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AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by



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AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between Harbor Bay Community Development District (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **the stabilization of certain canal retaining walls and berm rehabilitation within the community of Mirabay, as more fully described in the engineering documents and specifications contained within the Contract Documents**

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Harbor Bay Community Development District – Master Stormwater and Retaining Wall Stabilization Project**

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by

**Langan Engineering and Environmental Services, Inc.
Parkside Corporate Center
15150 NW 79th Court, Suite 200
Miami Lakes, Florida 33016-5848**

3.02 The Owner has retained **Langan Engineering and Environmental Services, Inc.** (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. ~~The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.~~

{or}

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within [] days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within [] days after the date when the Contract Times commence to run.
- B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
 - 1. Milestone 1 [event & date/days]
 - 2. Milestone 2 [event & date/days]
 - 3. Milestone 3 [event & date/days]

4.03 Liquidated Damages

~~A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):~~

- ~~1. Substantial Completion: Contractor shall pay Owner \$_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.~~
- ~~2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$_____ for each day that expires after such time until the Work is completed and ready for final payment.~~
- ~~3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.~~
- ~~4. Milestones: Contractor shall pay Owner \$_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone 1, until each Milestone 1 is achieved.~~

~~B. Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$_____ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$_____.~~

Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. In the event Contractor fails, without reasonable cause, to complete the Work and achieve the Milestones within the times specified in Paragraph 4.02 above, the parties explicitly recognize that Owner may seek to recover from Contractor, in a court of competent jurisdiction, actual damages

(including but not limited to consequential and other damages) suffered by Owner due to said failure.

4.04 *Special Damages*

- A. ~~In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.~~
- B. ~~After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.~~

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions. Unit Pricing, as shown in the Contractor's Proposal attached hereto, shall be used in connection with pricing for change orders.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

| Unit Price Work | | | | | |
|---|--------------------|-------------|---------------------------|-------------------|-----------------------|
| Item No. | Description | Unit | Estimated Quantity | Unit Price | Extended Price |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities) | | | | | \$ |

~~The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.~~

- C. ~~Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)~~
~~\$_____.~~
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner (i.e., by the first of the month) and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to 50 percent completion of the Work, the Owner may withhold from each progress payment made to the Contractor an amount not exceeding 10 percent of the payment. After 50 percent completion of the Work, the Contractor may present a payment request for up to one half of the retainage held, less such amounts as may be withheld pursuant to this Contract or applicable law. After 50 percent completion of the Work, and until final completion and acceptance of the Work by Owner, the Owner may, in its sole discretion, reduce to 5 percent the amount of retainage withheld from each subsequent progress payment made to the Contractor. Five percent of the Contract Price will be retained until final completion, acceptance of the Work by the Owner, and final payment to the Contractor.
 - 2. ~~Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract~~
 - a. ~~_____ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
 - b. ~~_____ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~
- B. ~~Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to _____ percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _____ percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~

6.03 Final Payment

- A. ~~Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.~~ Upon final completion and acceptance of the Work in accordance with paragraph 15.06.B of the General Conditions and subject to final acceptance by Hillsborough County, and/or other governmental entities, as applicable, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.B.

ARTICLE 7 – INTEREST

- 7.01 ~~All amounts not paid when due shall bear interest at the rate of _____ percent per annum. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74, Florida Statutes.~~

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement, as modified herein (pages 1 to ____, inclusive).
 - 2. Performance bond (pages ____ to ____, inclusive).
 - 3. Payment bond (pages ____ to ____, inclusive).
 - 4. Other bonds.
 - a. ____ (pages ____ to ____, inclusive).
 - 5. General Conditions, as modified therein (pages ____ to ____, inclusive).
 - 6. Supplementary Conditions (together, "Supplementary Conditions"):
 - a. Supplementary Conditions Relating to Insurance Requirements, Subsurface Conditions, and Hazardous Conditions (pages ____ to ____, inclusive).
 - b. Contractor's On-Site Security Plan (pages ____ to ____, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of ____ sheets with each sheet bearing the following general title: ____ **[or]** the Drawings listed on the attached sheet index.
 - 9. Addenda (numbers ____ to ____, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Resolution & the Project Manual (pages ____ to ____, inclusive).
 - b. Contractor's Bid (pages ____ to ____, inclusive).
 - c. Permits (pages ____ to ____, inclusive).
 - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.

- d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Assignment of Warranties*

- A. Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Contractor shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner.

10.06 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.07 Direct Purchase of Materials

- A. Owner represents to Contractor that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Contractor with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials (“Direct Purchase Materials”) necessary for the completion of the Work directly from the suppliers to take advantage of Owner’s tax exempt status.
- B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Contractor with a list of materials that will be treated as Direct Purchase Materials.
- C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner’s consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the Owner and if the original contract contemplated sale of materials and installation by same person, the change order needs to reflect sale of materials and installation by different legal entities.
- D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Contractor. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works; (2) the vendor’s invoice will be issued directly to the governmental entity; (3) payment of the vendor’s invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of delivery by the vendor.
- E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Contractor as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Contractor.

- G. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.
- H. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Contractor, as Owner's agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties and guarantees for all material and products as required under the Contract Documents. All warranties provided by Contractor as part of Contract shall apply to all Direct Purchase Materials, as though Contractor had purchased the Direct Purchase Materials.
- I. Contractor shall maintain builder's risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in the Owner's sole discretion, Owner shall maintain such insurance.

10.08 Construction Defects

PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

10.09 Public Records

Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be considered public records in accordance with Chapter 119, Florida Statutes, and other Florida law. Accordingly, Contractor agrees to comply with all such laws, and cooperate with the District in retaining such records for the applicable time periods established under Florida law, and provision of such records in response to such requests. Contractor shall promptly notify the District in the event that the Contractor receives a request for any such records.

10.10 Restriction on Removal of Fill Dirt from Work Site

Contractor acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the District.

10.11 Public Entity Crimes

Pursuant to Section 287.133(3)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Contractor represents that in entering into this Contract, the Contractor has not been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor is placed on the convicted vendor list, the Contractor shall immediately notify the District whereupon this Contract may be terminated by the District.

10.12 Scrutinized Companies

Contractor represents that in entering into this Contract, neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes, and in the event such status changes, Contractor shall immediately notify Owner.

10.13 Phases

As noted in the bid documents, the District, in its sole and absolute discretion, may additionally direct that the Project be delivered in multiple phases rather than all at once, or may elect to terminate this Contract early for no cause, in the event that the District desires to proceed with only a portion of the Project. Such options, if exercised, shall in no way impact the pricing of the Project, nor constitute a delay, and shall be considered a termination for convenience within the meaning of Section 16.03 of the General Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)