

AGREEMENT NO. 2018-08
LANDSCAPE AND TURF MAINTENANCE SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the CITY OF NORTH PORT ("City"), a municipal corporation of the State of Florida, hereinafter referred to as "City" and Rightmire's Land Services, Inc. ("Contractor"), 3037 Narcissus Terrace, North Port, FL 34286, a Florida Corporation, hereinafter referred to as "Contractor."

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. CONTRACTOR'S SERVICES AND TERM

- A. The Contractor agrees to diligently and timely perform services for the City relating to Landscape and Turf Maintenance Services as identified in the Request for Proposal No. 2018-08 and Contractor's proposal submitted January 5, 2018 (the "Project"). The overall Scope of Services is described in Attachment A.
- B. This Agreement shall commence March 9, 2018 upon the execution of this Agreement by both the City and the Contractor and shall remain in effect through March 9, 2021. This Agreement may be renewed for two (2) additional one (1) year terms, subject to the Contractor's satisfactory performance, by mutual agreement and within budgetary limitations, at the same terms and conditions.

2. COMPENSATION AND PAYMENT FOR CONTRACTOR'S SERVICES

A. COMPENSATION

- 1. The Contractor shall receive payments as set forth in the Scope of Services and Fee Schedule (Attachments A and B) as compensation for its services. This compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Agreement. The Scope of Services and Fee Schedule (Attachments A and B) are attached hereto and incorporated within.
- 2. The Parties acknowledge and agree that the obligations of City to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which City is a party, are and shall remain subject to the provisions of the Fiscal Non-Funding Act, Section 166.241, Florida Statutes, regardless of whether a particular obligation has been expressly so conditioned. City agrees to exercise all lawful and available authority to satisfy any financial obligations of City that may arise under this Agreement; however, since funds are appropriated annually by the City Commission on a fiscal year basis, City's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if,

a request for such appropriations is excluded from the budget approved by the City Commission). During the term of this Agreement, the City Manager or other appropriate official shall for each fiscal period include in the budget application submitted to the City Commission the amount necessary to fund City's obligations hereunder for such fiscal period. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of City shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by City under this Section. This Agreement shall not constitute an indebtedness of City nor shall it constitute an obligation for which City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

1. The City shall pay the Contractor through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes, upon receipt of the Contractor's invoice and written approval of same by the City's Administrative Agent indicating that services have been rendered in conformity with this Agreement. The Contractor shall submit an invoice for payment to the City for those specific tasks as described in the Scope of Services that were completed during that invoicing period.
2. For those specific services that were partially completed, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the City's Administrative Agent based on the percentage of the amount for those specific services.
3. The Contractor's invoices shall be in a form satisfactory to the City of North Port Finance Department, which shall initiate disbursements.

3. LIABILITY OF CONTRACTOR

The Contractor shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify, defend and hold harmless the City, its commissioners, employees, agents and assigns from all demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate levels), of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Contractor, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the City.

To the extent applicable, the Contractor shall fully indemnify, defend and hold harmless the City, and its commissioners, agents, employees and assigns from any demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of the Contractor's products by the City or any of its commissioners, agents, employees, and assigns, or to the operation or use of the Contractor's products by the City or any of its commissioners, agents, employees, and assigns in a manner not contemplated by this Agreement.

In the event of a claim, the City shall promptly notify the Contractor in writing by prepaid certified mail (return receipt requested), or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided in Section 17. Notification may also be provided by fax transmission to the number provided in Section 17, if provided.

The City shall provide all available information and assistance that the Contractor may reasonably require regarding any claim. This agreement for indemnification shall survive termination or completion of this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the City and such insurance coverage shall not be deemed a limitation on the Contractor's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this Indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the City as set forth in Florida Statutes Section 768.28.

4. CONTRACTOR'S INSURANCE

A. INSURANCE

Before performing any work, the Contractor shall procure and maintain, during the term of this Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with the Contractor.

1. Workers Compensation: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for disease.
2. Comprehensive Commercial General Liability Insurance: Aggregate must apply separately to this Agreement. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations; and \$100,000 damage to rented premises.
3. Business Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.
4. Environmental/Pollution Liability: Required when dealing with any substance as defined and regulated per Florida Statutes Section 487 and listed as hazardous on www.epa.gov website (Pesticide Regulation and Safety). Pollution Liability is generally excluded from most General Liability policies. A separate Pollution Liability policy is required with minimum limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The Contractor shall notify the City prior to usage of hazardous chemicals so that adequate insurance coverage is

provided prior to usage of such chemicals. Failure to so notify the City shall be deemed a material breach of this Contract.

