



Ocala

110 SE Watula Avenue
Ocala, FL 34471

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Item Details

File Number: 2024-0995

ID #: 2024-0995

Type: Agenda Item

Status: Passed

Version: 1

Placement: 8

In Control: City Council

File Created: 03/19/2024

Presented By: :

Final Action: 04/02/2024

Item Title: Approve two-year contracts with Marion Tree Trimming & Stump Removal and Flyway Access, LLC d/b/a Conrad Tree Services for tree trimming and removal services with an aggregate expenditure not to exceed \$760,000

Internal Notes:

Target Meeting: 04/02/2024

Agenda Number: 8c.

Sponsors:

Enactment Date:

Attachments: FOR COUNCIL- Agreement for CityWide Tree Trimming & Removal - Marion Tree (PWD 240344A),
FOR COUNCIL- Agreement for CityWide Tree Trimming & Removal - Conrad Tree (PWD 240344B), BID TABULATION

Enactment Number:

Recommendation:

Hearing Date:

Entered by: dphillips@ocalafl.org

Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	04/02/2024	Approved				Pass
Action Text: There being no further discussion the motion carried by roll call vote. Aye: 5 Pro Tem Dreyer, Council Member Bethea Sr, Council Member Hilty Sr, Council Member Musleh, and Council President Mansfield							

Text of Legislative File 2024-0995

Submitted By: Danielle Phillips

Presentation By: Thomas Casey

..end

Department: Public Works

STAFF RECOMMENDATION (Motion Ready):

Approve two-year contracts with Marion Tree Trimming & Stump Removal and Flyway Access, LLC d/b/a Conrad Tree Services for tree trimming and removal services with an aggregate expenditure not to exceed \$760,000

..end

OCALA'S RELEVANT STRATEGIC GOALS:
Operational Excellence, Quality of Place

PROOF OF PUBLICATION:
Bid released to the public: 2/15/24

BACKGROUND:

Multiple departments utilize the citywide tree trimming and removal services. This contract provides for year-round tree trimming and removal on City properties and rights-of-way throughout the City to ensure an acceptable appearance, facilitate coexistence with infrastructure, and minimize liability from diseased and unhealthy trees.

In order to ensure the most responsive service and best value possible, the City has historically utilized two vendors for the provision of citywide tree trimming and removal services. For scheduled, non-emergency work, staff will obtain quotes from both vendors, with the lowest available vendor being awarded the job. For emergency work, staff will rotate between both vendors.

FINDINGS AND CONCLUSIONS:

On February 15, 2024, Invitation to Bid (ITB) No.: PWD/240344 was released to the public and three (3) vendors responded. One bidder was rejected for not attending the mandatory pre-bid meeting. Marion Tree Trimming & Stump Removal and Flyway Access, LLC d/b/a Conrad Tree Services were the two lowest responsive and responsible vendors. The bid results are as follows:

Staff recommends approval of the contracts with Marion Tree Trimming & Stump Removal and Flyway Access, LLC d/b/a Conrad Tree Services for a two-year term beginning April 20, 2024, and continuing through April 19, 2026, each with an option for up to two (2) one-year renewals.

FISCAL IMPACT:

Each department has its budget for these services when needed and approved by its director.

PROCUREMENT REVIEW:

These services were procured in compliance with the City's Procurement Policy.

LEGAL REVIEW:

This Agreement will be reviewed and approved for form and legality by City Attorney, William E. Sexton.

ALTERNATIVE:

Item Details Continued (2024-0995)

- Approve with Changes
- Table
- Deny

AGREEMENT FOR CITYWIDE TREE TRIMMING AND REMOVAL SERVICES

THIS AGREEMENT FOR CITYWIDE TREE TRIMMING AND REMOVAL SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **MARION TREE TRIMMING AND STUMP REMOVAL, LLC** a limited liability company duly organized and authorized to do business in the state of Florida (EIN: 87-4596854) ("Contractor").

WHEREAS, on February 15, 2024, City issued an Invitation to Bid for the provision of citywide tree trimming and removal services, No.: PWD/240344 (the "Solicitation"); and

WHEREAS, three (3) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the bid submitted by Marion Tree Trimming And Stump Removal, LLC was found to be the lowest, responsive, and responsible bidder; and

WHEREAS, Contractor was chosen as an intended awardee to provide citywide tree trimming and removal services (the "Service"); and

WHEREAS, Contractor certifies that Contractor is qualified and possesses the required experience and licensure.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-6)

Exhibit B: Price Proposal (B-1)

Exhibit C: Federal (FEMA) Contract Provisions (C-1 through C-5)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B, then (3) Exhibit C.

3. **SCOPE OF SERVICES.** Contractor shall provide all materials, labor, supervision, tools, accessories, equipment necessary for Contractor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and **Exhibit B – Price Proposal**. The Scope of Work and/or pricing under this Agreement may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** City shall pay Contractor an amount no greater than **SEVEN HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$760,000)** (the "Contract Sum") over the contract term as full and complete compensation for the timely and satisfactory performance of services

in accordance with the pricing and frequency detailed in **Exhibit A – Scope of Work** and **Exhibit B – Price Proposal**.

