

SECTION 00520 Agreement

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER) and Proctor Construction Company, LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, 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:

Furnish specified materials, labor, and equipment necessary for the construction of a baseball field complex at 58th Avenue and 77th Street.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: Hobart Park Baseball Field Improvements
Bid Number: 2025030
Project Address: 5150 77th Street, Vero Beach, FL 32967

ARTICLE 3 - ENGINEER

3.01 The Indian River County Building & Facilities Services Department is hereinafter called the ENGINEER and will 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 *Days to Achieve Substantial Completion, Final Completion and Final Payment*

A. The Work will be substantially completed on or before the **240th** calendar day after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the **270th** calendar day after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Liquidated damages will commence for this portion of work. The parties also recognize the delays, expense, and difficulties involved in proving in a legal 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), CONTRACTOR shall pay OWNER **\$2,592** for each calendar day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **\$2,592** for each calendar day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment 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, an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A and summarized in paragraph 5.01.B, below:

- A. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto by reference.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract:

Numerical Amount: \$4,337,073.78

Written Amount: Four million, three hundred thirty-seven thousand, seventy-three dollars and seventy-eight cents

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and the Contract Documents.

6.02 *Progress Payments.*

- A. The OWNER shall make progress payments to the CONTRACTOR on the basis of the approved partial payment request as recommended by ENGINEER in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq. The OWNER shall retain five percent (5%) of the payment amounts due to the CONTRACTOR until substantial completion of all work to be performed by CONTRACTOR under the Contract Documents.

- B. For construction projects less than \$10 million, at the time the OWNER is in receipt of the Certificate of Substantial Completion, the OWNER shall have 30 calendar days to provide a list to the CONTRACTOR of items to be completed and the estimated cost to complete each item on the list. OWNER and CONTRACTOR agree that the CONTRACTOR'S itemized bid shall serve as the basis for determining the cost of each item on the list. For projects in excess of \$10 million, OWNER shall have up to 45 calendar days following receipt of Certificate of Substantial Completion of the project to provide CONTRACTOR with said list.
- C. Payment of Retainage - Within 20 business days following the creation of the list, OWNER shall pay CONTRACTOR the remaining contract balance including all retainage previously withheld by OWNER except for an amount equal to 150% of the estimated cost to complete all of the items on the list. Upon completion of all items on the list, the CONTRACTOR may submit a payment request for the amount of the 150% retainage held by the OWNER. If a good faith dispute exists as to whether one or more of the items have been finished, the OWNER may continue to withhold the 150% of the total cost to complete such items. The OWNER shall provide CONTRACTOR written reasons for disputing completion of the list.

6.03 *Pay Requests.*

- A. Each request for a progress payment shall be submitted on the application provided by OWNER and the application for payment shall contain the CONTRACTOR'S certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed.

6.04 *Paragraphs 6.02 and 6.03*

do not apply to construction services work purchased by the County as OWNER which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act. In such event, payment and retainage provisions shall be governed by the applicable grant requirements and guidelines.

6.05 *Acceptance of Final Payment as Release.*

- A. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER from all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with the work under this Contract and for every act and neglect of the OWNER and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the Contract Documents or the Public Construction Bond.

ARTICLE 7 - INDEMNIFICATION

7.01 CONTRACTOR shall indemnify OWNER, ENGINEER, and others in accordance with paragraph 6.20 (*Indemnification*) of the General Conditions to the Construction Contract.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. 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, and performance of the Work.
- C. 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 Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. CONTRACTOR has obtained and 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 Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto
- F. CONTRACTOR does not consider that any 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 Documents.
- 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 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.

