

CONTRACT #AGR2016-61
BID NO: BID2016-04
CEMETERY ROADWAY RESTORATION

THIS AGREEMENT, made and concluded this ____ day of _____, 20 ____,
by and between the City of Dunnellon, hereinafter generally called the CITY, and

(Contractor)

(Address, c/s/z)

hereinafter generally called the CONTRACTOR.

WITNESSETH, that for and in consideration of the payments and agreements to be made and performed by the OWNER, CONTRACTOR, at its own cost and expense and with skill and diligence, will construct and complete all work included in Bid No: BID2016-04, entitled:

CEMETERY ROADWAY RESTORATION

in accordance with attached Contract Documents, and in full compliance with this Agreement.

And the CONTRACTOR agrees to receive the prices stated in the Proposal Bid Form attached in full compensation for furnishing material and labor in moving materials and executing all the work contemplated in this Contract; the CONTRACTOR, for such consideration, shall be responsible for and hereby does indemnify CITY from and against any and all loss or damage, including attorney's fees and costs, arising out of the performance of the work aforesaid or from any action of elements; of every description encountered in connection with the work, and furnishing the materials.

The work on the site is to be commenced when directed in writing by the CITY or authorized representative, and to be diligently prosecuted to completion within 30 working days from receipt of notice to proceed.

To prevent all disputes and litigations, it is agreed by and between the parties to this Contract that the CITY shall in all cases determine the quality and quantity of the several kinds of work and materials which are to be paid for under this Contract, and shall determine all questions in relation to lines, levels and dimensions of the work, and as to the interpretation of the requirements and specifications.

Payment shall be made in accordance with provisions as outlined elsewhere in these specifications.

The Contract Documents shall consist of this Contract and the following:

- Bid Announcement
- Formal Bid Document
- Drawings/Plans (if any)
- Addendums (if any)
- Proposal Bid Form (as submitted by the bidder)
- Payment & Performance Bond (if required by the bid document)

This Agreement, together with these documents, forms the contract, and they are as fully a part of the contract as if hereto attached or herein repeated.

The CONTRACTOR and the CITY for themselves, their heirs, executors, administrators, successors, and assigns, hereby agree to the full performance of the covenants herein contained.

Independent Contractor: In the performance of this Agreement the CONTRACTOR will be acting in the capacity of an “independent contractor” and not as an agent, employee, partner, joint venturer, or associate of the CITY. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by the CONTRACTOR in the full performance of this Agreement.

City Responsibility: The CITY will notify the CONTRACTOR within thirty (30) calendar days of any change.

Default/Termination: In the event the CONTRACTOR fails to comply with any of the provisions of this Agreement, the CITY may terminate this Agreement for cause by first notifying the CONTRACTOR in writing, specifying the nature of the default and providing the CONTRACTOR with a reasonable period of time in which to rectify such default.

In the event the default is not cured within the period given, the CITY thereafter may terminate this Agreement upon written notice to the CONTRACTOR without prejudice to the CITY in terms of any right or for cause, the CITY will be responsible for compensation to the CONTRACTOR for services performed and expenses incurred prior to the terminate date.

The CITY may terminate this Agreement without cause providing at least seven (7) days written notice to the CONTRACTOR. In the event of termination of this Agreement without cause, the CITY will compensate the CONTRACTOR for all services timely performed and expenses incurred pursuant to this Agreement up to the date of termination.

Timely Performance: All work will commence upon authorization from the CITY’S representative. All work will proceed in a timely manner without delays. Provided however, the CONTRACTOR shall not be liable for delays in performance that are caused in whole or in part by the CITY, third parties over which the CONTRACTOR does not have the legal right to control or forces de majeure. The period of performance shall be extended by the period of delay contemplated herein.