- A. **Price Adjustments.** Prices offered shall remain firm for the initial contract term. Requests for price adjustments may be submitted, in writing, **no later than NINETY (90) DAYS** prior to the expiration of the prior term and must include proper CPI justification or other documentation supporting the adjustment. The City will review the submitted request for price adjustment and render a decision, in its sole discretion, as to whether it is in the best interest of the City to adjust the pricing on the awarded goods or services or reject the adjusted pricing and issue a competitive solicitation. In any event, price increases for renewal terms shall be subject to a maximum negotiated increase of **no more than THREE PERCENT (3%)** annually unless there are mitigating market conditions. The City is under no obligation to renew the contract for an additional term or to accept Vendor's proposed price increases. Vendor must receive written notification from the City confirming that the City has accepted the new prices prior to processing any orders at the new cost. Any orders issued by the City prior to formal approval of a price increase shall not be modified. Any payment of the adjusted price by City does not constitute acceptance of new pricing. Vendors are expected to pass along to the City any and all decreases in pricing on products and services or to keep pricing constant when market conditions warrant no such increases.
- B. **Invoice Submission.** All invoices submitted by Contractor shall include site location with specific address, main and cross-street, or nearest utility pole number. Specific work performed, including load size, off-road retrieval time if required, stump circumference to the edges of the surface roots, etc. The line items invoiced must match the descriptions in **Exhibit B- Price Proposal**. Contractor will invoice at least once a month. The City shall provide Contractor with a cover sheet, which must be filled out correctly and submitted with each invoice. Contractor will provide an estimated yardage of material removed on each invoice upon request from the City representative. Contractor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Department of Public Works**, Attn: **Tom Casey** E-Mail: tcasey@ocalafl.gov Telephone: 352-352-6733.
- C. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
- D. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Contractor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Contractor within **THIRTY (30)** calendar days of the Contractor's remedy or resolution of the inadequacy or defect.
- E. **Excess Funds.** If due to mistake or any other reason Contractor receives payment under this Agreement in excess of what is provided for by the Agreement, Contractor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Contractor's receipt of the overpayment or must

also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

- F. **Amounts Due to the City.** Contractor must be current and remain current in all obligations due to the City during the performance of services under this Agreement. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and/or charges owed to the City.
 - G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Contractor be authorized to use City's Tax Exemption Number for securing materials listed herein.
6. **TERM OF AGREEMENT.** This Agreement shall become effective and commence on **APRIL 20, 2024** and continue in effect for a term of **TWO (2) YEARS**, through and including **APRIL 19, 2026** (the "Term"). This Agreement may be renewed for **TWO (2)** optional **ONE (1) YEAR** periods by written consent between City and Contractor.
 7. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Contractor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
 8. **INSPECTION AND ACCEPTANCE OF THE WORK.** Contractor shall report its progress to the City Project Manager as set forth herein. All services, work, and materials provided by Contractor under this Agreement shall be provided to the satisfaction and approval of the Project Manager.
 - A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials furnished, or workmanship performed, the rate of progress of the work, the interpretation of the plans and specifications, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Contractor in its Bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.

B. Neither the Project Manager's review of Contractor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Contractor's furnishing and performing the work.

9. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Contractor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Contractor provides material that does not meet the specifications of the Agreement;
- (3) Contractor fails to complete the work required within the time stipulated in the Agreement; or
- (4) Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Contractor cannot or will not perform to the requirements of the Agreement.

B. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Contractor Default.** In the event that Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another Contractor to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination; and

- (4) City shall be entitled to recovery from Contractor any actual excess costs by: (i) deduction from any unpaid balances owed to Contractor; or (ii) any other remedy as provided by law.
- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Contractor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.
10. **DELAYS AND DAMAGES.** The Contractor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Contractor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
11. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Contractor's performance. Any such evaluation will become public record.
12. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of ONE (1) year and bid debarment for a period of up to THREE (3) years for serious contract failures.
13. **CONTRACTOR REPRESENTATIONS.** Contractor expressly represents that:
- A. Contractor has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Contractor under this Agreement.
 - B. Contractor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Contractor in the Contract Documents, and that the City's written resolution of same is acceptable to Contractor.
 - C. Contractor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - D. **Public Entity Crimes.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors, or executives, nor any of its affiliates, Contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the

convicted Contractor list following a conviction of a public entity crime. Contractor understands that a “public entity crime” as defined in section 287.133(1)(g), Florida Statutes, is “a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States...” Contractor further understands that any person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted Contractor list.

14. **CONTRACTOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Contractor:
 - A. Contractor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedures and safety precautions or programs incident thereto.
 - C. Contractor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
 - D. Contractor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - E. Contractor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Contractor and City may otherwise agree in writing.
15. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Contractor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
16. **RESPONSIBILITIES OF CITY.** City or its Representative shall issue all communications to Contractor. City has the authority to request changes in the work in accordance with the terms of this Agreement and with the terms in **Exhibit A**. City has the authority to stop work or to suspend any work. City will provide adequate venue space for launch site. City will provide security as needed for set up, execution, and breakdown of show.
17. **COMMERCIAL AUTO LIABILITY INSURANCE.** Contractor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial auto liability insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage arising out of Contractor’s operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If

Contractor does not own vehicles, Contractor shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Contractor's Commercial General Liability policy or separate Commercial Automobile Liability policy.

18. **GENERAL LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:

- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
- B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
- C. Policy must include coverage for contractual liability and independent contractors.
- D. The City, a Florida municipal corporation, and its officials, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liabilities arising out of activities performed by or on behalf of Contractor. This coverage shall contain no special limitation on the scope of protection to be afforded to the City, its officials, employees, and volunteers.

19. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Contractor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers' compensation and employer's liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable. Contractor shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Contractor shall waive and shall ensure that Contractor's insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Contractor's policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City's Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**

20. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Contractor's interests or liabilities or to protect Contractor from claims that may arise out of or result from the negligent acts, errors, or omissions of Contractor, any of its agents or subcontractors, or for anyone whose negligent act(s) Contractor may be liable.
- B. No insurance shall be provided by the City for Contractor under this Agreement and Contractor shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.

- C. Certificates of Insurance. No work shall be commenced by Contractor under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Contractor allow any subcontractor to commence work until all similarly required certificates and endorsements of the subcontractor have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. **Contractor shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org.** Contractor's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
 - D. City as Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.
 - E. Notice of Cancellation of Insurance. Contractor's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Contractor's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Contractor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
 - F. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Contractor. Contractor's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.
 - G. Severability of Interests. Contractor shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
21. **SAFETY/ENVIRONMENTAL.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall make an effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP, OSHA and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- A. All employees on the work and other persons that may be affected thereby;

- B. All work, materials, and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

- 22. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
- 23. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Contractor, subcontractor, or of any of their agents or employees, nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.
- 24. **EMERGENCIES.** In an emergency affecting the welfare and safety of life or property, Contractor, without special instruction or authorization from the City Project Manager, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury. Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Project Manager. Contractor shall be required to provide to the City Project Manager with the names, addresses and telephone numbers of those representatives who can be contacted at any time in case of emergency. Contractor's emergency representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by City or public inspectors.
- 25. **INDEPENDENT CONTRACTOR STATUS.** Contractor acknowledges and agrees that under this Agreement, Contractor and any agent or employee of Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Contractor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither

Contractor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Contractor in its performance of its obligations under this Agreement.

26. **ACCESS TO FACILITIES.** City shall provide Contractor with access to all City facilities as is reasonably necessary for Contractor to perform its obligations under this Agreement.
27. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
28. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Contractor under this Agreement be abandoned, or should Contractor become insolvent, or if Contractor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
29. **PUBLIC RECORDS.** Contractor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Contractor shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Contractor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to the public agency upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.gov; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

30. **AUDIT.** Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
31. **PUBLICITY.** Contractor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
32. **E-VERIFY.** Pursuant to section 448.095, Consultant shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Consultant shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Consultant certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Consultant understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Consultant may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Consultant shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
33. **CONFLICT OF INTEREST.** Contractor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Contractor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Contractor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
34. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power, or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
35. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should

any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.

36. **INDEMNITY.** Contractor shall indemnify and hold harmless City and its elected officials, employees and volunteers against and from all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Contractor, its agents, and employees.
37. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
38. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Contractor:	Marion Tree Trimming And Stump Removal, LLC Attention: Zach Smallridge 4400 SE 73 rd Street Ocala, FL 34480 Phone: 352-629-3843 E-mail: office@mariontree.net
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If to City of Ocala:	Daphne M. Robinson, Esq., Contracting Officer City of Ocala 110 SE Watula Avenue, 3 rd Floor Ocala, Florida 34471 Phone: 352-629-8343 E-mail: notices@ocalafl.gov
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Copy to:	William E. Sexton, Esq., City Attorney City of Ocala 110 SE Watula Avenue, 3 rd Floor Ocala, Florida 34471 Phone: 352-401-3972 E-mail: cityattorney@ocalafl.gov
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39. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without

limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

40. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
41. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of the State of Florida.
42. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
43. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
44. **MUTUALITY OF NEGOTIATION.** Contractor and City acknowledge that this Agreement is a result of negotiations between Contractor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
45. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
46. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any

third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

47. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
48. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
49. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
50. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements, or understandings, oral, written, or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
51. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]



IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Barry Mansfield
City Council President

Approved as to form and legality:

**MARION TREE TRIMMING AND STUMP
REMOVAL, LLC**

By: _____
(Printed Name)

By: _____
(Printed Name)

Title: _____

Title: _____
(Title of Authorized Signatory)

BACKGROUND

1. Contractor shall provide tree removal and trimming/pruning services, (to include removal of debris, disposal, and stump grinding) throughout the City of Ocala. Contractor is responsible for all labor, equipment, and materials necessary to provide these services.
2. Locations may include parks, cemeteries, golf courses, retention areas, private residences, right-of-way, and other areas as designated by City personnel.

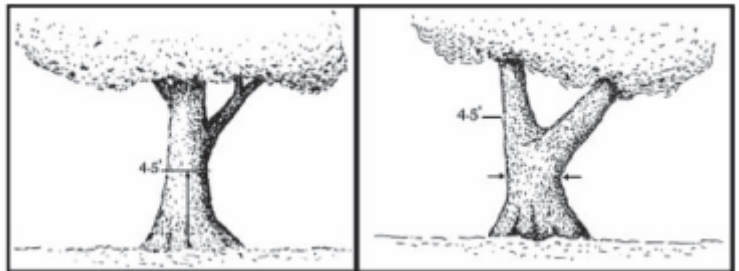
CERTIFICATION & CONTRACTOR REQUIREMENTS:

Maintenance of Traffic (MOT)/Temporary Traffic Control (TTC) Certification: Contractor must possess and maintain a MOT/TTC certification for the entire contract term. **Contractor will provide all MOT/TTC for each project as part of the tree work.**

International Society of Arboriculture (ISA) Arborist Certification: Contractor must possess and maintain an ISA Arborist certification: <http://www.isaarbor.com/certification/becomeCertified/index.aspx>

DEFINITIONS – Additional Info.

