

K22-548

Bond No. 4453327

CONTRACT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
TWIN SHORES LANDSCAPE AND CONSTRUCTION SERVICES, INC.

BID PROPOSAL NO.: 1870
NORMAN PLAYGROUND PHASE II

THIS CONTRACT (the “**Contract**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Twin Shores Landscape and Construction Services, Inc., represented by Robert W. Hazard, Jr., Vice President (the “**Contractor**”). The City and Contractor are each sometimes referred to as a “**Party**,” and collectively, as the “**Parties**.” The Contract is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on March 9, 2022, the City issued Invitation to Bid No. 1870 and Addendum No. 1 dated March 21, 2022, Addendum No.2 dated March 31, 2022, and Addendum No. 3 dated April 4, 2022, seeking a contractor to provide construction services for the Norman Playground Phase II Project (the “**ITB**”);

WHEREAS, the Contractor submitted the lowest responsive bid in response to the ITB;
and

WHEREAS, the City desires to award the Contract to the Contractor;

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to provide construction services for the Norman Playground Phase II Project to the City under the ITB, and the City and the Contractor, for good and valuable consideration, agree as follows:

ARTICLE I - THE CONTRACTOR’S OBLIGATIONS

The Contractor will perform all obligations of the Contractor and be subject to all terms and conditions set forth in this Contract and in the following documents that are incorporated fully into this Contract: the ITB and the Contractor’s Bid dated April 6, 2022 (the “**Bid**”).

ARTICLE II - THE CITY’S OBLIGATIONS

The City will pay the Contractor at the rates set forth in the Contractor’s Bid for the satisfactory performance of this Contract and will perform all obligations of the City, and be subject to all terms and conditions set forth, in this Contract and any incorporated documents.

A. Base Bid	\$295,500.00
B. No Alternates [No Change]	-
a. Total Bid	<u>\$295,500.00</u>

ARTICLE III - THE SURETY'S OBLIGATIONS

A. Performance and Payment Bonds. SureTec Insurance Company (the "Surety") intervenes in this Contract and binds itself as surety for:

1. The faithful performance of all work required of the Contractor by this Contract in the full sum of \$295,500.00; and
2. The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of \$295,500.00.

Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

B. Acknowledgement of Contract. The Surety represents and warrants that it has fully read and understands the terms of this Contract, including all incorporated documents.

C. Survival and Validity of Bonds. The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall become null and void if the Contractor: (1) well and faithfully performs all and singular the obligations assumed by the Contractor in this Contract; (2) promptly pays all wages of laborers, workmen, and mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any subcontractors; or furnished to subcontractors, and used in the construction, erection, alteration, performance, or repairs of the work required by the Contract; (3) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, and used in, or for use in machines used in, the construction, erection, alteration, performance, or repair of the work required by the Contract; (4) fully secures and protects the City, its legal successors and representatives, from all loss or expense of any kind, including premises, including all costs of Court and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (5) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses. The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the manner and mode of payment.

ARTICLE IV – LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and

3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. **Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023;
and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

A. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

B. **Reporting.** On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

C. **Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor

will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

D. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE V – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE VI - ADDITIONAL PROVISIONS

A. **Convicted Felon Statement.** The Contractor complies with City Code Section 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

B. **Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Contract.

C. **Non-Waiver.** The failure of either Party to insist upon strict compliance with any provision of this Contract, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other Party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect or constitute a waiver of either Party's right to insist upon such compliance, exercise such right, or seek such remedy with respect to that default or breach, or any prior, contemporaneous, or subsequent default or breach.

D. **Entire Agreement.** This Contract, including all incorporated documents, constitutes the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Contract and are without effect to vary or alter any terms or conditions of this Contract.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Catherine R. Froeba, Jack T. Landry, William H. Ellsworth, Laura Burns, Jeffrey E. Kropp, Jill K. Tucker

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided; however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 22nd day of September, 2020.

SureTec Insurance Company

By: 
Michael C. Keimig, President



Markel Insurance Company

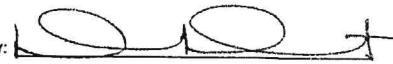
By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 22nd day of September, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies; and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.



By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the _____ day of _____, 2022.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 
Richard R. Grinnan, Vice President and Secretary