

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
MBR CONSTRUCTION, INC.
for
WINDMILL PARK IMPROVEMENTS
BID NO. 09-21-16-11

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and MBR Construction, Inc., a Florida corporation with principal offices located at 1020 NW 51 Street, Fort Lauderdale, FL 33309 (the "Contractor") to provide Windmill Park Improvements as specified in Bid No. 09-21-16-11.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions), drawings, specifications of Bid No. 09-21-16-11, all addenda issued prior to, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

2) The Work

The Contractor shall perform all work for the City required by the contract documents and Bid No. 09-21-16-11, as set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- c) Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
- d) Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) Insurance

Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this Agreement.

Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

4) Time of Commencement

The work to be performed under this Agreement shall be commenced after execution of the Agreement and not later than 30 days after the date that Contractor receives Notice to Proceed.

5) Contract Sum

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of FOUR MILLION FIVE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED TWENTY-ONE Dollars and ZERO cents (\$4,533,321.00).

6) Payments

Payments will be made with the City's Visa Procurement Card and in accordance with contract documents and Bid No. 09-21-16-11. Payment will be made monthly for work that has been completed, inspected and properly invoiced. A retainage of ten percent (10%) will be deducted from monthly payment. The City may, at its sole discretion, reduce the retainage to five percent (5%) after successful completion of fifty (50%) of work. Retainage monies will be released upon satisfactory completion and final inspection of this project.

7) Waiver of Liens

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement.

8) Warranties

Warranty of Title:

Contractor warrants to the City that all goods and materials furnished under the contract will be new unless otherwise specified and that Contractor possesses good, clear, and marketable title to said goods and there are no pending liens, claims, or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

Warranty of Specifications

Contractor warrants that all goods, materials, and workmanship furnished, whether furnished by the Contractor or its subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.

Warranty of Merchantability

Contractor warrants all material and workmanship for a minimum of one (1) year from date of project completion and acceptance by the City. If within one (1) year after acceptance by the City, or within such larger period of time as may be prescribed by law any of the work is found to be defective or not in accordance with the contract documents, the Contractor shall after receipt of a written notice from the City to do so, promptly correct the work unless the City has previously given the Contractor a written acceptance of such condition.

9) Indemnification

The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

10) Independent Contractor

Contractor is an independent Contractor under this Agreement. Personal services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Contractor.

11) Assignment and Subcontracting

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the City.

12) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager

City of Coconut Creek

4800 West Copans Road

Coconut Creek, FL 33063

With a copy to the City Attorney at the same address.

CONTRACTOR

Michael R. Boss, President
MBR Construction, Inc.
1020 NW 51 Street
Fort Lauderdale, FL 33309
Phone: 954-486-8404
Fax: 954-486-9579
Email: mboos@mbrconstruction.com
Web Address: www.mbrconstruction.com

13) Agreement Subject to Funding

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

14) Venue

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is fixed exclusively in Broward County, Florida.

15) Signatory Authority

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

16) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

17) Merger; Amendment

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and MBR Construction, Inc. (Name of party with whom Agreement is made), signing by and through its President, Michael R. Boss (President, Owner, CEO, etc.) duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Mary C. Blasi, City Manager Date

Leslie Wallace May Date
City Clerk

Approved as to form and legal sufficiency:

Terrill C. Pyburn, City Attorney Date

CONTRACTOR

ATTEST:

Company Name

(Corporate Secretary)

Signature of President/Owner Date

Type/Print Name of Corporate Secy.

Type/Print Name of President/Owner

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA:

:SS

COUNTY OF _____:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____, of _____, a _____ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this _____ day of _____, 2016.

Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.