

RESOLUTION NO. 24-69

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH HELLAS CONSTRUCTION FOR THE REHABILITATION OF THE FRANK BROWN PARK TENNIS COURTS IN THE AMOUNT OF \$248,565.00; AND AUTHORIZING THE EXECUTION OF QUALIFYING CHANGE ORDERS NOT TO EXCEED THE TOTAL BUDGETED AMOUNT FOR THE PROJECT IN AN AMOUNT NOT TO EXCEED \$66,435.00.

BE IT RESOLVED by the City Council of the City of Panama City Beach that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement with Hellas Construction for the rehabilitation of the Frank Brown Park Tennis Courts in the amount of Two Hundred Forty-Eight Thousand, Five Hundred Sixty-Five Dollars and No Cents (\$248,565.00), in substantially the form **attached** as Exhibit A, with such changes, insertions, or omissions as may be approved by the City Manager, and whose execution shall be conclusive evidence of such approval.
2. The City Manager is authorized to execute and deliver on behalf of the City change orders related to this project in an amount not to exceed Sixty-Six Thousand, Four Hundred Thirty-Five Dollars and No Cents (\$66,435.00), provided that the City's Project Manager verifies that a change order does not expand the scope of the project, the Finance Director confirms that the total budgeted amount for the project is not exceeded, and the City Attorney has reviewed the form of the change order.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in regular session this 11th day of January, 2024.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

AGREEMENT

TENNIS COURTS REHABILITATION PROJECT

THIS AGREEMENT for TENNIS COURTS REHABILITATION PROJECT is made and entered into this 11 day of January, 2024, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and Hellas Construction (Contractor or Vendor).

PREMISES**1. SCOPE OF WORK**

Contractor will perform tennis court rehabilitation, as more particularly described in the Scope of Work/Specifications listed in Invitation to Bid number PCB24-17, the terms of which are expressly incorporated herein.

If the Contractor/Vendor believes that any particular product is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor/Vendor, the Contractor/Vendor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular work/service/product is within the scope of the contract as written, the Contractor/Vendor will be order to and shall continue to supply the work/service/product as changed and at the cost stated for the work/service within the scope. The Contractor/Vendor must assert its right to an adjustment under this clause within thirty (30) days from the date of the receipt of this agreement.

2. COMPENSATION

As compensation for the work contemplated herein and performance rendered by the Contractor/Vendor of its duties and obligations hereunder, City shall pay Contractor/Vendor according to the not to exceed price submitted on PCB24-17 FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT Bid Proposal Form. The City shall pay to the Contractor as full consideration for the work required by this Agreement the UNIT PRICE contained in the Contractor's cost proposal.

Extra and/or Additional Work Changes – Should City at any time during the progress of said work request alterations, deviations, additions, or omissions from said specifications or other contract documents, it shall be at liberty to do so by written authorization to Contractor/Vendor, and the same shall in no way affect or make void the Agreement. The unit price of any such addition or deletion from the contract Bid price must be mutually agreed upon by both parties.

3. PAYMENT

Contractor/Vendor will invoice for payment to the City when satisfactory inspection of the work has been completed. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413. Invoices shall be paid via ACH or Virtual Credit Card only.

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

4. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 5, and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect on the executed date of award and be valid until the completion of the work.

5. TERMINATION OF CONTRACT

- A. City Termination for Cause – The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Contractor/Vendor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work; (9) arrest or conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Contractor/Vendor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgement and discretion, the City may afford Contractor/Vendor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it seems expedient.
- B. City Termination for Convenience – Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days advanced written notice to Contractor/Vendor. In such event, Contractor/Vendor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become City property. Upon receipt of notice, Contractor/Vendor shall discontinue Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor/Vendor shall also make every reasonable effort to cancel, upon terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor/Vendor may not claim any compensation not specifically provided herein, including, but not limited to loss of anticipated profits, idle equipment, labor, and facilities; or any additional claims of subcontractors and vendors.

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

6. COMPLIANCE WITH LAWS

The Contractor/Vendor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor/Vendor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor/Vendor shall protect and indemnify the City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor/Vendor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Contractor/Vendor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during term of the contract.

7. WARRANTY

The Contractor/Vendor agrees that, unless otherwise specified in the specifications of the invitation to bid, the product furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Contractor/Vendor gives to any customer for comparable quantities of such products and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision of the invitation/offer. Contractor warrants to the City that all construction and related services provided hereunder shall be performed in a good and workmanlike manner, by workers who are appropriately trained and experienced in the work being performed, and in accordance with all requirements of the contract documents, industry standards for projects of similar type and quality, and all applicable laws, codes, regulations and other requirements, including safety requirements.

8. INSURANCE AND INDEMNIFICATION

Contractor/Vendor shall at its own expense maintain in force during the term of the contract the insurance on policies and insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit "A".

- i. Within thirty (30) days of the date of the Award, and thereafter upon the written request of the City, Contractor/Vendor shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance requirements in order to satisfy this provision, the documentation required by this part must be sent to the following address: ATTN: RISK MANAGEMENT DIRECTOR, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.
- ii. Regardless of the coverage provided by any insurance, the successful Contractor/Vendor shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Contractor/Vendor, its sub-contractors, agents, servants, or employees during the course of performing services or caused

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

by the goods provided pursuant to these Bid documents and/or resultant contract.

If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Contractor/Vendor under this Agreement, the City shall promptly cause notice of the claim to be delivered to the successful Contractor/Vendor and shall afford the Contractor/Vendor and its counsel, at the Contractor's/Vendor's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.

