



CONSTRUCTION CONTRACT

CONTRACT #07-2022

TORRY ISLAND SEAWALL HANDRAIL PROJECT

CITY OF BELLE GLADE COMMISSION

**STEVE B. WILSON, MAYOR
JOAQUIN ALMAZAN, VICE MAYOR
MICHAEL C. MARTIN, TREASURER
MARY ROSS WILKERSON, COMMISSIONER
ANDREW L. BERRY, COMMISSIONER**

**PURCHASING DIVISION
110 DR. MARTIN LUTHER KING, JR. BLVD., WEST
BELLE GLADE, FL 33430-3900**

**CONTRACT****CONTRACT #07-2022****TORRY ISLAND SEAWALL HANDRAIL PROJECT**

THIS CONTRACT is made this _____ day of _____, 20--, between **THE CITY OF BELLE GLADE**, a Florida municipality, hereinafter called the "CITY", and **XXX**, their successors, executors, administrators, and assigns hereinafter called the "CONTRACTOR".

CITY and CONTRACTOR, in consideration of the mutual covenants set forth below, agree as follows:

1 PURPOSE

- 1.1 That Contractor agrees with CITY, for the consideration herein mentioned, at his, its or their own proper cost and expense to do all the Work and furnish all the materials, equipment, supplies, and labor necessary to carry out this Contract in the manner and to the full extent as set forth in the Contract Documents, per the terms and conditions of Invitation to Bid # _____ and to the satisfaction of the duly authorized representatives of the CITY, who shall have at all times full opportunity to inspect the materials to be furnished and the Work to be done under this Contract.

2 GENERAL DESCRIPTION OF WORK

- 2.1 It is agreed that the Work to be done under this Contract is:
The design, fabrication and installation of approximately 760-LF of aluminum pedestrian railing system as per FDOT specifications and ADA requirements.

The 48-inch tall railing system shall be installed 6-inch offset from face of concrete seawall cap and include 3/4-inch round or square pickets. Railing can either be prefabricated in welded sections or assembled in the field using railing components and set screws.

Pre-approved material vendors for this project are:

1. GatorDock® Marine Access Solutions (Thomas Addoms, Regional Sales Manager at 727-295-7339),
 2. Bridge Brothers, Inc. (Aaron Gentilucci at 866-258-3401), or approved equal.
- See bid schedule and specifications for additional information

3 TIME

- 3.1 The Contract Times shall commence to run on the dates stated in the Notice to Proceed all work is to be substantially completed within _____ (XXX) calendar days, and full completion shall be within _____ calendar days. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, but no WORK shall be done at the Site prior to said commencement date.

4 LIQUIDATED DAMAGES

- 4.1 CITY and CONTRACTOR recognize that time is of the essence as to each and every obligation of this Contract and the Contract Documents, and that CITY will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by CITY if the Work is not completed on time.
- 4.2 Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR and/or CONTRACTOR'S Surety shall pay CITY for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete per the schedule of liquidated damages for substantial completion listed in the General conditions, article 12.2.



- 4.3 Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR and/or CONTRACTOR'S Surety shall pay CITY for each day that expires after the time specified in paragraph 3.1 for Full Completion until the Work is fully complete per the schedule of liquidated damages for full completion listed in the General conditions, article 12.2.

5. PROJECT MANAGER

- 5.1. The Project has been designed by the CITY's Engineer, who is hereinafter called ENGINEER and who is to act as CITY's representative, The Engineer shall assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.
- 5.2. The Project Manager for the Contractor is XXX at (XXX) XXX-XXXX.
- 5.3. The parties shall direct all matters arising in connection with the performance of this Contract, other than invoices and notices, to the attention of the Project Managers for attempted resolution or action. Except as otherwise provided for in this Contract, the Project Managers shall be responsible for overall resolution or action in accordance with the Contract documents. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this Contract. The Project Manager, however, has no authority to approve or execute Change Order Work.