1. **Diameter Breast Height (DBH):** Contractor must physically measure the distance of the tree trunk at four and a half feet (4.5') above the ground on the tree's uphill side (if not on even ground).
 - A. If the tree forks below or bulges at 4.5', measure the circumference where the tree reaches normal size or tapers below 4.5'.
 - B. For accurate measurement, use a diameter tape or regular tape measure.
2. **Hauling:** does not apply to tree removal (lines 1-15 of **Exhibit B – Price Proposal**). Instead, hauling (lines 21-22 of **Exhibit B – Price Proposal**) applies ONLY to the hauling of debris.
3. **Diameter:** Contractor must physically measure the length of the line that cuts any straight-line segment that passes through the center of the circle. The measurement for diameter is at four and a half feet (4.5') above ground on the tree's uphill side (if not on even ground).

**PROJECT SUMMARY, DELIVERABLES AND HOURS**

1. **Execution of Work:**
 - A. Contractor shall be responsible for performing the work necessary to meet the City standards in a safe, neat, and high-quality workman-like manner using only accepted methods in carrying out the work and complying with all federal, state, and local laws, codes, and regulations. The work must be accomplished with professional methods and standards of the trade.
 - B. Normal working hours for this contract will be 7:00 AM to 5:30 PM, Monday through Friday, excluding holidays unless otherwise written authorization from the City representative is given.

- C. All non-emergency work shall be completed within **SEVEN (7)** working days after notification, at the discretion of the City representative (unless otherwise noted below).
- i. Contractor must respond via e-mail within 24 hours of a request to the requesting department giving an estimated start time for each project.
 - ii. City reserves the right to question any job when the hours performed by Contractor seem excessive for the work completed.
- D. Work will be scheduled on an as-needed basis. There will be time periods when there is no work available.
- E. No tree should be pruned/trimmed in a way that alters the natural shape. Tree Trimming/Pruning will be completed using a 3-man crew.
- F. **No shearing, such as lion-tailing or topping of a tree, is allowed unless consent is given by a City representative for a specific purpose.**
- G. Contractor shall coordinate all work with the appropriate City personnel:

Department	Division	Type	Contact Name	Number	Contact Email
Public Works	Streets	Primary	Tom Casey	(352) 427-9364	tcasey@ocalafl.gov
		Alternate	Charlie Varney	(352) 351-6789	cvarney@ocalafl.gov
	Stormwater	Primary	Brian Herrick	(352) 401-6927	bherrick@ocalafl.gov
Recreation & Parks	Parks/Golf Courses	Primary	Bill Rodriguez-Cayro	(352) 425-4401	wcayro@ocalafl.gov
		Alternate	Jeff Kerley	(352) 425-8817	jkerley@ocalafl.gov
Utilities	Electric (Arborist)	Primary	Anthony Santangelo	(352) 572-0365	asantangelo@ocalafl.gov
	Water Resources	Primary	Robyn Preston	(352) 629-8471	RBPreston@ocalafl.gov
		Alternate	Shane Bailey	(352) 572-0483	sbailey@ocalafl.gov
		Alternate	Luis Acosta	(352) 572-0421	lacosta@ocalafl.gov

2. Disaster Work:

- A. Should a disaster occur, the **City of Ocala must be the Contractor's priority for any disaster work** that may harm any person or property. The City Manager will determine what constitutes a disaster.
- B. Contractor must provide telephone numbers of at least three (3) emergency contacts to all primary contacts listed above. In the event of an emergency, the City must be able to reach one of the Contractor's emergency contacts.

3. Emergency, Disaster, Holiday, and Weekend Work (3-Man Crew):

- A. Work must be completed in a timely manner.
 - i. Contractor will have **thirty (30) minutes** to arrive at the job site after the call is received.
 - ii. The hourly rate for said work shall be the Contractor's labor cost over and above the cost to provide said services in a non-emergency situation.
 - iii. Contractor shall invoice based on the tree type, size, work performed, and the emergency/disaster or holiday/weekend hourly rate.
- B. In the event of multiple urgent/after-hours requests by the City, Contractor should prioritize work as follows:
 - i. Trees blocking roadways.
 - ii. Impeded access to lift stations or water treatment facilities.
 - iii. Dead trees
 - iv. Low-hanging limbs
 - v. Any work outside of the list above will be prioritized by the City for the Contractor.
- C. In the event Contractor is unable to complete the emergency, disaster, holiday, or weekend work as required, or if the City is unable to reach the Contractor, the City reserves the right to use another Contractor.
- D. Multiple failures to respond to requests for work, and/or failures to answer emergency, disaster, holiday, and weekend work calls may result in **termination of the contract**.

- 4. **Damage:** Contractor is responsible for performing the work with utmost care and by using appropriate methods to prevent any damage to any public or private property that is adjacent to the work area. In case any public or private property gets damaged or destroyed during the work, Contractor must immediately report the same to the relevant project manager. Contractor is liable for any expense incurred for repairing or restoring the damaged property and shall ensure that the repairs or restoration are acceptable to the City. Contractor must complete the repairs or restoration no later than **one (1) month** from the date the damage occurred.

5. Debris Removal (3-Man Crew):

- A. Off-road retrieval shall be discussed with the City prior to the performance of work.
- B. Site cleanup shall include raking and removing small debris.

- C. Response within **TWENTY-FOUR (24)** hours of original notification by the City of Ocala unless otherwise agreed for a specific location.
- D. Downtown debris will be removed from the area immediately.

6. **Grinding:**

- A. Grind out stumps and surrounding surface roots even with the level of the surrounding surface. The ground must be raked smooth and level. Grinding is based on the diameter measurement price per inch.
- B. Contractor shall remove grindings, roots, and any debris.
- C. Response within **THREE (3) DAYS** of the original notification.

