

AGREEMENT OF CITY OF SUNRISE FLORIDA
TO ENTER INTO A CONTRACT BASED ON AWARD
BY ANOTHER ENTITY

THIS AGREEMENT OF CITY OF SUNRISE FLORIDA TO ENTER INTO CONTRACT BASED ON AWARD BY ANOTHER ENTITY (Contract) is entered into by the City of Sunrise Florida, a Florida municipal corporation (City) and MBR Construction, Inc., a Florida corporation "Contractor) based on the terms, conditions and prices of the Broward County, Florida award of Solicitation T1369306B1 Park Improvements and Construction Term Contract Bid Designation: Public (Agreement) to MBR Construction, Inc. on April 12, 2016. This Contract is a fixed one-time purchase with a completion time of 90 calendar days from issuance of Notice to Proceed (NTP). Contractor is hereby retained to provide construction services utilizing the Broward County Agreement, which is attached hereto as Exhibit 1 and incorporated herein with the following exceptions:

1. All references to Broward County, FL shall be replaced with City of Sunrise, FL where applicable.
2. Contract Price. The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of **Thirty Four Thousand Seven Hundred Fifty Dollars (\$34,750.00)**.
3. Public Records. The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the Contractor and this Contract are subject to the requirements in Section 119.0701, Florida Statutes, the Contractor shall: (a) keep and maintain public records required by the City to perform the services provided hereunder; (b) upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) 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 term of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City; and (d) upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. If the Contractor fails to comply with the requirements in this Section, the City may enforce these provisions in accordance with the terms of this Contract. If the Contractor fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

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, THE CONTRACTOR SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, FELICIA M. BRAVO, BY TELEPHONE (954/746-3333), E-MAIL (CITYCLERK@SUNRISEFL.GOV), OR MAIL (CITY OF SUNRISE, OFFICE OF THE CITY CLERK, 10770 WEST OAKLAND PARK BOULEVARD, SUNRISE, FLORIDA 33351).

4. Governing Law/Jurisdiction/Venue. The Contract shall be governed by the laws of the State of Florida. Except as set forth in Section 13 (below), should the parties be involved in legal action arising under, or connected to this Contract, each party will be responsible for its own attorneys' fees and costs. The venue for any litigation will be Broward County, Florida. Both Parties hereby agree to waive a jury trial, and will proceed to a trial by judge if necessary.
5. Discriminatory Vendor List. Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By execution of this Contract, Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.
6. Non-Discrimination. Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, sex, gender identity, sexual orientation, age, disability/handicap, religion, family, or income status.

7. Scrutinized Company.

(a) Pursuant to Section 287.135, Florida Statutes, Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes and that it is not engaged in a boycott of Israel.

(b) Pursuant to Section 287.135, in the event the Contract is for one million dollars or more, Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and Contractor further certifies that it is not engaged in business operations in Cuba or Syria.

(c) Pursuant to Section 287.135, Florida Statutes, City may, at the option of the City Commission, terminate this Contract if Contractor is found to have submitted a false certification as provided under subsection 287.135(5), Florida Statutes; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria.

8. Electronic Recordkeeping. Contractor certifies its services and products meet all recordkeeping requirements of the State of Florida, including but not limited to those in Chapter 119, Florida Statutes and Rule 1B-26.003(6)(g), Florida Administrative Code.
9. Compliance with Laws. Contractor and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act (ADA), 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.
10. ADA Compliance. Upon request, Contractor will provide the City with any accessibility testing results and written documentation verifying accessibility for documents delivered by the Contractor to the City, as well as promptly respond to and resolve accessibility complaints.
11. Pollution Legal and Remediation Liability. Contractor agrees to maintain Third-Party Pollution Legal and Remediation Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate. The Contractor

agrees the policy shall include a minimum three (3) year discovery (tail) reporting period, and a retroactive date that equals or precedes the effective date of the Contract, or the performance of Work hereunder. In the event the policy is cancelled, non-renewed, switched to an occurrence form, retroactive date advanced, or any other event triggering the right to purchase a supplemental extended reporting period (SERP) during the life of this Contractor, Contractor agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage. The Contractor agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis. The Third-Party Pollution Legal and Remediation Liability shall be endorsed to include City as an Additional Insured.

12. Commercial Umbrella/Excess Liability. Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$2,000,000 Each Occurrence \$2,000,000 Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Certificate of Insurance states the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City is automatically defined as an Additional Protected Person
13. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Contract. This indemnification shall survive the term of this Contract.
14. Time and Liquidated Damages. The City shall notify the Contractor in writing of the date on which the Work shall begin ("the Notice to Proceed Date"). The Contractor shall commence site activities on the Notice to Proceed Date, and the Work shall be carried on regularly and without interruption. The **Contractor shall achieve Completion of the Work** no later than **Ninety (90) calendar days** after the Notice to Proceed Date. The number of calendar days from the Notice to Proceed Date, through the date set forth for Completion, shall constitute the "Contract Time."

