Esq.
BB47A3B4B262492...

Vanessa Joseph, Esq.
City Clerk

City of North Miami, a Florida municipal Corporation: “City”

By: DocuSigned by:
Arthur H. Sorey, III
FDAE1897923F40D...

Arthur H. Sorey, III
Interim City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: DocuSigned by:
Jeff P. H. Cazeau
8AF8443B714D491

Jeff P. H. Cazeau
City Attorney