7. **Tree Trimming:**

- A. City's horticulturist will review the proper ways of trimming Crepe Myrtle trees with the Contractor on location, at the time of service.
- B. Palm Tree trimming may include boot removal.
- C. City implements tree trimming preparation for holiday lighting in August through September.
- D. If City implements year-round tree lighting, a lift must be used when trimming. Special care must be taken to avoid damaging lights.

8. **Maintenance of Traffic (MOT)/Temporary Traffic Control (TTC):** Maintain traffic per FDOT latest edition series index within the limits of the project for the duration of the service period. Construct and maintain detours. The Contractor is responsible for the MOT/TTC on each project.

- A. Provide facilities for access to residences, businesses, etc., along the project. Furnish, install, and maintain traffic control and safety devices during the work. Furnish and install work zone pavement markings for MOT/TTC in work areas. Provide any other special requirements for safe and expeditious movement of traffic.
- B. MOT/TTC includes all facilities, devices, and operations as required for the safety and convenience of the public within the work zone. Do not maintain traffic over those portions of the project where no work is to be accomplished or where work operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work and repair any damage to existing pavement open to traffic. FDOT Design Standards are the minimum standards for the use in the development of all Traffic Control Plans (TCPs).
- C. Contractor must have one (1) person who is MOT/TTC Certified on-site when required by the work.
- D. Contractor must provide the FDOT current standard specification section index number/sheet for the maintenance set-up per work site in accordance to the latest edition of the FDOT.
- E. ***Contractor will pull all road permits for scheduled lane & road closures.***
- F. The Project Manager will advise Contractor of permit requirements at the time of performing emergency or disaster services.

PROJECT SPECIFICATIONS

All work shall be performed in accordance with:

1. FDOT Design Standards (latest edition) available at: <https://www.fdot.gov/design/standardplans>
2. ANSI Specifications for Tree Care Operations (A300) (latest edition) available at: <https://tcia.org/>

WRITTEN QUOTES

1. Contractor shall prepare written estimates in advance of the performance of work. Written quotes shall list the location name and address. Contractor and the assigned City Project Manager shall review the estimate and agree in writing prior to the work being formally assigned.
2. Estimates shall be descriptive and detail the number of crew members, estimated number of hours, and the equipment anticipated by Contractor to be utilized and needed to complete the proposed work. Contractor and the assigned City project manager shall review the estimate and agree in writing prior to the work being formally assigned.

CONTRACTOR EMPLOYEES AND EQUIPMENT

1. Contractor must utilize competent employees in performing the work. Employees performing the work must be properly certified or qualified as required by the scope.
2. Contractor shall provide an assigned Project Manager, who will be the primary point of contact. Contractor must always provide a valid telephone number and address to the City.
3. At the request of the City, Contractor must replace any incompetent, unfaithful, abusive, or disorderly person in their employment. The City and the Contractor must each be promptly notified by the other of any complaints received.
4. Contractor's employees shall always wear suitable work clothes and personal protective equipment as defined by OSHA/FDOT.
5. Contractor will operate as an independent Contractor and not as an agent, representative, partner, or employee of the City of Ocala, and shall control their operations at the worksite, and be solely responsible for the acts or omissions of their employees.
6. Communication is required between the Contractor and each department representative.
7. During the execution of work for the City, the Contractor's employees must wear a company shirt or name badge with the company name, and all vehicles must bear the company name.

EQUIPMENT REQUIREMENTS

Contractor must own or have access to the required equipment listed below.

- i. Bucket Truck
- ii. Loader equipment transport
 - iii. Stump grinder
 - iv. Mulcher (AKA "Chipper")

CITY OF OCALA RESPONSIBILITIES

1. City of Ocala will furnish the following services/data to Contractor for the performance of services:
 - A. Access to City buildings and facilities to perform the work.
 - B. Provide access to drawings, specifications, schedules, reports, and other information prepared by/for City of Ocala pertinent to the Contractor's responsibilities.
 - C. Provide office facilities for Contractor, if needed.
2. City reserves the right to purchase any materials for Contractor to use. Contractor shall not charge a mark-up fee for material furnished by the City.

CONTRACTOR RESPONSIBILITIES

1. Contractor shall complete all work performed under this solicitation in accordance with policies and procedures of the City of Ocala and all applicable State, Federal, and local laws, policies, procedures, and guidelines.
2. All work shall conform to all existing governing authorities' codes and regulations.
3. Contractor shall obtain and pay for any additional equipment, dumping and/or disposal fees, etc., required to fulfill this contract. All disposal and dumping must be conducted in a legal manner.
4. If Contractor is advised to leave a property by the property owner or their representative, Contractor shall leave at once without altercation. Contractor shall then contact the City Project Manager immediately and advise of the reason for not completing the assigned project.
5. **Photo Submission:** After completion of each request, Contractor shall take a cellphone photo of the worksite(s) using the Solocator or Timestamp cell phone app and e-mail the photo to the City Project manager. Contractor can visit the following links for additional details regarding the Solocator or Timestamp apps: www.solocator.com or www.timestampcamera.com.
6. **Contractor is required to take a cellphone picture of the tree's diameter before work commences using an app similar to Solocator / Timestamp and text to the City's project manager. Failure to do this may result in reduced payment.**

SAFETY

1. Contractor shall be fully responsible for the provision of adequate and proper safety precautions meeting all OSHA, local, state, and national codes concerning safety provisions for their employees, subcontractors, all building and site occupants, staff, public, and all persons in or around the work area.
2. In no event shall City be responsible for any damages to any of the Contractor's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.
3. Immediately clean up and remove all debris after any work performed in the **Downtown Area**. Safety areas and site clean-up must also be completed after any tree work is performed.

