

CONTRACT FOR CONSTRUCTION

THIS CONTRACT FOR CONSTRUCTION (the "Contract") is dated as of the _____ day of _____ **2014** by and between **TOWN OF MEDLEY, FLORIDA**, a Florida municipal corporation (hereinafter called the "**TOWN**") and _____ (hereinafter called **CONTRACTOR**), with its principal place of business at _____.

TOWN and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

1.1 Project/Work. **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents. The Contractor shall furnish all of the labor, materials, equipment, transportation, supplies and services necessary to perform all of the Work required by the Contract Documents for:

Project Description : **ITB NO. 2015-001**

DANNY MEEHAN RECREATIONAL FIELD IMPROVEMENTS

The Contractor must furnish all supervision, labor, materials, tools, equipment, and performing all operations required to construct the Town of Medley Capital Improvements Project Number PR-1301, Danny Meehan Recreational Field (DMRF) Improvements in accordance with the Contract Documents and as described in the Drawings, General Notes, and Technical Specifications.

Work includes, but is not limited to, the construction of a public recreational facility within the 2 acres public park to include paved parking, drainage, lighting, athletic fields, playgrounds, assembly space, green play space, sporting activities areas (soccer field, basketball courts, etc.), walkways/exercise trail with fitness stations, and landscaping improvements.

Article 2. TOWN'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1. It is understood that the TOWN will designate a representative for the Work. The **TOWN'S RESIDENT PROJECT REPRESENTATIVE** referred to in any of the Contract Documents designated herein is: _____.

2.2 The **TOWN'S ENGINEER OF RECORD (EOR)** referred to in any of the Contract Documents designated herein is _____.

2.3 The TOWN's **CONSTRUCTION ENGINEERING AND INSPECTION SERVICES COMPANY (CEI)** referred to in any of the Contract Documents designated herein is

Article 3. TERM

3.1 Contract Times. The Work shall be Substantially Complete within One Hundred and Eighty Two (**182**) calendar days after the date specified in the Notice to Proceed and achieve Final Completion completed and ready for final payment in accordance with the Contract Documents within Two Hundred and Ten (**210**) calendar days after the date specified in the Notice to Proceed. Failure to achieve timely Final Completion shall be regarded as a breach of this Contract and subject to the appropriate remedies including but not limited to, liability for liquidated damages in accordance with Section XII(3) of the General Conditions.

3.2. Term. The term of the Contract shall be from the date of execution through the date of final payment unless terminated earlier pursuant to the General Conditions or otherwise indicated in the Contract Documents..

3.3 Survival of Obligations. Any obligations by the Contractor, including but not limited to Document 00700, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4. Liquidated Damages. TOWN and CONTRACTOR recognize that time is of the essence in this Contract and that the TOWN will suffer financial loss if the Work is not completed within the Contract Time specified in Section 3.1 for the Work, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes the delays, expense and difficulties involved in proving the actual loss suffered by TOWN if the Work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay TOWN **Five Hundred Dollars (\$500.00)** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Final Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by TOWN, CONTRACTOR shall pay TOWN **Five Hundred Dollars (\$500.00)** for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

3.5. Should the Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any other liquidated damages, all actual additional costs incurred by the TOWN for professional services will be the responsibility of the CONTRACTOR.

3.6. Monies due to the TOWN under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

Article 4. CONTRACT SUM

DMRF Improvements
ITB 2015-001

5.1 **CONTRACTOR** shall submit Applications for Payment in accordance with the General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by **TOWN** as provided in the General Conditions.

5.2 **Progress Payments, Retainage.** **TOWN** shall make progress payments, deducting the amount from the Contract Sum above, on the basis of **CONTRACTOR'S** Applications for Payment as recommended by the **TOWN'S REPRESENTATIVE**, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No progress payment shall not be made until the **CONTRACTOR** delivers to the **TOWN** complete original partial releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the **TOWN**, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for Work completed to date.

5.3. Ten percent (10%) of all monies earned by the Contractor shall be retained by the Town until the Work is totally completed as specified and accepted by the Town. After fifty percent (50%) of the Work has been completed, the Town may reduce the retainage to five percent (5%) of all monies earned.

5.3.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as **TOWN'S REPRESENTATIVE** shall determine, or **TOWN** may withhold, in accordance with the General Conditions.

5.4. The payment of any Application for Payment by **TOWN**, including the Final Request, does not constitute approval or Acceptance by **TOWN** of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of **TOWN'S** rights hereunder or at law or in equity.

5.5. The Final Application for Payment by **CONTRACTOR** shall not be made until the **CONTRACTOR** delivers to the **TOWN** complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the **TOWN**, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The **CONTRACTOR** may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to **TOWN** to defend and indemnify **TOWN** and any other property owner, person or entity **TOWN** may be required to indemnify against any lien or claim.

5.6. Final Payment. Upon final completion and acceptance of the Work in accordance with the General Conditions, **TOWN** shall pay the remainder of the Contract Sum and any retainage as recommended by the **TOWN'S REPRESENTATIVE**.

5.7 The Contractor may requisition payments for Work completed during the Project at intervals of not more than once a month. The Contractor's requisition shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with properly executed releases of liens by all Sub-Contractors, suppliers and material men who were included in the

Contractor's current and previous applications for payment and any other supporting documentation as may be required by the CEI or Contract Documents. Each requisition shall be submitted in triplicate to the CEI for approval. The Town shall make payment to the Contractor within thirty (30) days after approval by the CEI of the Contractor's requisition for payment,

5.8 The Town may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

5.8.1 Defective Work not remedied.

5.8.2 Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the Contractor.