The Contractor shall pay the City the sum of **Two Hundred Dollars (\$200.00)** per day for each and every calendar day of unexcused delay in achieving Completion beyond the date set forth herein for Completion of the Work. The parties recognize and agree that this event may cause the City to suffer losses or damages that are

by their nature uncertain, difficult to prove, and not ascertainable at the time the Contract is entered into. The parties agree that this event will cause Contractor to pay City liquidated damages without any proof of the actual damages resulting from this event. In no event shall these liquidated damages be construed or deemed to constitute a penalty. When the City reasonably believes that Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays.

15. Contractor Responsible for Delays. The Contractor shall be responsible for any damages caused to the City as a result of any delays caused by the Contractor.

16. Changes in the Work.

16.1 Changes Permitted. Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order, Construction Change Directive or by Field Order. Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

16.2 Change Order Defined. Change Order shall mean a written order to the Contractor executed by the City's Representative issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

16.3 Changes in the Contract Price.

16.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 16.4 below.

16.3.2 The Contractor shall be bound by the following conditions and procedures governing additional work under the Contract.

- 16.3.2.1 Any change order must be recommended by the City's Representative and approved by the City before any steps are taken to implement the change order.
- 16.3.2.2 Should the Contractor commence work without making a claim in writing for unforeseen extra work encountered, it will be construed as an acceptance and agreement that such work is required under the Contract and no further claim for such extras will be considered or allowed by the City.
- 16.3.2.3 Changes in the Work directed by the City's Representative shall become part of the Contract only by written change order.
- 16.3.2.4 Information regarding changes in the Work for additional work, credits and adjustments under the Contract shall be promptly transmitted in writing by the Contractor to the City's Representative with full explanations and justifications for consideration in preparing a change order to the Contract.
- 16.3.2.5 Contractor shall allow twenty-one (21) calendar days for the City's Representative to review and respond to the City on Contractor submitted Requests for Change Order pricing and Contractor submitted pricing for City initiated proposal requests. This review time is only for correctly submitting pricing. Submitted pricing found not to be in correct format, or containing pricing that relates to Work clearly not part of the change, or contains Sub-Contractor pricing not in the correct format, or contains Sub-Contractor pricing that relates to Work clearly not part of the change, will not be reviewed and returned to the Contractor for proper submission and as such, no Contractor claims for delay will be accepted as a result of extended response time due to improper pricing submission.

16.3.2.6 The City's Representative will review properly submitted Contractor pricing and compare submitted pricing with published pricing data contained in the Building Cost Data, Mechanical Cost Data and Electrical Cost Data, latest edition, as published by R.S. Means Company, Inc. Contractor submitted pricing found to be in excess of five (5%) percent above the stated published pricing will not be accepted and as such, no Contractor claims for delay will be accepted as a result of extended response time due to excessive pricing submittal by the Contractor.

16.3.3 The value of any change ordered under the Contract for extra work or any reductions in work required, shall be determined under one or more of the following procedures before a written change order is issued.

16.3.3.1 By Unit Price named in the contract or subsequently agreed upon by the City and the Contractor, which prices shall include Contractor's overhead and profit.

16.3.3.2 By Lump Sum Price agreed upon by the City and the Contractor, which price shall include overhead and profit. A breakdown of the estimated costs comprising the lump sum price may be required by the City's Representative for review. Percentage for overhead and profit shall be determined in accordance with the method listed described under Overhead and Profit below.

16.3.3.3 By a Cost Plus Price on total actual costs, plus an added percentage, all determined as described under Overhead and Profit below.

16.3.3.4 Overhead and Profit

(a) Subcontractor's overhead, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the Work shall be just and fully compensated for by adding an amount equal to TEN PERCENT (10%) of the sum of material and labor costs as defined under Subcontractor's

profit below, but excluding equipment rental costs.

- (b) Subcontractor's profit may then be added to the above material costs and labor costs including the Overhead allowance at the rate of TEN PERCENT (10%) of the sum of those costs, excluding equipment rental costs.
- (c) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools incidental to and required for the Work accomplished by its own direct labor shall be considered to be just and fully compensated for by adding an amount equal to SEVEN AND ONE HALF PERCENT (7-1/2%) of the sum of material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.
- (d) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools and equipment incidental to and required for the Work accomplished by subcontractors shall be considered to be just and fully compensated for by adding an amount equal to FIVE PERCENT (5%) of the sum of material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.
- (e) Contractor's profit may then be added into the above material costs and labor costs, including the Overhead allowance at the rate of TEN PERCENT (10%) of the sum of those costs, excluding equipment rental costs.