SPECIAL REQUIREMENTS: Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as this Agreement number and description of work, are to be furnished to the City's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein. ***Certificates of Insurance must be accompanied by a copy of the additional insured endorsement (CG 20101185 or combination CG20100704 and CG20370704 will be accepted).***

Any and all deductibles to the above-referenced policies are the responsibility of the Contractor. The Contractor's insurance is considered primary for any loss, regardless of any insurance maintained by the City. The Contractor is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the City is provided notice as stated within the policy. It is the Contractor's responsibility to provide notice to the City.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, affiliates and volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arises from the contractual relationship or work performed by the Contractor for the City. It is the Contractor's responsibility to notify each insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the Contractor, its officers, officials, agents, employees, volunteers, and any subcontractors, agrees to waive all rights of subrogation against the City, its officers, officials, agents, employees, affiliates and volunteers, and the City's insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which the Contractor or its agents may be responsible for.

C. POLICY FORM

1. All policies required by this Agreement, with the exception of Workers Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Office, are to be written on an occurrence basis and shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insureds as their interests may appear under this Agreement. Insurer(s), with the exception of Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.

2. Insurance requirements itemized in this Agreement and required of the Contractor, shall be provided by or on behalf of all subcontractors to cover their operations performed under this Agreement. The Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
3. Each insurance policy required by this Agreement shall:
 - Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Contractor is to notify the City Purchasing Office by written notice via certified mail, return receipt requested.
4. The City shall retain the right to review, at any time, coverage, form, and amount of insurance.
5. **The procuring of required policies of insurance shall not be construed to limit Contractor's liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of Contractor's liability for indemnity of the City shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Contractor and its carrier.**
6. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the City's Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
7. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the Contractor's insurance company and the City's Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF THE CONTRACTOR

- A. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of the Contractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The Contractor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Contractor), to solicit or secure this Agreement and

that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.

- D. Contractor shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent Contractor firms in effect at the time Contractor's services are rendered. The Contractor covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes Section 112.313, as it relates to work performed under this Agreement. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- F. The Contractor shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the Contractor's offices for the purpose of inspection, audit, and copying during normal business hours by the City, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
- G. In accordance with Florida Statutes Section 119.0701, Contractor shall comply with all public records laws, and shall specifically:
 - 1. Keep and maintain public records required by the City to perform the service.
 - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - b. "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, Project documents, meeting notes, emails and all other documentation generated during this Agreement.
 - 2. Upon request from the City's custodian of public records, provide the City, at no cost, 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 for by law. All records kept 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.
 - 3. Ensure that Project 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, if the Contractor does not transfer the records to City following completion of the contract, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.

4. Upon completion of the contract, transfer, at no cost, to the City all public records in Contractor's possession 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 the completion of the contract, the Contractor shall meet all applicable requirements for retaining public records.
5. 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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7056 OR HOTLINE 429-7270; EMAIL padkins@cityofnorthport.com.
6. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement. Further, the Contractor may be subject to penalties under Florida Statutes Section 119.10.

6. TIMELY PERFORMANCE OF CONTRACTOR'S PERSONNEL

The timely performance and completion of the required services is vitally important to the interest of the City. The Contractor shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the Contractor to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. The Contractor shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the Contractor's key personnel must receive the City's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by the Contractor shall commence within one (1) week of the Contractor's receipt of written Notice to Proceed from the City.
- B. The Contractor specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of the Contractor or the City.
- C. The Contractor agrees to provide to the City's Administrative Agent, monthly written progress reports concerning the status of the work. The City's Administrative Agent may determine the format for this progress report. The City shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by the Contractor.

- D. In the event unreasonable delays occur on the part of the City or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by the Contractor which delay the Project Schedule completion date, the City shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay.

7. OBLIGATIONS OF CITY

- A. The City's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the City's Administrative Agent. The City shall designate any specific program manager in the Notice to Proceed. The responsibility of the City's Administrative Agent shall include:
 - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the Contractor, and render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 - 3. Review for approval or rejection all of the Contractor's documents and payment requests.
- B. The City shall, upon request, furnish the Contractor with all existing data, plans, studies and other information in the City's possession which may be useful in connection with the work of the Project, all of which shall be and remain the property of the City and shall be returned to the City's Administrative Agent upon completion of the services to be performed by the Contractor.
- C. The City's Administrative Agent shall conduct periodic reviews of the work of the Contractor necessary for the completion of the Contractor's services during the period of this Agreement, and may make other City personnel available, where required and necessary to assist the Contractor. The availability and necessity of said personnel to assist the Contractor shall be determined solely within the discretion of the City. The City's technical obligations to the Project, if any, are stated in Letters of Interest and Work Authorizations.
- D. The City shall not provide any services to the Contractor in connection with any claim brought on behalf of or against the Contractor.

8. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days' written notice to the Contractor to terminate the services of the Contractor and, in that event, the Contractor shall cease work and shall deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Contractor in connection with its services. The City shall, upon receipt of the aforesaid documents, pay to the Contractor and the Contractor shall accept as full payment for its services, a sum of money equal to: (1) the fee for each completed and accepted task as shown in Attachment A –

Scope of Services and Attachment B –Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 and any amounts withheld by the City to settle claims against or to pay indebtedness of the Contractor in accordance with the provisions of this Agreement.

- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the City and the Contractor that funding for any subsequent fiscal year of this Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the City reserves the right to terminate this Agreement. The City will be responsible for payment of any outstanding invoices and work completed by the Contractor prior to such termination.
- C. In the event that the Contractor has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the Contractor indicating its intention to do so. The written notice shall state the evidence indicating the Contractor's abandonment.
- D. The Contractor shall have the right to terminate services only in the event of the City failing to pay the Contractor's properly documented and submitted invoice within ninety (90) calendar days of the approval by the City's Administrative Agent.
- E. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the Contractor shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Contractor or an assignment is made for the benefit of creditors.
- F. In the event Contractor breaches this Agreement, the City shall provide written notice of the breach and Contractor shall have ten (10) days from the date the notice is received to cure. If Contractor fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate this Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to Contractor due to:
 - 1. The quality of a portion or all of the Contractor's work not being in accordance with the requirements of this Agreement;
 - 2. The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
 - 3. The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
 - 4. The Contractor's failure to use Agreement funds, previously paid the Contractor by the City, to pay Contractor's Agreement related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - 5. Claims made, or likely to be made, against the City or its property;
 - 6. Loss caused by the Contractor;

7. The Contractor's failure or refusal to perform any of the obligations to the City, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in the clause, the Contractor shall promptly comply with such demand. The City's rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

9. INDEPENDENT CONTRACTOR

The 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 of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the 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. The Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Agreement. The Contractor shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

10. ENTIRE AGREEMENT

This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter.

11. AMENDMENT

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation for the services, the City Commissioners for the City and the duly authorized representative for the Contractor shall agree in writing to this change. For all other changes, the City's Administrative Agent and the Contractor's representative shall agree in writing to the change.

12. ASSIGNMENT

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the City. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the City.

13. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

14. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Sarasota County, Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

15. AUTHORITY

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

16. NO HIRE

The Contractor shall not hire any City employee associated with the Project during the term of this Agreement and for a period of one (1) year after this Agreement terminates.

17. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONTRACTOR'S REPRESENTATIVE:

Sherry L. Rightmire, CEO
Rightmire's Land Services, Inc.
3037 Narcissus Terrace
North Port, FL 34286
TEL 941.429.7691
FAX 941.257.4126
EMAIL: rightmire@verizon.net

CITY'S ADMINISTRATIVE AGENT:

Chuck Speake, Operations Manager
City of North Port, Public Works
1100 N. Chamberlain Blvd
North Port, FL 34286
TEL (941) 240-8090
FAX (941)240-8063
EMAIL: cspeake@cityofnorthport.com

A party may change its address by providing written notice to the other party.

18. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.

19. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

20. CONFLICTS

In the event of any conflict between the provisions of this Agreement and RFP No. 2018-08 or the Contractor's response, which are made a part hereof by reference, this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: _____
Patsy C. Adkins, MMC, City Clerk

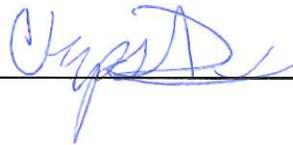
By: _____
Peter D. Lear, CPA, CGMA, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Amber Slayton, City Attorney

WITNESS:

RIGHTMIRE'S LAND SERVICES, INC.:

By:  _____

By:  _____
Sherry L. Rightmire, CEO

ATTACHMENT A – SCOPE OF SERVICES

SCOPE OF SERVICES: The scope of services consists of all landscape maintenance within the designated work areas. This includes routine maintenance (such as mowing, edging and pruning) as well as ongoing insect/disease control and fertilization, and periodic tree pruning and mulch installation. At all times, the landscaped areas within the defined locations are to be maintained at maximum health and vitality, offering a thriving and beautiful amenity to City of North Port residents and visitors. Through implementation of sound horticultural practices, together with timely and appropriate intervention, the landscape areas shall be maintained so as to present a beautiful and welcoming environment. The scope of work is a general guide to the work the City expects to be performed by the Contractor, and is not a complete listing of all services that may be required or desired.