- I. 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.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. CONTRACTOR is registered with and will use the Department of un Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. CONTRACTOR is also responsible for obtaining an affidavit from all subcontractors, as required in Section 448.095(5)(b), F.S., stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 00520-1 to 00520-8, inclusive);
 - 2. Notice to Proceed (page 00550-1);
 - 3. Public Construction Bond (pages 00610-1 to 00610-3, inclusive);
 - 4. Sample Certificate of Liability Insurance (page 00620-1);
 - 5. Contractor's Application for Payment (pages 00622-1 to 00622-6 inclusive);
 - 6. Certificate of Substantial Completion (pages 00630-1 to 00630-2, inclusive);
 - 7. Contractor's Final Certification of the Work (pages 00632-1 to 00632-2, inclusive);
 - 8. Professional Surveyor & Mapper's Certification as to Elevations and Locations of the Work (page 00634-1);
 - 9. General Conditions (pages 00700-1 to 00700-38, inclusive);
 - 10. Supplementary Conditions (pages 00800-1 to 00800-13, inclusive);
 - 11. Specifications as listed in Division 1 (General Requirements) and the incorporated Concession Building Project Manual Bid Set prepared by Donadio & Associates, Architects;
 - 12. Drawings consisting of a cover sheet, Civil Engineering Plans numbered 1 through 15, inclusive, landscape plans numbered LC-1 through LC-3, inclusive, irrigation plans numbered 1 through 10, inclusive, with each sheet bearing the general title,; Hobart Park Baseball Field Improvements; Site Electrical Plans numbered E0.1 and E0.2, and architectural plans including title sheet, and sheets A1.10, A2.10, A2.20, A2.30, A3.10, A4.10, A6.10, S-1,S-2, M1.1, E1.1, E1.2, E1.3 and P1.1, with each sheet bearing the

following general title bearing the general title Hobart Park Concession & Restroom Building;

13. Addenda 1 and 2;
14. Appendices to this Agreement (enumerated as follows):
 - Appendix A – Permits
 - Appendix B – Indian River County Fertilizer Ordinances
 - Appendix C – Indian River County Traffic Engineering Special Conditions for Right of Way Construction
 - Appendix D – Subsurface Soil Exploration and Geotechnical Engineering Evaluation
15. CONTRACTOR'S BID FORM (pages 00310-1 to 00310-4, inclusive) and Itemized bid schedule;
16. Bid Bond (page 00430-1 to 00430-2, inclusive);
17. Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages 00452-1 to 00452-2, inclusive);
18. Sworn Statement Under the Florida Trench Safety Act (pages 00454-1 to 00454-2, inclusive);
19. Qualifications Questionnaire (page 00456-1 to 00456-2, inclusive);
20. List of Subcontractors (page 00458-1);
21. Certification Regarding Prohibition Against Contracting with Scrutinized Companies (page 00460-1);
22. Anti-Human Trafficking Affidavit (page 00462-1);
23. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;
 - b) Work Change Directives;
 - c) Change Order(s);

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

- A. 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, 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.

10.03 *Successors and Assigns*

- A. OWNER 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.

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 *Venue*

- A. This Contract shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Contract shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

10.06 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County 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 Chapter 119 or as otherwise provided by law.
- (3) 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 the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records required by the County

to perform the service. If the CONTRACTOR transfers all public records to the County upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. 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:

(772) 226-1424

publicrecords@indianriver.gov

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

B. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf. This Agreement will be effective on ____ day _____ of 20 ____.

OWNER:

CONTRACTOR:

INDIAN RIVER COUNTY

COMPANY NAME

By: _____
Joseph E. Flescher, Chairman

By: _____
Name: _____
Title: _____

By: _____
John A. Titkanich, Jr., County Administrator

(Corporate Seal)
(If CONTRACTOR is a corporation or partnership, attach evidence of authority to sign)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Jennifer W. Shuler, County Attorney

Attest: _____
Name: _____
Title: _____

Ryan L. Butler, Clerk of Court and Comptroller

Designated Representative:
Name: _____
Title: _____
Address: _____
Phone: _____

Attest: _____
Deputy Clerk

(SEAL)

Designated Representative:
Bradley Mower
address
phone
email

**** END OF SECTION ****