Exhibit B - PRICE PROPOSAL		CONTRACT# PWD/240344A	
Marion Tree Trimming and Stump Removal			
INITIAL CONTRACT TERM PRICING			
ITEM	DESCRIPTION	UOM	UNIT COST
FLAT RATE: Oak Tree - Cut down and remove debris. Area shall be raked and cleaned.			
1	0" to 12" Diameter	Per Tree	\$ 200.00
2	12" to 24" Diameter	Per Tree	\$ 1,000.00
3	24" to 36" Diameter	Per Tree	\$ 2,200.00
4	36" to 48" Diameter	Per Tree	\$ 2,600.00
5	48" + Diameter	Per Tree	\$ 2,950.00
FLAT RATE: Pine Tree - Cut down and remove debris. Area shall be raked and cleaned.			
6	0" to 12" Diameter	Per Tree	\$ 175.00
7	12" to 24" Diameter	Per Tree	\$ 700.00
8	24" to 36" Diameter	Per Tree	\$ 1,500.00
9	36" to 48" Diameter	Per Tree	\$ 1,800.00
10	48" + Diameter	Per Tree	\$ 2,200.00
FLAT RATE: Other Trees - Cut down and remove debris. Area shall be raked and cleaned.			
11	0" to 12" Diameter	Per Tree	\$ 500.00
12	12" to 24" Diameter	Per Tree	\$ 1,000.00
13	24" to 36" Diameter	Per Tree	\$ 1,800.00
14	36" to 48" Diameter	Per Tree	\$ 1,900.00
15	48" + Diameter	Per Tree	\$ 2,000.00
Miscellaneous			
16	Tree Trimming/Pruning (including debris removal) 3-man crew.	Per Hour	\$ 300.00
17	Emergency/Disaster / Holidays / Weekends Work 3-man crew	Per Hour	\$ 250.00
18	Debris removal - including site cleanup 3-man crew	Per Hour	\$ 125.00
19	Grind stumps & roots remove chips, by diameter. Area shall be clean and level when finished.	Per Inch	\$ 3.50
20	Cut and toss - clearing access paths from fallen storm debris when time is of the essence and/or in areas not accessible by hauling equipment or areas where hauling equipment is not allowed 3-man crew	Per Hour	\$ 300.00
21	Hauling - Full Load - 50 cubic yards for tree trimming activities, only.	Per Load	\$ 600.00
22	Hauling - Half Load - 25 cubic yards for tree trimming activities, only.	Half Load	\$ 225.00
23	Crane Service - Includes truck and crane operator	Per Hour	\$ 250.00

DRUG FREE WORKPLACE REQUIREMENTS

1. Drug free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D).
2. Contractor entering Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements in accordance with the Drug Free Workplace Act of 1988.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. Contractor will ensure that conduct and communication at the DMS and with all personnel will not be discriminatory, inappropriate or offensive and the City shall have the right to request replacement personnel when violations of this policy occur.
2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by

rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Successful Proposer may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

1. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the contract, and for disbarment as a Contractor and subcontractor as provided in 29 CFR § 5.12.13.5.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)

1. Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
2. Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.
3. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. Compliance with the Contract Work Hours and Safety Standards Act:
 - **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or

a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- **Withholding for unpaid wages and liquidated damages.** The City of Ocala shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

CLEAN AIR ACT AND THE FEDERAL POLLUTION CONTROL ACT

1. Clean Air Act

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The Contractor agrees to report each violation to the City and Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Regional Office of the Environmental Protection Agency.
- The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

2. Federal Water Pollution Control Act

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- The Contractor agrees to report each violation to the City and Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Regional Office of the Environmental Protection Agency.
- The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SUSPENSION AND DEBARMENT

1. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR §180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the State of Florida and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C throughout the period of the contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
5. Consultant certifies it is not so listed as excluded or disqualified from contracting and shall confirm same for every subcontractor receiving any payment in whole or in part from federal funds.

ACCESS TO RECORDS

The following access to records requirements applies to this contract:

1. Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

DHS SEAL, LOGO AND FLAGS

Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance may be used to fund the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CONFLICT OF INTEREST

Contractor must disclose in writing any potential conflict of interest to the City or pass-through entity in accordance with applicable Federal policy.

MANDATORY DISCLOSURES

Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

UTILIZATION OF MINORITY AND WOMEN FIRMS (M/WBE)

1. Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
2. Contractor shall document efforts to utilize M/WBE firms including what firms were solicited as suppliers and/or subcontractors as applicable and submit this information to the City for all emergency services provided under this Agreement.

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended):

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352.
2. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
3. Contractor's certification of compliance with certification requirements under 10 CFR Part 601 New Restrictions on Lobbying is attached and incorporated by reference into and made part of the Agreement.

AGREEMENT FOR CITYWIDE TREE TRIMMING AND REMOVAL SERVICES

THIS AGREEMENT FOR CITYWIDE TREE TRIMMING AND REMOVAL SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **FLYWAY ACCESS, LLC D/B/A CONRAD TREE SERVICES** a limited liability company duly organized and authorized to do business in the state of Florida (EIN: 20-8444604) ("Contractor").