Description: Complete services consisting of, but not limited to, landscape and turf maintenance at various locations in the City. The maintenance services for these locations shall be of the highest quality and shall provide an aesthetically pleasing view and an unobstructed line of sight for motorists. The services shall include the following:

- Litter removal
- Mowing
- Line trimming
- Edging
- Blowing
- Weed control
- Rodent, pest, and disease control on landscape plantings and turf
- Herbicide applications including a pre-emergent herbicide
- Fertilizing turf, palms, trees, shrubs, and grasses
- Pruning of palms, trees, shrubs, and ornamental grasses
- Tree staking and straightening
- Structural shaping of young trees, shrubs, and ground cover plants
- Mulching
- Roadway/sidewalk clearance and sightline visibility maintenance
- Emptying trash receptacles
- Clearing catch basin grates of any and all obstructions

Landscape Maintenance

- A high level of maintenance on all plant bed areas is required, consistent with the quality of life standards that are expected by the citizens. All beds shall be tended in a reasonable way to provide a neat and aesthetically pleasing appearance, without any unintended growth. Likewise, good landscape maintenance practices will enhance the plant vigor that is necessary to ensure the acceptable appearance.
- All landscaped areas shall be inspected regularly, but no less than prior to each mowing cycle, and all trash or debris removed.
- Trees shall be maintained for both health and appearance as well as to ensure compliance with all codes and ordinances. Selected plant material shall be compatible with the climate and the local area and designed to provide consistency throughout the City.
- All trees, shrubs and planting beds care and sustenance shall be part of the landscape maintenance including weed control, pruning, trimming, mulching, and plant replacement.

Generally accepted horticultural practices shall be applied at all times. Customary yearly planting and pruning cycles shall be followed.

- Newly planted trees less than 12 feet tall shall be fertilized, controlled of pests, and pruned.
- Trees shall be trimmed/pruned annually utilizing accepted horticultural practices.
- Trees shall be lifted as needed in order to maintain a minimum clearance of 8 feet in landscaped areas and pedestrian or vehicular traffic areas; all such pruning cuts shall only be performed to the extent permissible by the ANSI A300-1995 Standard and/or applicable municipal ordinances.
- Any tree leaning, i.e. not upright and perpendicular, shall be straightened after each mowing cycle.
- Tree wells shall be maintained around each tree in a uniform circle and free from undesirable vegetation.
- Any suckers, adventitious growth, shall be trimmed from all trees and Spanish moss removed utilizing accepted horticultural practices during every maintenance cycle.
- All dead fronds and/or fronds initiating below the horizontal line shall be removed, and all seed pods and/or fruit shall be removed with the exception of any palms fronds/seed pods and/or fruit that exceed the height of twenty (20) feet.
- Perennial Peanuts shall be trimmed to a height of four inches. Planting beds are to be kept grass and weed free.
- Planting beds shall be kept grass and weed free by hand and approved mechanical or chemical methods in accordance with generally accepted horticultural practices. At no time shall weeds be allowed to remain in planting beds.
- All hedges, shrubs and ground covers shall be trimmed monthly, for a total of twelve (12) times per year in accordance with standard horticultural practices to produce a uniform appearance (unless indicated otherwise by plant species, size, form, use or architectural direction).
- Shrub or bush growth impinging upon sidewalks and/or streets shall be trimmed.
- Landscape plantings shall be properly treated to remain rodent, pest, and disease free.
- Leaves and grass cuttings shall be removed from all beds after each mowing cycle. All material and debris collected from beds shall be disposed of off-site and not blown into adjacent turf, drainage structures or roadways.
- Bed borders shall be kept neatly trimmed, away from curb overhang and consistent with design intent.
- The turf along any bed located on the slope of a swale shall not to be mechanically edged.
- Trees, shrubs, and planting beds shall be mulched once annually with a minimum mulch depth of two (2) inches. Mulch shall be kept three (3) inches away from the trunk of trees to avoid trunk decay.
- Mulch shall be Cypress mulch or other type of mulch and the color shall be approved in advance by the City.
- The City shall be responsible for the replacement cost of any plants, flowers, or vegetation damaged or destroyed by motor vehicles, acts of nature, or vandalism.
- The health of all plant material shall be addressed. Non-irrigated, non-established plants shall be watered by way of water truck or tank. Plant material that dies as a result of neglect shall be replaced by Contractor at no cost to the City. Removed landscape material shall be replaced within a reasonable period of time, not to exceed ten (10) working days.