Cease and Desist Order: In the event CONTRACTOR fails or refuses to perform the work as herein required, the CITY may instruct the CONTRACTOR to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the CONTRACTOR shall immediately cease and desist as instructed by CITY and shall not proceed further until the cause for CITY's instructions has been corrected, no longer exists, or the CITY instructs that the work may resume. In the event the CITY issues such instructions to cease and desist, and in further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the CITY that the cause of such instructions will be eliminated or corrected, then the CITY shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor and the CONTRACTOR shall be fully responsible and liable for the costs of performing such work by the CITY. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the CITY may have against the CONTRACTOR.

Severability: 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.

CONTRACTOR'S Representation: In order to induce THE CITY to enter into this Agreement, CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract and Bid Documents and other related data.
- B. CONTRACTOR has visited the sites and become familiar with and is satisfied as to the general, local and sites' conditions that may affect cost, progress, and performance of THE PROJECT.
- C. CONTRACTOR guarantees all parts supplied in conjunction with the services to be rendered are genuine, standard new stock products specifically designed and manufactured for use with original equipment, and are identical in all respects to original equipment manufacturer's replacement parts; also, that no part shall be substituted contrary to the manufacturer's recommendation. Every replacement part delivered shall be guaranteed against faulty material and workmanship in accordance with the manufacturer's standard warranty. Any faulty part shall be immediately replaced by the CONTRACTOR without any cost to the CITY.
- D. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of THE PROJECT.

E. CONTRACTOR has carefully studied all drawings and documents provided (if any) pertaining to THE PROJECT sites.

F. CONTRACTOR has carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the sites which may affect cost, progress, or performance of THE PROJECT or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract and/or Bid Documents to be employed by the CONTRACTOR, and safety precautions and programs incident hereto.

G. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of THE PROJECT at the Contract Price, within the Contract Terms, and in accordance with the other terms and conditions of the Contract Documents.

H. CONTRACTOR is aware of the general nature of THE PROJECT to be performed by the CITY and others at the sites that relate to THE PROJECT as indicated in the Contract Documents.

I. CONTRACTOR has correlated the information known to the CONTRACTOR, information and observations obtained from visits to the sites, reports, and drawings, (if any) identified in the Contract Documents, and the written resolution thereof by Issuing Office is acceptable to the CONTRACTOR.

J. CONTRACTOR has given Issuing Office written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by Issuing Office is acceptable to CONTRACTOR.

K. Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of THE PROJECT.

L. CONTRACTOR will provide a list of at least five (5) references to include name, address, telephone number, date of service, and brief job description.

Public Records:

The CONTRACTOR shall maintain public records required by the CITY to perform the service.

Upon request from the CITY's custodian of public records, the CONTRACTOR shall provide the CITY with a copy of the requested records or allow the records to be inspected or copied

within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

The CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the CITY.

Upon completion of this contract, CONTRACTOR shall transfer, at no cost, to CITY all public records in possession of CONTRACTOR or keep and maintain public records required by CITY to perform the service. If the CONTRACTOR transfers all public records to CITY upon completion of the contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**City Clerk's Office
City of Dunnellon
20750 River Drive
Dunnellon, FL 32703
dbowne@dunnellon.org
(352) 465-8500**

Applicable Law: The law is hereby agreed to be the law of the State of Florida. Venue is hereby agreed to be in Marion County, Florida.

Prevailing Party: The prevailing party in any action, lawsuit, appeal, or other legal proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs, and expenses incurred by the prevailing party, and in all efforts to collect any recovery by the prevailing party.

Successor's and Assigns: Each party binds itself, its successors, assigns, executors, administrators, or other representatives to the other party hereto and to successors, assigns, executors, administrators, or other representatives of such other party in connection with all

terms of this Agreement. The CONTRACTOR shall not assign this Agreement without prior written consent of the CITY.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF THEY HAVE EXECUTED THIS AGREEMENT:

City of Dunnellon

City Clerk Attest:

Mayor:

(Signature)

(Name, Written or Typed)

(Title, Written or Typed)

Contractor

Attest:

AFFIX CORPORATE SEAL

Officer:

(Signature)

(Name, Written or Typed)

(Title, Written or Typed)

TOTAL CONTRACT AMOUNT: \$ _____ \$ _____

(Total Amount Written in Words)