
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 Gomez and Son Fence (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Installation of fencing around Sebastian Harbor Preserve

ARTICLE 2 - THE PROJECT

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: Sebastian Harbor Preserve Fencing
Bid Number: 2022057
Project Address: 184 Englar Drive
Sebastian, FL 32958

ARTICLE 3 - CONTRACT TIMES

3.01 *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 specifications are of the essence of the Agreement.

3.02 *Days to Achieve Substantial Completion, Final Completion and Final Payment*

- A. The Work will be completed and ready for final payment on or before the 120th day after the date when the Contract Times commence to run.

3.03 *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 3.02 above, plus any extensions thereof allowed in writing as a change order to this Agreement. 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 \$1,148.00 for each calendar day that expires after the time specified in paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 OWNER shall pay CONTRACTOR for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A and summarized in paragraph 4.01.B, below:

- A. For all Work, at the prices stated in Exhibit 1.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$182,297.84

Written Amount: one hundred, eighty-two thousand, two hundred ninety-seven dollars and eighty-four cents.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Method of Payment

Owner shall make only one payment for the entire amount of the contract when the work has been completed. Upon a determination of satisfactory completion, the COUNTY Project Manager will authorize payment to be made. All payments for services shall be made to the CONTRACTOR by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.02 Acceptance of Final Payment as Release

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 Agreement 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 this Agreement, the Invitation to Bid or the Public Construction Bond.

ARTICLE 6 - INDEMNIFICATION

6.01 CONTRACTOR shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Work.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 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 Invitation to Bid 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 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.
- E. 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.
- F. 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.
- G. 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.
- H. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor is registered with and will use the Department of Homeland 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 proof of E-Verify registration and utilization for all subcontractors.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - (1) This Agreement;
 - (2) Notice to Proceed;
 - (3) Certificate(s) of Liability Insurance;

- (4) Invitation to Bid 2022057;
- (5) Addendum 1;
- (6) CONTRACTOR'S Bid Form;
- (7) Bid Bond;
- (8) Qualifications Questionnaire;
- (9) Drug Free Workplace Form;
- (10) Affidavit of Compliance;
- (11) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships;
- (12) Certification Regarding Prohibition Against Contracting with Scrutinized Companies;
- (13) Certification Regarding Lobbying;
- (14) Warranty Information Form
- (15) 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 9 - MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Invitation to Bid.

9.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Agreement 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.

9.03 *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.

9.04 *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.

9.05 *Venue*

- A. This Agreement 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 Agreement 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.

9.06 *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@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

- C. 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 November 1, 2022.

OWNER:

INDIAN RIVER COUNTY _____

By: _____
Peter D. O'Bryan, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk
(SEAL)

Designated Representative:
Name: Wendy Swindell
Title: Conservation Lands Manager
Address: 1590 9th Street SW, Vero Beach, FL 32962
Phone: 772-226-1781
Email: Wswindell@ircgov.com

CONTRACTOR:

By: _____
(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

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

Phone: _____
Email: _____

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

Exhibit 1 to the Agreement – Pricing

Item	Unit Price	Unit	Quantity	Total
1. 4' High Field Fencing				
With 4-5" X 7' Round Terminals				
with 3.5-4" X 7' Round Lines				
with 4-5" X 8' Top/Brace/Bottom Rails	\$ 15.79	LF	11,396	\$ 179,942.84
2. <i>Vegetation Removal</i>	\$ 7	<i>LF</i>	<i>TBD</i>	<i>N/A</i>
3. City of Sebastian Permitting Fee	\$ 1500	EA	1	\$1,500
4. Indian River County Permitting Fee (includes one inspection)	\$ 855	LS	1	\$ 855
Total Bid Price (excluding vegetation removal)				\$ 182,297.84

Project completion time after receipt of "Notice to Proceed" or PO: 52 DAYS