Turf Maintenance

Grass Cutting

- Turf shall be mowed, no less than 36 cycles annually, with the appropriate frequency to ensure a consistent aesthetically pleasing and healthy appearance, based on the type of grass, location, and season.
- Turf shall be cut to a height appropriate for the type of grass being mowed. Mowers shall be maintained in optimum condition with sharp blades to provide a smooth, even cut without tearing of the grass blades.
- Grass shall be kept in a healthy, weed-free, vigorous, and well-kept state at all times.
- Grass shall be cut uniformly even (taking into account uneven ground surfaces, slopes, curbs and sidewalks), resulting in no excessive rutting or other turf damages.
- Grass cutting shall be performed in a manner that avoids grass discharge onto landscaped areas, lakes, ponds, streams, drainage structures and other like areas.
- Mulching is the preferred grass cutting method so as to provide natural nutrient replenishment and to avoid added landfill disposal.
- Notwithstanding the preference for mulching, there shall be no excess grass clumping or grass clippings visible after mowing or line trimming.
- Mowing the entire right-of-way shall include mowing all bridge approaches, bridge slopes, approach slopes, and areas around bridge structures.
- Line trimming shall be done with each mowing cycle around all fixed objects exposed in the turf, including irrigation devices, trees, signs, posts, poles, water bodies and other fixtures commonly found in such settings.
- Line trimming must be performed to a uniform height equal to the mowed area.
- Trimming shall include the area headwalls, curbed intersections, fire hydrants, sign posts, mail boxes, culvert boxes, light posts, trees, under and around guardrails and any other areas not accessible by mower within the right-of-way due to standing water or saturated ground.
- All curb and road edges, sidewalks, brick pavers, bordering materials, planters and tree wells shall be machine edged with each mowing cycle, unless directed otherwise by City.
- Sidewalks damaged by the Contractor shall be replaced or repaired by the Contractor at no cost to the City. All repairs/replacement must be completed within thirty (30) calendar days of notice from the City.

Weed Removal, Clean up and Debris Removal

- Prior to each cutting of an area, any debris (trash, rubbish, branches, boughs, small animals, and like debris) shall be removed.
- Debris residue that remains after cutting shall be cleaned up immediately and properly disposed of.
- Unpermitted signs found within the right of way shall be removed before the area is mowed.
- Upon completion of every grass cutting, all turf will be trimmed to water's edge of ponds and retention areas.
- Grass or weeds sprouting through sidewalks, curbs, gutters, parking lots, French drains and other concrete, rock or asphalt surfaces within or along the perimeter of the grass cutting area shall be removed, no less than with each mowing cycle.
- Upon completion of every grass cutting, the grass trimmings or clippings shall be blown or swept off non-grass surfaces such as sidewalks, streets, pathways and similar areas. Grass clippings shall

not be swept or blown into landscaped areas, drainage structures, ponds, roadways or ditches. Grass clippings and leaves shall be removed from all beds.

- Bagged grass clippings and debris collected during maintenance shall be disposed of off-site.
- Trash and debris shall be disposed of off-site.
- Bagged garbage within the City owned litter receptacles shall be disposed of and the litter bags replaced during maintenance.
- The grates on any and all catch basins shall be cleared of any debris during grass maintenance.

Fertilization and Insect/Disease Control

- All turf areas shall be fertilized three (3) times per year within the following dates: October 1 to 15; January 1 to 15, and May 1 to 15.
- All Trees, Palms and Shrubs shall be fertilized three (3) times per year within the following dates: October 1 to 15; January 1 to 15, and May 1 to 15.
- All fertilizers shall be slow release granular and complete, furnishing the required percentage of nitrogen, phosphoric acid and potassium to keep lawns, trees, shrubs, and other plants in a healthy and vigorous growing condition. Fertilizers shall be of an appropriate formulation to promote optimum nutritional status and appearance and shall be applied at a rate commensurate with the manufacturer's specifications.
- All turf, ornamentals and trees shall be inspected no less often than once a month to identify any lawn and ornamental destroying insects. Contractor shall be responsible for making any treatments required to resolve identified problems.
- Turf areas with more than a 3 foot x 3 foot section (less if the area is subject to instability or the potential for erosion) of turf loss due to pests or improper horticultural practices shall be re-sodded.
- An approved pre-emergent herbicide shall be applied to all turf areas a minimum of one (1) time per year in the early spring and/or as directed by the City for control of all types of weeds. At no time shall weeds be allowed to remain in turf areas. Weeds sprouting in turf areas may require additional herbicide spraying.
- Insecticides, fungicides, herbicides, and rodenticides shall be properly labeled with guaranteed analysis, and brought to the job site in the manufacturer's original container.
- Any herbicides applied for the control of nuisance vegetation must be approved for use in the State of Florida by the Department of Environmental Protection and must be used in accordance with the manufacturers' directions.
- Horticultural best management practices regarding fertilization and pest management shall be carried out at all times.