9. ATTORNEY'S FEES

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

10. TIME/LIQUIDATED DAMAGES

The Contractor and the City recognize that time is of the essence of this agreement and the City will suffer financial loss if the Work is not completed within the time specified. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay in completion of the Work (but not as a penalty), the Contractor shall pay the City the sum of 3.5% of the contract total dollar amount for each day that expires after the time specified herein for completion of the Work until the Work is completed.

11. FORCE MAJEURE

The Contractor's/Vendor's failure or inability to perform the stated scope of work at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

12. ASSIGNMENT

This Agreement is not assignable.

13. SEVERABILITY

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14. CHOICE OF LAW & VENUE

This Agreement shall be governed by the laws of the State of Florida. Any legal proceeding regarding this Agreement shall be brought in the 14th Judicial Circuit in Bay County, Florida.

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

15. MODIFICATIONS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Contractor/Vendor.

16. WAIVER

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City 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 and conditions of this Agreement.

17. NOTICES

Any notice required by this Agreement shall be directed to the parties as follows:

A. As to City:

City Representative: Keith Meyerl

Title/Position: Parks and Recreation Assistant Director

Email Address: Keith.Meyerl@pcbfl.gov

Mailing Address: 16200 PCB Parkway, Panama City Beach, FL 32413

Phone: (850) 832-2746

B. As to Contractor/Vendor:

Contract Representative: Arthur Bryan, II

Title/Position: In-House Counsel

Email Address: abryan@hellasconstruction.com

Mailing Address: 12000 West Parmer Lane, Austin, TX 786413

Phone: (512) 250-2910

18. ENTIRE AGREEMENT

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among the parties.

The term "Agreement" means and includes the following documents, all of which are incorporated into this Agreement by reference:

Advertisement for Bids
Information for Bidders
Scope of Work/Specifications

PCB24-17 ITB FRANK BROWN PARK TENNIS COURTS REHABILITATION PROJECT

- Bid Proposal Form
- Drug Free Work Place Statement
- Public Entity Crimes Statement
- Non-Collusion Affidavit
- E-Verify
- Notice of Award
- Notice to Proceed
- Agreement
- Exhibit A – Insurance Requirements
- Any Additional Exhibits or Appendices

ADDENDA (S)

No. _____, dated _____, 20 _____

No. _____, dated _____, 20 _____

No. _____, dated _____, 20 _____

No. _____, dated _____, 20 _____

IN WITNESS WHEREOF, the Contractor/Vendor has executed this Agreement as of the day and year first written above.

Signed in the presence of: Contractor/Vendor

Witness 1: Nicole Passini
 (Print Name): Nicole Passini

By: [Signature]
 Contractor/Vendor

Tyler Pufahl, Chief Estimator

Witness 2: [Signature]
 (Print Name): Molly Snook

THE CITY OF PANAMA CITY
 BEACH, FLORIDA,
 a municipal corporation

By: [Signature]
 Drew Whitman, City Manager

ATTEST:

Lynne Fasone
 City Clerk



CITY OF PANAMA CITY BEACH
17007 Panama City Beach Parkway, Panama City Beach, Florida 32413
PCB24-17 - ITB - Frank Brown Park Tennis Courts Rehabilitation Project
Monday, December 4, 2023
2:00PM

Bid Meeting Opened at 2:00 PM and Concluded at 2:08PM

CONTRACTOR/VENDOR	DATE/TIME BID RECEIVED	PAPER or DEMANDSTAR	BID FORM	CONFLICT OF INTEREST	E-VERIFY	DRUG FREE WORKPLACE	PUBLIC ENTITY	NON-COLLUSION	W9	INSURANCE	Resurfacing of Four Courts	Lighting and Photometric Study	Fencing	Poles & Lights	TOTAL BID	RESPONSIVE BID - Minimum Requirements Provided
1 Sport Surfaces LLC	12/01/23 @ 3:18PM	DemandStar									\$ -	\$ -	\$ -	\$ -	\$ -	No documents uploaded
2 Hellas Construction, Inc.	12/04/23 @ 10:24AM	DemandStar	X	X	X	X	X	X	X	X	\$ 37,835.00	\$ 101,076.00	\$ 93,890.00	\$ 15,764.00	\$ 248,565.00	Yes
3 Mor Sports Group	12/04/23 @ 12:44PM	DemandStar	X								\$ -	\$ -	\$ -	\$ -	\$ -	No - Required documents not uploaded
4 ACRO Construction LLC	12/04/23 @ 1:36PM	DemandStar	X	X	X	X	X	X	X	X	\$ 73,603.00	\$ 209,933.00	\$ 92,933.00	\$ 6,110.00	\$ 382,579.00	Yes
5 Aris General Contractors, Inc.	12/4/2023 @ 1:43PM	DemandStar	X	X	X	X	X	X	X	X	\$ 59,700.00	\$ 229,500.00	\$ 97,000.00	\$ 11,250.00	\$ 397,450.00	Yes
6 ECSC, LLC	12/04/23 @ 1:50PM	DemandStar	X	X	X	X	X	X	X	X	\$ 52,211.57	\$ 189,762.62	\$ 94,458.79	\$ 9,599.58	\$ 346,032.56	Yes
7 M. Gay Constructors, Inc.	12/04/23 @ 1:59PM	DemandStar	X	X	X	X	X	X	X	X	\$ 54,000.00	\$ 178,000.00	\$ 85,700.00	\$ 12,500.00	\$ 303,600.00	Math is incorrect on bid form, adds to \$330,200.00
8																
9																
10																
11																
12																

Bid tabulation is preliminary - bids are still reviewed for responsibility and are not finalized until awarded by City Council.