5.8.3 Failure of the Contractor to make payment to Sub-Contractors or suppliers for materials or labor.

5.8.4 Damage to another Contractor not remedied.

5.8.5 Liability for liquidated damages has been incurred by the Contractor.

5.8.6 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.

5.8.7 Reasonable evidence that the Work will not be completed within the Contract Time.

5.8.8 Persistent failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the Contractor provides a Surety Bond or consent of surety satisfactory to the Town which will protect the Town in the amount withheld, payment maybe made in whole or in part.

Article 6. INSURANCE/INDEMNIFICATION.

6.1. Insurance. The **CONTRACTOR** shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the **TOWN** against hazards or risks of loss as specified in the General Conditions and the Contract Documents.

6.2. Indemnification. The **CONTRACTOR** shall indemnify, defend and hold harmless the **TOWN**, their officials, agents, employees, and volunteers as set forth in General Conditions and of the Contract Documents.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce **TOWN** to enter into this Contract, **CONTRACTOR** makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. CONTRACTOR has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. **CONTRACTOR** acknowledges that **TOWN** does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the site. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. The CONTRACTOR is aware of the general nature of Work to be performed by **TOWN** and others at the site that relates to the Work as indicated in the Contract Documents.

7.6. The CONTRACTOR has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. The CONTRACTOR has given the **TOWN'S PROJECT REPRESENTATIVE** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by the **TOWN'S PROJECT REPRESENTATIVE** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8. The CONTRACTOR warrants the following:

7.8.1. Anti-Discrimination: The **CONTRACTOR** agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an

individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

- 7.8.2. Anti-Kickback:** The **CONTRACTOR** warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the **TOWN** has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the **TOWN** shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.8.3. Licensing and Permits:** The **CONTRACTOR** warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses and permits whether federal, state, County or **TOWN**.
- 7.8.4. Public Entity Crime Statement:** The **CONTRACTOR** warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in the Instructions to Bidders.

Article 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Contract as though physically attached as a part thereof:

- 8.1.1 Change Orders.
- 8.1.2 Field Orders.
- 8.1.3 Contract for Construction.
- 8.1.4 Exhibits to this Contract.
- 8.1.5 Supplementary Conditions.
- 8.1.6 General Conditions.
- 8.1.7 Specifications bearing the title:
- 8.1.9. Drawings consisting of a cover sheet and sheets numbered _____ with each sheet bearing the following general title: **Danny Meehan Recreational Field (DMRF) Improvements, CIP Project No. PR-1301**

- 8.1.10. Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.
- 8.1.11. Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.
- 8.1.12. The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).
- 8.1.13. There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.
- 8.1.14. The Contract Documents shall remain the property of the TOWN. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other Projects without the TOWN's prior written authorization.
- 8.1.15. The General Conditions discuss the bond and surety requirements of the TOWN. This Contract requires bonds, which must be required before the commencement of any Work.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Contract which are defined in the other Contract Documents shall have the meanings indicated in the Contract Documents and shall apply to this Contract.

9.2. Except as otherwise provided in the Contract Documents with respect to Subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are 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.

9.3. **TOWN** and **CONTRACTOR** each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4. Severability: Should any provision, paragraph, sentence, word, or phrase contained in this Contract 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, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5. Remedies: If and when any default of this Contract occurs, the **TOWN** may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the **TOWN**. Nothing contained in this Contract shall limit the **TOWN** from pursuing any legal or equitable remedies that may apply.

9.6. Access to Public Records: The **CONTRACTOR** shall comply with the applicable provisions of Chapter 119, Florida Statutes. The **TOWN** shall have the right to immediately terminate this Contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

9.7. Inspection and Audit: During the term of this Contract and for five (5) years from the date of Termination, the **CONTRACTOR** shall allow **TOWN** representatives access during reasonable business hours to **CONTRACTOR'S** records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the **TOWN** determines the **CONTRACTOR** was paid for services not performed, upon receipt of written demand by the **TOWN**, the **CONTRACTOR** shall remit such payments to the **TOWN**.

9.8. Counterparts: This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9. Notices: Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

FOR TOWN:

Town of Medley

ATTN: TOWN Mayor

WITH COPY TO:

ATTN: TOWN Attorney

9.10. Waiver Of Jury Trial And Venue: The **TOWN** and **CONTRACTOR** knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be in Miami-Dade County, Florida.

9.11. Attorneys' Fees: If either the **TOWN** or **CONTRACTOR** is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

9.12. Amendments: This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form approved by the Town.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: TOWN OF MEDLEY, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the _____ day of _____, 2015, and by _____ (**Contractor**), signing by and through its **President**, duly authorized to execute same.

TOWN:

TOWN OF MEDLEY, FLORIDA, a Florida
municipal
corporation

ATTEST :

Town Clerk

Roberto Martell, Mayor

Executed: _____, 2015.

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF TOWN OF MEDLEY ONLY:

Town Attorney

CONTRACTOR:

WITNESS

By: _____

By _____
(Signature and Title)

(Corporate Seal)

(Type Name/Title signed above)

Executed: _____, 20__

(In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.*

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am of the _____, and that _____, who signed the Bid with the TOWN OF MEDLEY, FLORIDA for _____, is _____ of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this ____ day of _____, 2015.

(SEAL) _____
Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2015.

My Commission Expires:

Notary Public

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, _____, certify that I am the _____ of _____, who signed the Bid with the TOWN of MEDLEY, MIAMI-DADE County, Florida, for the project titled _____, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

(Signature) (Typed Name w/Title)

Signed and sealed this ____ day of _____, 2015.

(SEAL) _____
Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2015.

My Commission Expires:

Notary Public