6. CONTRACT DOCUMENTS

- 6.1. The Contract Documents which comprise the Contract between the CITY and the CONTRACTOR are attached hereto and made part hereof and consist of the following:
- 6.1.1. This Contract.
 - 6.1.2. Purchase Order if issued in lieu of the Contract.
 - 6.1.3. Notice to Proceed
 - 6.1.4. Contractor's Bid and Bid Bonds
 - 6.1.5. Bid Documents, consisting of:
 - 6.1.5.1. Invitation to Bid
 - 6.1.5.2. Instructions to Bidders.
 - 6.1.5.3. Bid Form
 - 6.1.5.4. General Conditions
 - 6.1.5.5. Supplemental General Conditions
 - 6.1.5.6. Special Conditions.
 - 6.1.5.7. Technical Specifications
 - 6.1.5.8. Plans/Drawings (even if not attached)
 - 6.1.5.9. Addenda
 - 6.1.6. Recorded Public Construction Bond in a form acceptable to the CITY, which shall be provided to the CITY by the Contractor, along with the return of an executed copy of this Contract. The Contractor shall be responsible for recording the Public Construction Bond.
 - 6.1.7. Insurance Certificates which shall be provided by the Contractor, along with the return of an executed copy of this Contract.
 - 6.1.8. Any Modifications, including but not limited to change orders, and Contract amendments duly delivered after execution of this Contract.
 - 6.1.9. Except for duly authorized and executed Modifications including but not limited to change orders and Contract amendments, any conflict between the terms and conditions of this Contract and the terms and conditions of any of the other Contract documents shall be interpreted in favor of this Contract.
 - 6.1.10. Any other documents required by this Contract, the Bidding Documents or the Contract Documents whether or not the same is attached hereto.
 - 6.1.11. The following which may be delivered or issued after the Effective Date of the Contract may not be attached hereto: Notice to Proceed, Warranty of Title form, Final Release of Liens form, all written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 Amending Contract Documents and 3.6 ownership/Reuse of Contract Documents of the General Conditions.



7. CONTRACT PAYMENT

The CITY shall pay the Contractor for the performance of this Contract and completion of the project in accordance with the Contract Documents, subject to adjustment by change order/Contract amendment, the total amount in current funds being:

Written _____ & \$ _____

which is based on the price(s) in the Schedule of Values and as approved by the CITY Project Manager.

7.2 PAYMENT PROCEDURES

7.2.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and the SCOP Agreements. Applications for Payment will be processed by CONSULTANT as provided in the General Conditions and the SCOP Agreements. Regarding payment procedures, any conflicts between the procedures set forth in the SCOP Agreements and the General Conditions or this Agreement shall be resolved in accordance with the SCOP Agreements.

7.2.2 PROGRESS PAYMENTS. CITY shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by CONSULTANT, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Bid Form (and in the case of Unit Price Work, if any, based on the number of units completed).

7.2.3 Prior to successful completion of 50% of the work, 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 CONSULTANT shall determine, or CITY may withhold, in accordance with Paragraph 14.3 of the General Conditions and any applicable Supplementary Conditions.

7.2.3.1 90% of Work completed.

7.2.3.2 0% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to CITY as provided in Paragraph 14.3.4 .A of the General Conditions).

7.2.3.3 Upon successful completion of 50% of the work, progress payments will be made in an amount equal to 95% of work completed, but, in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or CITY may withhold, in accordance with Paragraph 14.02 of the General Conditions and any applicable Supplementary Conditions.

7.3 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Paragraph 14.9, Final Application for Payment, and 14.10, Final Payment and Acceptance of the General Conditions, and settlement of all claims, CITY shall pay the remainder of the Contract Price as recommended by CONSULTANT as provided in said paragraph 14.10 of the General Conditions.

8. CONTRACTOR'S REPRESENTATIONS AND COVENANTS

In order to induce CITY to enter into this Contract CONTRACTOR makes the following representations:

- 8.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 8.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 4 of the General Conditions; and no additional examinations, investigations, explorations, tests,



reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 8.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 8.4. CONTRACTOR has given CITY written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CITY is acceptable to CONTRACTOR.
- 8.5. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 8.6. **IF APPLICABLE CONTRACTOR** understands and agrees to be subject to the “-_____ as if it were the recipient thereunder. The