WHEREAS, on February 15, 2024, City issued an Invitation to Bid for the provision of citywide tree trimming and removal services, No.: PWD/240344 (the "Solicitation"); and

WHEREAS, three (3) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the bid submitted by Flyway Access, LLC d/b/a Conrad Tree Services was found to be the second-lowest, responsive, and responsible bidder; and

WHEREAS, Contractor was chosen as an intended awardee to provide citywide tree trimming and removal services (the "Service"); and

WHEREAS, Contractor certifies that Contractor is qualified and possesses the required experience and licensure.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-6)

Exhibit B: Price Proposal (B-1)

Exhibit C: Federal (FEMA) Contract Provisions (C-1 through C-5)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B, then (3) Exhibit C.

3. **SCOPE OF SERVICES.** Contractor shall provide all materials, labor, supervision, tools, accessories, equipment necessary for Contractor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and **Exhibit B - Price Proposal**. The Scope of Work and/or pricing under this Agreement may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** City shall pay Contractor an amount no greater than **SEVEN HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$760,000)** (the "Contract Sum") over the contract term as full and complete compensation for the timely and satisfactory performance of services

in accordance with the pricing and frequency detailed in **Exhibit A – Scope of Work** and **Exhibit B – Price Proposal**.

- A. **Price Adjustments.** Prices offered shall remain firm for the initial contract term. Requests for price adjustments may be submitted, in writing, **no later than NINETY (90) DAYS** prior to the expiration of the prior term and must include proper CPI justification or other documentation supporting the adjustment. The City will review the submitted request for price adjustment and render a decision, in its sole discretion, as to whether it is in the best interest of the City to adjust the pricing on the awarded goods or services or reject the adjusted pricing and issue a competitive solicitation. In any event, price increases for renewal terms shall be subject to a maximum negotiated increase of **no more than THREE PERCENT (3%)** annually unless there are mitigating market conditions. The City is under no obligation to renew the contract for an additional term or to accept Vendor's proposed price increases. Vendor must receive written notification from the City confirming that the City has accepted the new prices prior to processing any orders at the new cost. Any orders issued by the City prior to formal approval of a price increase shall not be modified. Any payment of the adjusted price by City does not constitute acceptance of new pricing. Vendors are expected to pass along to the City any and all decreases in pricing on products and services or to keep pricing constant when market conditions warrant no such increases.
- B. **Invoice Submission.** All invoices submitted by Contractor shall include site location with specific address, main and cross-street, or nearest utility pole number. Specific work performed, including load size, off-road retrieval time if required, stump circumference to the edges of the surface roots, etc. The line items invoiced must match the descriptions in **Exhibit B- Price Proposal**. Contractor will invoice at least once a month. The City shall provide Contractor with a cover sheet, which must be filled out correctly and submitted with each invoice. Contractor will provide an estimated yardage of material removed on each invoice upon request from the City representative. Contractor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Department of Public Works**, Attn: **Tom Casey** E-Mail: tcasey@ocalafl.gov Telephone: 352-352-6733.
- C. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
- D. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Contractor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Contractor within **THIRTY (30)** calendar days of the Contractor's remedy or resolution of the inadequacy or defect.
- E. **Excess Funds.** If due to mistake or any other reason Contractor receives payment under this Agreement in excess of what is provided for by the Agreement, Contractor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Contractor's receipt of the overpayment or must

also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

- F. **Amounts Due to the City.** Contractor must be current and remain current in all obligations due to the City during the performance of services under this Agreement. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and/or charges owed to the City.
 - G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Contractor be authorized to use City's Tax Exemption Number for securing materials listed herein.
6. **TERM OF AGREEMENT.** This Agreement shall become effective and commence on **APRIL 20, 2024** and continue in effect for a term of **TWO (2) YEARS**, through and including **APRIL 19, 2026** (the "Term"). This Agreement may be renewed for **TWO (2)** optional **ONE (1) YEAR** periods by written consent between City and Contractor.
 7. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Contractor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
 8. **INSPECTION AND ACCEPTANCE OF THE WORK.** Contractor shall report its progress to the City Project Manager as set forth herein. All services, work, and materials provided by Contractor under this Agreement shall be provided to the satisfaction and approval of the Project Manager.
 - A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials furnished, or workmanship performed, the rate of progress of the work, the interpretation of the plans and specifications, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Contractor in its Bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.

B. Neither the Project Manager's review of Contractor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Contractor's furnishing and performing the work.

9. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Contractor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Contractor provides material that does not meet the specifications of the Agreement;
- (3) Contractor fails to complete the work required within the time stipulated in the Agreement; or
- (4) Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Contractor cannot or will not perform to the requirements of the Agreement.

B. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Contractor Default.** In the event that Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another contractor to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination; and

- (4) City shall be entitled to recovery from Contractor any actual excess costs by: (i) deduction from any unpaid balances owed to Contractor; or (ii) any other remedy as provided by law.
- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Contractor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.
10. **DELAYS AND DAMAGES.** The Contractor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Contractor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
11. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Contractor's performance. Any such evaluation will become public record.
12. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of ONE (1) year and bid debarment for a period of up to THREE (3) years for serious contract failures.
13. **CONTRACTOR REPRESENTATIONS.** Contractor expressly represents that:
- A. Contractor has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Contractor under this Agreement.
 - B. Contractor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Contractor in the Contract Documents, and that the City's written resolution of same is acceptable to Contractor.
 - C. Contractor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - D. **Public Entity Crimes.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors, or executives, nor any of its affiliates, Contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the

convicted Contractor list following a conviction of a public entity crime. Contractor understands that a “public entity crime” as defined in section 287.133(1)(g), Florida Statutes, is “a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States...” Contractor further understands that any person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted Contractor list.