General

- Contractor will have an office or yard located within a one (1) hour response time to all job sites.
- Response time to outstanding issues brought up by the City or emergencies shall be within one (1) hour during normal working hours and a maximum of two (2) hours during all other times.
- Complaints or deficiencies shall be addressed within 24 hours after notification. Deficiencies include excessive weeds, dead or unsightly plant debris, or similar conditions not generally acceptable for proper landscape maintenance.
- Any irrigation damaged by Contractor shall be repaired, within seven (7) calendar days by Contractor at no cost to the City.

- All areas identified by the City of North Port during the pre-proposal meeting, verbally or by map, shall be included for service.
- Maintenance of traffic/temporary traffic control associated with the turf or landscape shall be performed.
- There shall be no on-site storage of equipment or materials.
- Sufficient personnel shall be provided to accomplish work within the scheduled allotted time frames.
- All field personnel shall wear standard uniform with company identification.
- Utilizing Day labor or temporary staffing shall not be acceptable. All employees working under this contract must be regular employees of the Contractor.
- Possession of all licenses, permits and certifications are required prior to award of contract and without additional expense to the City. Such licenses, permits, and certifications shall be maintained for the term of the contract.
- All maintenance work shall be accomplished between the hours of 7:00 am and 7:00 pm, Monday through Friday. No maintenance functions that generate excessive noise, which would cause annoyance to residents of any area, shall be commenced before 8:00 am. The City may grant, on an individual basis, permission to perform maintenance at other days or hours.
- The City shall be informed in advance about any deviations or changes to the maintenance schedule.
- Site Supervisor must be able to communicate effectively in English (both orally and in writing) with City staff.
- A Site Supervisor shall be within City limits at all times while work is being performed and shall be available to meet with City staff at job sites if necessary.
- The City reserves the right to demand the replacement of Contractor staff who do not meet the City's standard for safety, professionalism, or horticultural knowledge.
- The contractor shall supply the names and current Material Data Safety Sheet (MSDS) information for all chemicals.

Submittals

- A list of all supervisory staff, including day and evening cell telephone numbers responsible for work to be performed, shall be provided to the City.
- The Contractor shall provide an annual maintenance schedule, prior to beginning any work, indicating the time frames when items of work shall be accomplished per the performance requirements.
- A weekly maintenance schedule shall be e-mailed or delivered by street to the City's Contract Administrator or designee by 5:00 pm on the last working day of the previous week, indicating the time frames when items of work shall be accomplished per the performance requirement and to further delineate the week's work.
- A weekly completed performance summary shall be e-mailed or delivered to the Contract Administrator or designee by 8:00 am every Monday morning, detailing the previous week's activities.
- A weekly chemical use summary shall be provided.
- A weekly fertilizer use summary shall be provided.

Vehicles and Equipment

- All vehicles and equipment shall be neat in appearance and easily identified.
- Identification on vehicles shall consist of at a minimum, company name, local telephone number, and contract services provided in print no less than eight (8) eight inches tall.
- Vehicles and equipment shall be maintained in safe and mechanically sound condition.
- All necessary equipment, tools and supplies to properly perform the grass cutting services shall be provided.
- Grass cutting equipment shall be appropriately sized for the area or parcel to be cut. The City reserves the right to deny the use of any equipment if the City reasonably determines that the equipment is not properly sized for the cutting area.
- Weed whips or similar equipment shall be used to cut grass in areas not otherwise accessible with typical mowing equipment.
- Mowing equipment shall not be used to push picnic tables, park benches or similar items during the grass cutting process.
- Equipment shall be maintained in reasonable working condition, especially blade sharpness. There shall be no equipment that is unreasonably noisy, dripping fluids or smoking excessively.
- Upon request, the City shall be allowed to inspect equipment used for performing the services.
- All equipment safety implements such as deck discharge covers shall be used at all times.

