

AGREEMENT

THIS AGREEMENT is dated as of the 16 day of May in the year 2022, by and between the City of Greenacres (hereinafter called CITY or OWNER) and ARZ Builders, Inc. (hereinafter called CONTRACTOR).

CITY 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 Construction Contract Documents. The work is generally described as follows:

The base bid work consists of median landscape and irrigation improvements along Forest Hill Boulevard within project limits and associated work incidental thereto as shown on the Construction Plans and described in the Contract Documents. Specifications are further detailed in Appendix D.

ARTICLE 2 - PROJECT

The project for which the work under the Contract Documents may be the whole or only a part, is generally described as follows:

FOREST HILL MEDIAN LANDSCAPE IMPROVEMENTS Bid No. 22-006

ARTICLE 3 - ENGINEER

The project has been designed by:

Tricia Richter, PLA
Kimley-Horn
1920 Wekiva Way Suite 200
West Palm Beach, FL 33401
561-845-0665
tricia.richter@kimley-horn.com

Who is hereafter called ENGINEER and who is to act as CITY'S contract administrator, assume all duties and responsibilities and have the rights and authority assigned ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

The City's Contract Administrator for this project is:

Carlos Cedeño
Public Works Director
City of Greenacres
Greenacres, FL 33463
Ph: (561) 642-2071

ARTICLE 4 - CONTRACT TIMES

- 4.1 Time is of the essence throughout this Agreement, and all time limits for completion and readiness for final payment are as set forth and mandated pursuant to the Contract Documents issued in BID NO. 22-006. This Project shall be completed within **one hundred twenty (120)** consecutive calendar days.
- 4.2 The work will be completed and ready for final payment in accordance with paragraph 27 of the General Terms and Conditions. This Agreement mandates that the Project shall be completed within **one hundred twenty (120)** consecutive calendar days from the date when the Agreement time commences to run as delineated and set forth by the City's Notice to Proceed for the Project.
- 4.3 The CITY and the CONTRACTOR recognize that time is of the essence for the completion of the Project and this Agreement, and that CITY will suffer financial or economic loss if the work on the Project is not completed within the time specified in paragraphs 4.1 and 4.2 above, plus any expressly permitted delay(s) or extension(s) thereof allowed in accordance with paragraphs 7 or 10 of the General Terms and Conditions. The parties also recognize the delays, expense and difficulties involved in initiating and proving a breach of the Agreement through a legal action or arbitration proceeding, which will further be an actual loss suffered by CITY if the work is not completed on time.

Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR have agreed that as liquidated damages for delay, the CONTRACTOR shall pay the CITY **Two Hundred and Fifty Dollars (\$250.00)** for each calendar day after the time specified in paragraphs 4.1 and 4.2 for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to the CITY for its inability to obtain full beneficial occupancy and/or use of the Project. The liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the CITY as a consequence of such delay, and both Parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of the CONTRACTOR to complete the Agreement on time.

The above-stated liquidated damages shall apply separately to each portion of the Project, if any, for which a time for completion is given.

- 4.4 The CITY is authorized to deduct liquidated damages from monies due to CONTRACTOR for the work under this Agreement or as much thereof as the CITY may, in its sole discretion, deem just and reasonable.

ARTICLE 5 - CONTRACT PRICE

- 5.1 The CITY shall pay the CONTRACTOR for completion of the work in accordance with, and as described in the Contract Documents, the total amount in current funds as follows:

The lump sum contract price of Two hundred twenty seven thousand six hundred and fifty dollars (\$ 227,650.00) as outlined in the BID No. 22-006 proposal documents, which are hereby reproduced and is inserted herein, and is an integral part of this Agreement. The

Unit prices within Base Bid Schedule shall be used in calculating Add or Deduct changes to the base bid work as described within the Contract Documents.

ARTICLE 6 - PAYMENT PROCEDURES

The CONTRACTOR shall submit application(s) for payment in accordance with paragraph 27 of the General Terms and Conditions, and for work completed for the Project. Application(s) for payment will be processed by the ENGINEER as provided in the General Terms and Conditions.