- 16.3.3.5 Material costs actually recorded by the Contractor and the subcontractor as materials are delivered to the site and, as evidenced from originally receipted invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and made available to the City's Representative at all times.

- 16.3.3.6 Labor Costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed on the extra work required, including the net cost of insurance, social security and Workmen's Compensation. Records in proper form shall be maintained and be made available to the City's Representative at all times.
- 16.3.3.7 Rentals for special equipment or machinery such as power driven roller, tractors, trucks, shovels, drills, mixers, pumps, hoists, etc. required for the economic performance of the work at reasonable rental prices agreed upon before work commences, shall be allowed the Contractor and subcontractors by the City's Representative for each and every hour such special equipment is in use on the particular work. To the sum of such equipment rentals, no additional percentage shall be added.
- 16.3.3.8 Owned Equipment. For certain owned heavy or specialized equipment (defined as tools and equipment with an individual purchase cost of more than One Thousand Dollars (\$1000) brought on to the job site specifically for change order work shall be valued at 75 percent of the monthly rental divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Fuel and an operator necessary to utilize the equipment will be considered as a separate direct cost associated with the change order work. No recovery will be allowed for heavy or specialized equipment that is already on the jobsite and is necessary to complete work of the original contract. No recovery will be allowed for hand tools, power tools, minor equipment, work vehicles (including pickup trucks and cargo vans), simple scaffolds, etc. The longest period of time that the equipment is to be required for the work will be the basis for pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.

- 16.4 Minor Changes. The City's Representative after first obtaining express written approval from the City, shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.
- 16.5 Effect of Executed Change Order. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.
- 16.6 Emergency Change Orders. In an emergency which presents immediate danger to person or property, the City's Representative may order a change in the Work which shall be documented within three (3) days from the inception of said emergency in accordance with the change order requirements of Article 16 of this Contract.
- 16.7 Construction Change Directive.
- 16.7.1 If the City and the Contractor cannot agree on the cost of a change in the Work, the City may issue a written Construction Change Directive ordering a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price and/or the Contract Time.
- 16.7.2 The City and the Contractor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price and/or the Contract Time arising out of a Construction Change Directive. Within 15 days of issuance of the Construction Change Directive, the City will issue a Change Order based upon the City Representative's estimate for the cost of the Work and any additional agreed upon time extension in accordance with Article 10.3. When a resolution has been reached on the total cost of the Work and the cost of the Work is more or less than the City Representative's estimate, a final adjusting Change

Order will be issued for the difference in both cost and time as is applicable.

17. Claims for Additional Costs. Except as prohibited in Paragraph 18 herein below, if the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City's Representative and the City written notice of such claim within three (3) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

17.1 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited to direct costs incurred by the Contractor. Direct costs do not include the Contractor's home office overhead, loss of efficiency, consequential damages of the Contractor, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

18. Claims for Additional Time. If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the City's Representative for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than three (3) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Contractor's future performance. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time

shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

18.1 In no event, and under no circumstances, shall the Contract Sum be increased for, nor shall the Contractor claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-critical, and whether caused in whole or in part by the City. The Contractor shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

It is further agreed that such direct costs do include the Contractor's home office overhead, loss of efficiency, consequential damages, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The Contractor's sole and exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 18 hereinabove.

19. Notice. In order for a notice to a party to be effective under this Contract, notice must be sent via U.S. certified mail, overnight delivery, or hand delivery to the addresses listed below and shall be effective upon mailing if sent by certified mail or overnight delivery and effective upon receipt if hand delivered. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

TO CITY:

Procurement Manager
City of Sunrise
Purchasing Office
10770 West Oakland Park Boulevard, Third Floor
Sunrise, FL 33351

with copy to:

City Attorney
City of Sunrise
City Attorney's Office
10770 West Oakland Park Boulevard, Third Floor
Sunrise, FL 33351

TO CONTRACTOR:

MBR Construction, Inc.

Attn: _____

Title: _____

Address _____

City, State, Zip _____

20. Conflicting Terms. In the event the terms of this Contract conflict with those of the Broward County Agreement, the terms of this Contract shall govern. All other terms of the Broward County Agreement shall remain and continue in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals effective as of the date this Contract is fully executed by the parties.

MBR Construction, Inc.

By:_____

Printed Name: _____

Title: _____

Date:_____

CITY OF SUNRISE

By:_____

Print Name: _____

Title: Procurement Manager

Date:_____