Locations

Location Schedule A

- Location 1, L-1, is the median strips and rights-of-way located on Sumter Boulevard from just south of I-75 south to U.S. 41. The area is approximately 137 acres.
- Location 2, L-2, is the median strips and rights-of-way located on Talon Bay Drive from U.S. 41 to the Talon Bay Gate. The area is approximately 1 acre.
- Location 3, L-3, is the western side right-of-way located on North Port Boulevard from Greenwood Avenue to Appomattox Drive. The area is approximately 9 acres.
- Location 4, L-4, is the median strips on Biscayne Drive from Elyton Drive to the Myakkahatchee Creek. This location also includes the eastern side of the Biscayne right of way from East Hyde Park Avenue to East Sydney Avenue. The area is approximately 9 acres.
- Location 5, L-5, is the sides and median strips on U.S. 41 from the Charlotte County Line to Talon Bay Drive. This location also includes the northern side of the U.S. 41 right of way from the Charlotte County line to Salford Boulevard, and the eastern side of the Salford Boulevard right of way from U.S. 41 to the Cocoplum Waterway. The area is approximately 32 acres.
- Location 6, L-6, is five (5) landscaped SCAT Bus Stops on U.S. 41 at Bolander Terrace, Tuscola Boulevard, Almonte Terrace, Biscayne Drive, and Grobe Street. The area is approximately less than 1 acre.

Location Schedule B

- Location 7, L-7, is the median strips and rights-of-way located on Toledo Blade Boulevard from just south of I-75 south to Hillsborough Boulevard. The area is approximately 122 acres.
- Location 8, L-8 is the median strips and right-of-way areas on Panacea Boulevard from North Toledo Blade Boulevard to the Snover Waterway, excluding privately maintained properties. The area is approximately 41 acres.

- Location 9, L-9, Plantation Boulevard median strips and right-of-way areas from approximately 1,529 feet east of North Toledo Blade Boulevard to the entrance of Lakeside Plantation. The area is approximately 7.5 acres.

Contractors must field verify the land area. Acreage is provided only for estimating purposes.

Compensation

- Payment shall be monthly, based on work completed, at the end of each month.
- Invoices shall be sent to pwfinance@cityofnorthport.com.
- All invoices for work performed under this contract shall be submitted in a format approved by the Contract Administrator or designee.
- Invoices shall include the Contractor's invoice number, dates of service, location with line item cost according to the fee schedule, and total.
- Additional maintenance may be added to this contract based on monthly price per location.

REFERENCES/CLIENT LISTING: The City will only entertain proposals from proposers with a minimum of three years' experience in projects of similar scope and size. Additionally, Proposers shall submit a commercial client listing, with at least five accounts, detailing the longevity of the accounts and disclosing the contact name and phone number for each account, project description, and area included in "Scope of Work". The City reserves the right to make contact with any or all clients to acquire a reference; however, the Proposer is encouraged to submit written recommendations from his client(s).

FAILURE TO PERFORM: Failure to perform as described, or not complete all activities as required and as provided herein, shall be just cause for the assessment of damages, as described herein, and such damages shall be considered, not as a penalty, but as liquidation of damages sustained. In the event all of the required work is not completed as actually reflected in the invoice when the frequency requires, corrections of all discrepancies shall be performed between the hours of 7:00 AM and 7:00 PM the following work day. These corrections shall be completely performed in accordance with the specification requirements. Failure to appear and perform the required duties without the advance approval of the City shall result in the deduction of the total cost of the service from the invoice. These charges are intended to act as an incentive to perform in full compliance with the specifications. Deductions shall be applied in accordance with the cost proposal form "prices." A full deduction "price" shall be levied each time services are not performed in full accordance with work specifications. Such deductions will continue until said work is properly performed or the contract is cancelled. Acknowledgment and agreement is given by both parties that the amount herein above set is not intended to be, nor shall be deemed to be, in the nature of a penalty.