- 6.1 The CITY is not obligated or required to make any monthly progress payments. The Contract Documents and BID No. 22-006 set forth that the contract price for the Project is a lump sum pricing, and the CONTRACTOR'S application(s) for monthly payments shall be at the sole discretion of the ENGINEER, upon consultation with the CITY Representative for the Project. However, progress payments may be made to the CONTRACTOR based upon the recommendation of the ENGINEER. The CONTRACTOR shall include, but same shall not be limited to, with each application for payment, an updated progress schedule that is acceptable to the ENGINEER as may be required by this Agreement or the Contract Documents as set forth within BID No. 22-006 and pursuant to the requirements this provision.
- 6.2 Final Payment. Upon final completion and acceptance of the work in accordance with paragraph 27 of the General Terms and Conditions, the CITY will pay the remainder of the contract price, minus any monthly payments (if any), as recommended by the ENGINEER pursuant to the requirements of paragraph 27. Any monthly payment(s) recommended by the ENGINEER must be approved by the CITY'S Representative before such payment(s) are issued by the CITY to the CONTRACTOR.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

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

- 7.1 The CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the ITB No. 22-006 Bidding Documents.
- 7.2 The CONTRACTOR has visited the site and has become familiar with and is satisfied as to the general, local, and Project site conditions that may affect cost, progress, and performance of the work.
- 7.3 The CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and the performance of the work.
- 7.4 The CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Project 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).

- 7.5 The CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Project location 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.
- 7.6 The 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.
- 7.7 The CONTRACTOR is aware of the general nature of work to be performed by the City and others, if any, at the Project location that relates to the work as indicated in the Contract Documents.
- 7.8 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Project location, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.9 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.
- 7.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishings of the work.
- 7.11 It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services, and activities under this Agreement an independent CONTRACTOR and not an employee, agent, or servant of the CITY. All persons engaged in any work, service or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform and work. In all respects CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent CONTRACTOR and not as employees or agents of the CITY.
- 7.12 In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of CITY'S Procurement Department. The CONTRACTOR shall be solely and exclusively responsible for payment to all subcontractors and obtaining the necessary Release of Liens. The CITY shall in no way be obligated for payments to any subcontractors.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between CITY and CONTRACTOR concerning the work, consist of the following:

- 8.1 Instructions to Bidders (pages 00 21 13 - 1 thru 00 21 13 - 7)
- 8.2 Drug Free Workplace Certification (pages 00 45 00 - 3)
- 8.3 This Agreement
- 8.4 Construction Performance Bond (pages 00 61 13.13 - 1 thru 00 61 13.13 - 2)
- 8.5 Construction Payment Bond (pages 00 61 13.16 - 1 thru 00 61 13.16 - 2)
- 8.6 Application for Payment (page 00 62 76 - 1)
- 8.7 Warranty of Title (page 00 65 36 - 1)
- 8.8 Contractor's Affidavit to City (page 00 65 19.16 - 1)
- 8.9 Final Release (page 00 65 19.26 - 1)
- 8.10 General Conditions (pages 00 72 00/Attachment A)
- 8.13 Notice of Award
- 8.14 Notice to Proceed
- 8.15 Technical Specifications as listed in the Index of Construction Contract Documents.
- 8.16 One set of Construction Drawings consisting of 26 sheets bearing the following general title:**
 - FOREST HILL MEDIAN LANDSCAPE IMPROVEMENTS**
- 8.17 Addenda Numbers _____ to _____, Inclusive
- 8.18 CONTRACTOR'S Bid - Designated as Bidder's Proposal including attachments (Corporate Certificates, Qualification Form, Subcontractors list)
- 8.19 Documentation Submitted by CONTRACTOR Prior to Notice of Award
- 8.20 The following which may be delivered or issued after effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Terms and Conditions.

There are no Contract Documents other than those listed above in this provision. The Contract Documents may only be amended, modified or supplemented as provided in the General Terms and Conditions.

ARTICLE 9 - MISCELLANEOUS

- 9.1 The requirements of the Contract Documents, as such term is delineated in the Invitation to Bid No. 22-006 and this Agreement, are hereby incorporated by reference as if fully set forth herein. The terms used in this Agreement, which are identified within the General Terms and Conditions and any other documents of the Invitation to Bid No. 22-006, will have the meanings indicated herein. This Agreement is part of, and incorporated in, the Contract Documents as defined herein. Accordingly, all of the documents incorporated by the Contract Documents shall govern this Project.
- 9.2 No assignment by a party hereto of any rights under or interest in the Contract Documents 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 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. The CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Work and ITB 22-006, and to provide and perform such services to the CITY'S satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR'S performance and all interim and final product(s) provided to or on behalf of the CITY shall be comparable to the best local and national standards.