_____ Contracts require and the Contractor specifically agrees to the following:

- 8.6.1. CONTRACTOR agrees that it will not discriminate against any employee employed in the performance of the Contract Documents, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. CONTRACTOR shall include a similar provision in all of its contracts and subcontracts made in connection with the performance of the Contract Documents and shall require the same of its contractors and subcontractors' contracts.
- 8.6.2. CONTRACTOR affirms that it is aware of and will abide by the provisions of section 287.134(2)(a), Florida Statutes regarding discriminatory vendors. CONTRACTOR agrees that it shall not violate section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of the Contract Documents may result in the termination of the Contract Documents. CONTRACTOR shall include a similar provision in all of its contracts and subcontracts made in connection with the performance of the Contract Documents and shall require the same of its contractors and subcontractors' contracts.
- 8.6.3. CONTRACTOR agrees that any of its contractors and subcontractors performing work or providing services in the performance of the Contract Documents shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CONTRACTOR of any of its contractors and subcontractors during the term of the Contract Documents.
- 8.6.4. CONTRACTOR shall permit, and shall require its contractors and subcontractors to permit, the CITY and the FDOT's authorized representatives to inspect all work, materials, payrolls, and records, and to audit the books, records, and accounts pertaining to the financing and development of this Project.
- 8.6.5. **RESERVED.**
- 8.6.6. **RESERVED.**
- 8.6.7. There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in Articles 3.5 of the General Conditions.

9. JURY TRIAL

TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

10. INDEMNIFICATION.

CONTRACTOR shall indemnify and hold harmless CITY, ENGINEER and all of their respective officers, agents, and employees, from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, reasonable attorneys' fees, fees and charges of engineers, architects and other professionals, and all court, arbitration or other dispute resolution costs which may arise



because of the negligence (whether active or passive), recklessness or intentional wrongful misconduct, in whole or in part (whether joint, concurrent, or contributing), of the CONTRACTOR, its officers, agents, employees, or persons otherwise utilized by CONTRACTOR in the performance or non-performance of its obligations under the Contract Documents. CONTRACTOR recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the CITY, ENGINEER and when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by CITY in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida.

This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY, ENGINEER and as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the CITY or ENGINEER, to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes. CONTRACTOR shall include the indemnification provision set forth above in all contracts with subcontractors and subconsultants who perform work in connection with the Contract Documents. It is the specific intent of the parties hereto that the foregoing indemnification, when applicable, complies with § 725.06, Florida Statutes.

11. PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

12. BINDING CONTRACT

CITY 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 of all covenants, Contracts and obligations contained on the Contract Documents.

13. SURVIVAL OF OBLIGATIONS

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

14. IMMIGRATION AND NATIONALITY ACT

CONTRACTOR understands that the FDOT considers the employment by any contractor of unauthorized aliens a violation of section 274(A)(e) of the Immigration and Nationality act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract Documents.

15. GUARANTY OF PAYMENT

CONTRACTOR guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the CITY or CONTRACTOR, in connection with the Contract Documents.

16. THIRD PARTY BENEFICIARY

The parties agree that the Contract Documents are not intended, by any provision or part thereof, to create in the public or any member thereof, a third party beneficiary under the Contract Documents, or to authorize anyone not a party to the Contract Documents to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract Documents.

17. INDEPENDENT CONTRACTOR

CONTRACTOR agrees that the CONTRACTOR, its employees, representatives, agents or subcontractors are not agents of the CITY or the FDOT as a result of the Contract Documents.

18. SALES TAX EXEMPT

The CITY is exempt from the payment of Florida State Sales and Use Tax.

19. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the work or payment for work hereunder.

**20. NOTICES**

All notices, requests, consents, and other communications required or permitted under this Contract shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to:

As To CITY:

Director of Finance
City of Belle Glade
110 Dr. Martin Luther King Jr. Blvd
W.
Belle Glade FL., 33430-3900

With A Copy To:

Purchasing Manager
City of Belle Glade
110 Dr. Martin Luther King Jr.
Blvd W.
Belle Glade FL., 33430-3900

As To CONTRACTOR:

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

21. ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and CONTRACTOR agree that the Contract Documents set forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the contract documents may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties herein.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Contract in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

CONTRACTOR

CORPORATE SEAL

Signature

Name, Title (Typed)

WITNESS

As to the CITY on the ____ day of ____, ____.

CITY of BELLE GLADE

SEAL

ATTEST: Debra R. Buff, City Clerk, MMC

Steve B. Wilson, Mayor



APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

This is to certify that I have examined the attached Contract Documents for _____” and that after such examination I am of the opinion that the execution of the Contract, the Performance Bond and Payment Bond to be provided are in due and proper form.

Glen J. Torcivia, City Attorney

ALL DOCUMENTS AND EXHIBITS SHALL BE ATTACHED HERE

SAMPLE