END OF ATTACHMENT A

ATTACHMENT B - FEE SCHEDULE

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RFP 2018-08 Landscape and Turf Maintenance Services
Annual (12 Months)

Code	Description	Estimated Mowing Cost			Estimated Fertilizer/Pre-Emergent Herbicide Applications Cost			Estimated Pruning/Pesticide Application and Plant Bed Maintenance Cost			Estimated Annual Mulching Cost			Total Estimated Annual Cost
		Estimated # of Units	Price Per Unit	Estimated Annual Cost	Estimated # of Units	Price Per Unit	Estimated Annual Cost	Estimated # of Units	Price Per Unit	Estimated Annual Cost	Estimated # of Units	Price Per Unit	Estimated Annual Cost	
L-1	Sumter Boulevard	36	\$ 6,386.00	\$ 229,896.00	3	\$ 6,050.00	\$ 18,150.00	12	\$ 6,050.00	\$ 72,600.00	1	\$ 33,000.00	\$ 33,000.00	\$ 353,646.00
L-2	Talon Bay Drive	36	\$ 202.00	\$ 7,272.00	3	\$ 214.00	\$ 642.00	12	\$ 214.00	\$ 2,568.00	1	\$ 800.00	\$ 800.00	\$ 11,282.00
L-3	North Port Boulevard	36	\$ 467.00	\$ 16,812.00	3	\$ 444.00	\$ 1,332.00	12	\$ 444.00	\$ 5,328.00	1	\$ 1,200.00	\$ 1,200.00	\$ 24,672.00
L-4	South Biscayne Drive	36	\$ 960.00	\$ 34,560.00	3	\$ 910.00	\$ 2,730.00	12	\$ 910.00	\$ 10,920.00	1	\$ 12,500.00	\$ 12,500.00	\$ 60,710.00
L-5	Tamiami Trail Medians	36	\$ 1,414.00	\$ 50,904.00	3	\$ 1,340.00	\$ 4,020.00	12	\$ 1,340.00	\$ 16,080.00	1	\$ 1,600.00	\$ 1,600.00	\$ 72,604.00
L-6	Tamiami Trail Bus Stops	36	\$ 158.00	\$ 5,688.00	3	\$ 150.00	\$ 450.00	12	\$ 150.00	\$ 1,800.00	1	\$ 2,500.00	\$ 2,500.00	\$ 10,438.00
L-7	Toledo Blade Boulevard	36	\$ 5,969.00	\$ 214,884.00	3	\$ 5,655.00	\$ 16,965.00	12	\$ 5,655.00	\$ 67,860.00	1	\$ 28,000.00	\$ 28,000.00	\$ 327,709.00
L-8	Panacea Boulevard	36	\$ 2,047.00	\$ 73,692.00	3	\$ 1,940.00	\$ 5,820.00	12	\$ 1,940.00	\$ 23,280.00	1	\$ 8,500.00	\$ 8,500.00	\$ 111,292.00
L-9	Plantation Boulevard	36	\$ 336.00	\$ 12,096.00	3	\$ 318.00	\$ 954.00	12	\$ 318.00	\$ 3,816.00	1	\$ 4,000.00	\$ 4,000.00	\$ 20,866.00
													TOTAL	\$ 993,219.00

*FEE SCHEDULE REFLECTS UNIT PRICING SUBMITTED AND VERIFIED BY RIGHTMIRE'S LAND SERVICES, INC. FOR AGREEMENT NO. 2018-08.

**ACTUAL NUMBER OF UNITS MAY BE GREATER OR LESS THAN THE NUMBER ESTIMATED.

The City's Operations and Maintenance Manager shall monitor all miscellaneous landscaping work. Additional work will have Administrative approval and will not exceed the Commission authorized contingency amount. If additional funds are required above authorized contingency amount, the Department of Public Works will seek Commission approval.

Miscellaneous work is not guaranteed and will be authorized at the rates below:

Mulch	Price Per Cubic Yard
Mulch for additional landscape areas at various sites-including labor	\$ 65.00

LIST THE HOURLY RATES FOR THE FOLLOWING PERSONNEL.

#	DESCRIPTION OF PERSONNEL	Straight Time Rate	Hourly Overtime Rate
1	Landscape Laborer (includes hand tools)	\$ 25.00	\$ 37.50
2	Landscape Plantsman (foreman) (includes pickup truck)	\$ 30.00	\$ 45.00
3	Landscape Driver w/o Truck	\$ 25.00	\$ 37.50
4	Landscape Operator w/o Equipment	\$ 35.00	\$ 52.50
5	Landscape Operator with Watering Equipment	\$ 70.00	\$ 105.00

*Materials will be reimbursed at cost plus 10% for handling. The City reserves the right to request a copy of the original material invoice.

#	Description of Work	Quantity	Unit of Measure	Unit Price	Extended Total Price
1	Straighten leaning trees dislocated by Hurricane Irma	56	1.5 hour	\$ 95.00	\$ 7,980.00

* Landscape operator with watering equipment \$70.00 per hour

* Landscape laborer \$25.00 per hour