

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

AGREEMENT FOR TANK BRANCH GRANT  
PARK CONSTRUCTION

**THIS AGREEMENT** made and entered into on the date last entered hereinafter, by and between \_\_\_\_\_, hereinafter referred to as “Contractor”, and the CITY OF GAFFNEY, hereinafter referred to as “the City” is for construction of a park in the Tank Branch Grant Area.

**WITNESSETH:**

That the parties hereto, for and in consideration of the covenants, premises, and conditions hereinafter set forth, agree as follows:

1. Statement of Work

The Contractor will furnish all supervision, labor, materials, machinery, tools, equipment and services to construct a park in accordance with this agreement and the bid documents, request for proposals, plans, specifications, work write-up, and drawings in the Tank Branch Neighborhood Revitalization Project Area in Gaffney, South Carolina.

The following documents are attached hereto and designated to be a part of this Agreement and are incorporated herein:

Request for Bids  
Bid Form  
General Conditions  
CDBG Contract Special Provisions (dated 8/2017)  
Exhibit A – Specifications  
Exhibit B – Location Map  
Exhibit C – Wage Rate

2. Contract Price

The total contract price is \$\_\_\_\_\_ and is shown on the attached Bid Form, which is made a part of this Agreement. This Bid Form includes detailed costs for each item.

3. Change Orders

No changes from the original plans, specifications, work write-up, and drawings shall be made, and the City and Contractor shall not agree to any changes or additional work to be performed, unless specifically approved by written order of the City and the Department of Commerce prior to such changes or additions.

Each Order shall include in its final form the following:

- (a) A detailed description of the change in the work.

(b) The Contractor's proposal (if any) or a conformed copy thereof.

(c) A definite statement that the resulting change shall be performed in accordance with Contract requirements except as modified by the Change Order.

4. Inspection of Work

The Contractor shall permit the City to inspect all work and/or materials at all times, and shall remove and replace all defective work and materials at the Contractor's expense upon notice by the City.

5. Time of Commencement and Completion

The Contractor represents that no work has been performed and no materials have been delivered to the construction site prior to the execution of this Agreement. The Contractor shall commence work upon issuance of a Notice to Proceed by the City.

All work as required in accordance with the work write-up, specifications, and drawings, if any, annexed hereto shall be satisfactorily completed by the Contractor within sixty (60) days after issuance of the proceed Order.

6. Insurance

The Contractor, as well as any subcontractor, shall maintain such insurance as will protect him from claims under Workers Compensation Acts and other employee benefits acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise both out of and during operations under this Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The Contractor shall maintain general liability insurance as follows: Coverage for bodily injury liability must be \$1,000,000 each person and \$2,000,000 each occurrence. Property damage liability must be \$1,000,000 each occurrence and \$2,000,000 each aggregate. Workers Compensation and Employer Liability Coverage must comply with statutory requirements. Certificates of such insurance shall be provided to the City prior to the time work is commenced. The Contractor shall defend, indemnify and hold harmless the City, its officers and employees, from liability and claim for damages because of bodily injury, death, property damage, sickness, disease, or loss and expense arising from Contractor's operations under this Contract.

7. Accident Prevention

No laborer or mechanic employed in the performance of this contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

The Contractor shall exercise precaution at all times for the protection of persons and property, and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building construction codes shall be observed, and the Contractor shall take or cause to be taken such additional safety and health measures as determined to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

8. Permits and Licenses

All permits and licenses necessary for the completion and execution of this work, including but not limited to a City business license and a land disturbance permit, shall be secured and paid for by the Contractor. If the Contractor at any time observes or discovers that the bid package, plans and/or specifications are at variance with applicable laws, rules, ordinances, or regulations bearing on the conduct of or materials used in such work, he shall promptly notify the City in writing. Any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs work contrary to such laws, ordinances and/or regulations, he shall bear all costs arising therefrom.

9. Workmanship

The entire project shall be executed in the best workmanlike manner in accordance with the specifications, work write-up, and drawings, if any annexed hereto. In addition, all work shall be performed in accordance with applicable local codes and regulations whether or not covered by the work write-up, specifications and drawings, if any.

The Contractor shall keep the premises clean and orderly during the course of the work and remove all debris at the completion of the work. Materials and equipment that have been removed and replaced as part of the work shall belong to the Contractor, who shall be responsible for proper disposal.

10. Assignment/Subcontractors

The Contractor shall not assign his rights under this contract without having first obtained written consent of the City. Further, the Contractor shall not vary from the subcontractors nor substitute any subcontractor as listed on the bid documents without having first obtained the written consent of the City. Any request for assignment of this contract or substitution of subcontractors shall be directed in writing to the City.

The Contractor agrees that he is as fully responsible to the City for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of himself or persons directly employed by him. Nothing

contained in this Agreement shall create any contractual relation between any subcontractor and the City. The Contractor shall not subcontract any part of the work under this Contract or permit subcontracted work to be further subcontracted without the prior written approval of the City.

11. Warranties

The Contractor upon completion of the project shall deliver to the City a written warranty guaranteeing the work performed for a period of three (3) years from the date of acceptance by the City of all work required under this contract. This warranty shall include labor, parts, and components. The City shall provide a bucket truck when needed. This warranty shall also include that the contractor shall correct any issue that may occur within the three-year warranty period within five (5) business days (please note that the City of Gaffney considers business days to be Monday through Friday unless it is an observed City holiday).

12. Use of Utilities/Cooperation of City

The Contractor may use existing utilities such as lights, water and power, situated at the project site necessary to the successful completion of the Project. The use of these facilities, as well as the associated costs, will be the responsibility of the Contractor.

13. Final Payment/Release of Liens

The City shall make final payment to the Contractor within thirty (30) days of receipt of an invoice for the work. The contractor shall not submit an invoice until after the work is completed, and only after final inspection and acceptance of all the work to be performed, and further subject to the condition that final payment shall not be due until the Contractor has delivered to the City a complete release of all liens or claims for liens arising out of the contract by the Contractor, subcontractors, laborers, and suppliers of material.

14. Partial Disbursements

No partial disbursements will be made by the City to the Contractor under this agreement.

15. Default by Contractor

In the event of default by the Contractor of any of the conditions contained herein, the City shall have the right to discharge the Contractor from performance of further services, without waiver of any penalty or other remedy provided by this Agreement or as provided by law.

16. Non-Liability of the City

The Contractor agrees to hold the City harmless for any damages arising out of the undertaking and execution of this Agreement.

17. Entire Contract

This Agreement, including documents incorporated by reference herein, represents the entire contract between the parties hereto, and no prior, simultaneous, or subsequent Agreements shall be binding unless executed in writing by the parties hereto.

18. Liquidated Damages

The City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the work is not substantially complete with the times specified in this Agreement. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City Two Hundred Dollars (\$200.00) for each day that expires after the time specified in Section 5 of this Agreement "Time Commencement and Completion."

WITNESS OUR HANDS AND SEALS ON THE DATES SET FORTH BELOW.

Dated: \_\_\_\_\_

(CONTRACTOR'S NAME)

ATTEST:

\_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF GAFFNEY

ATTEST:

\_\_\_\_\_

BY: \_\_\_\_\_

Its: City Administrator

Printed Name: James R. Taylor