- 9.3 The CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representative to the other party hereto, its partners, successors, assigns and legal representative in respect of all covenants, agreements and obligations contained in the Contract Documents. Where there is a conflict between any provisions set forth within the Contract Documents and a more stringent provision elsewhere in the Contract Documents or under any law, regulation, statute or code requirement which is applicable to this Project, the more stringent provision shall prevail and govern the performance of the Work.
- 9.4 GOVERNING LAW AND VENUE. The Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

BY ENTERING INTO THIS AGREEMENT, THE CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT. THE CONTRACTOR SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS AGREEMENT.

- 9.5 PUBLIC RECORDS. The City is a public agency subject to Chapter 119 of the Florida Statutes. As required by Chapter 119 of the Florida Statutes, the CONTRACTOR and all sub-contractors for services shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR and sub-contractors shall:

Keep and maintain public records required by the public agency to perform the service.

Upon request from the public agency's custodian of public records, provide the public agency 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.

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 public agency.

Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 642-2006, CITYCLERK@GREENACRESFL.GOV, CITY CLERK 5800 MELALEUCA LANE, GREENACRES, FLORIDA 33463.

- 9.6 ALL PRIOR AGREEMENTS SUPERSEDED: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.
- 9.7 SEVERABILITY: The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or

provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

- 9.8 PUBLIC ENTITY CRIMES. The CONTRACTOR acknowledges that the provisions of the Public Entity Crimes Act, Section 287.133 of the Florida Statutes shall apply to this Agreement, which statute provides, in pertinent part, that a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vender list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the CITY, and may not transact any business with the CITY in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the CONTRACTOR shall result in cancellation of the CITY purchase and may result in CONTRACTOR debarment.
- 9.9 INDEPENDENT CONTRACTOR. The CONTRACTOR is an independent contractor under this Agreement. The services provided by the CONTRACTOR pursuant to this Agreement shall be subject to the supervision of the CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of the City. This Agreement shall not constitute or make the Parties a partnership or joint venture.
- 9.9.1 THIRD PARTY BENEFICIARIES. Neither the CONTRACTOR nor the City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 9.9.2 NOTICES. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For the CITY:

PURCHASING AGENT
CITY OF GREENACRES
5800 MELALEUCA LANE
GREENACRES, FL 33463

For the CONTRACTOR:

GEORGE JAWDE, PRESIDENT
ARZ BUILDERS, INC.
1515 N FEDERAL HWY#300
BOCA RATON, FL 33432

- 9.9.3 MATERIALITY AND WAIVER OF BREACH. The CITY and the CONTRACTOR agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. The CITY'S failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 9.10 E-VERIFY. The Contractor is hereby acknowledging that by entering this Agreement, the CONTRACTOR becomes obligated to comply with the provisions of 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility." This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System, and beginning on January 1, 2021, the CONTRACTOR shall:
- A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
 - B. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement), which affidavit must state that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k) of the Florida Statutes;
 - C. Maintain copies of all subcontractor affidavit(s) for the duration of this Agreement, and shall provide the same to the CITY upon request;
 - D. Comply fully with, and ensure that all of its subcontractors, comply fully with Section 448.095 of the Florida Statutes.

Failure to comply may lead to termination of this Agreement, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination of this Agreement. If this Agreement is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of one year after the

date of termination, and the CONTRACTOR may be liable for any additional costs incurred by the CITY resulting from the termination of the Agreement. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 10 - INDEMNIFICATION

- 10.1 CONTRACTOR shall at all times hereafter, indemnify, hold harmless and defend CITY, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.
- 10.2 CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend CITY, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which CITY, its agents, or employees are alleged to be liable.
- 10.3 CONTRACTOR acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by CONTRACTOR, and that CITY'S entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the CITY'S rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, CITY AND CONTRACTOR have signed this Agreement. All portions of the Contract Documents have been signed or identified by CITY or by ENGINEER on their behalf and by the CONTRACTOR.

This Agreement will be effective May 16, 2022.

CITY OF GREENACRES,
A municipal corporation of the State of
Florida

ATTEST:

BY: _____
Andrea McCue, City Manager

Quintella Moorer, City Clerk

ENDORSED AS TO FORM & LEGALITY:

Glen J. Torcivia, City Attorney

(CORPORATE SEAL)

FIRM:

WITNESSES:

BY: _____
Signature

Typed Name

Title

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, who was physically present, as _____ (title), of
_____ (name of entity) which is authorized to do business in the State
of Florida, and who is personally known to me or who has produced the following
_____ as identification.

Notary Public

Print Name: _____

My commission expires: _____