14. **CONTRACTOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Contractor:
 - A. Contractor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedures and safety precautions or programs incident thereto.
 - C. Contractor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
 - D. Contractor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - E. Contractor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Contractor and City may otherwise agree in writing.
15. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Contractor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
16. **RESPONSIBILITIES OF CITY.** City or its Representative shall issue all communications to Contractor. City has the authority to request changes in the work in accordance with the terms of this Agreement and with the terms in **Exhibit A**. City has the authority to stop work or to suspend any work. City will provide adequate venue space for launch site. City will provide security as needed for set up, execution, and breakdown of show.
17. **COMMERCIAL AUTO LIABILITY INSURANCE.** Contractor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial auto liability insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage arising out of Contractor’s operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If

Contractor does not own vehicles, Contractor shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Contractor's Commercial General Liability policy or separate Commercial Automobile Liability policy.

18. **GENERAL LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:

- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
- B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
- C. Policy must include coverage for contractual liability and independent contractors.
- D. The City, a Florida municipal corporation, and its officials, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liabilities arising out of activities performed by or on behalf of Contractor. This coverage shall contain no special limitation on the scope of protection to be afforded to the City, its officials, employees, and volunteers.

19. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Contractor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers' compensation and employer's liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable. Contractor shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Contractor shall waive and shall ensure that Contractor's insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Contractor's policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City's Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**

20. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Contractor's interests or liabilities or to protect Contractor from claims that may arise out of or result from the negligent acts, errors, or omissions of Contractor, any of its agents or subcontractors, or for anyone whose negligent act(s) Contractor may be liable.
- B. No insurance shall be provided by the City for Contractor under this Agreement and Contractor shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.

- C. Certificates of Insurance. No work shall be commenced by Contractor under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Contractor allow any subcontractor to commence work until all similarly required certificates and endorsements of the subcontractor have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. **Contractor shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org.** Contractor's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
 - D. City as Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.
 - E. Notice of Cancellation of Insurance. Contractor's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Contractor's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Contractor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
 - F. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Contractor. Contractor's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.
 - G. Severability of Interests. Contractor shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
21. **SAFETY/ENVIRONMENTAL.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall make an effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP, OSHA and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- A. All employees on the work and other persons that may be affected thereby;

- B. All work, materials, and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

- 22. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
- 23. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Contractor, subcontractor, or of any of their agents or employees, nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.
- 24. **EMERGENCIES.** In an emergency affecting the welfare and safety of life or property, Contractor, without special instruction or authorization from the City Project Manager, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury. Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Project Manager. Contractor shall be required to provide to the City Project Manager with the names, addresses and telephone numbers of those representatives who can be contacted at any time in case of emergency. Contractor's emergency representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by City or public inspectors.
- 25. **INDEPENDENT CONTRACTOR STATUS.** Contractor acknowledges and agrees that under this Agreement, Contractor and any agent or employee of Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Contractor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither

Contractor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Contractor in its performance of its obligations under this Agreement.

26. **ACCESS TO FACILITIES.** City shall provide Contractor with access to all City facilities as is reasonably necessary for Contractor to perform its obligations under this Agreement.
27. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
28. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Contractor under this Agreement be abandoned, or should Contractor become insolvent, or if Contractor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
29. **PUBLIC RECORDS.** Contractor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Contractor shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Contractor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to the public agency upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.gov; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

30. **AUDIT.** Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
31. **PUBLICITY.** Contractor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
32. **E-VERIFY.** Pursuant to section 448.095, Consultant shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Consultant shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Consultant certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Consultant understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Consultant may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Consultant shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
33. **CONFLICT OF INTEREST.** Contractor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Contractor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Contractor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
34. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power, or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
35. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should

any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.

36. **INDEMNITY.** Contractor shall indemnify and hold harmless City and its elected officials, employees and volunteers against and from all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Contractor, its agents, and employees.
37. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
38. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Contractor:	Flyway Access, LLC DBA Conrad Tree Services Attention: William Conrad PO Box 4368 Ocala, FL 34478 Phone: 352-867-1123 E-mail: office@conradtree.com
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If to City of Ocala:	Daphne M. Robinson, Esq., Contracting Officer City of Ocala 110 SE Watula Avenue, 3 rd Floor Ocala, Florida 34471 Phone: 352-629-8343 E-mail: notices@ocalafl.gov
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Copy to:	William E. Sexton, Esq., City Attorney City of Ocala 110 SE Watula Avenue, 3 rd Floor Ocala, Florida 34471 Phone: 352-401-3972 E-mail: cityattorney@ocalafl.gov
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39. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without

limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

40. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
41. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of the State of Florida.
42. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
43. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
44. **MUTUALITY OF NEGOTIATION.** Contractor and City acknowledge that this Agreement is a result of negotiations between Contractor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
45. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
46. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any

third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

47. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
48. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
49. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
50. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements, or understandings, oral, written, or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
51. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]



IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Barry Mansfield
City Council President

Approved as to form and legality:

**FLYWAY ACCESS, LLC D/B/A CONRAD
TREE SERVICES**

By: _____
(Printed Name)

By: _____
(Printed Name)

Title: _____

Title: _____
(Title of Authorized Signatory)

BACKGROUND

1. Contractor shall provide tree removal and trimming/pruning services, (to include removal of debris, disposal, and stump grinding) throughout the City of Ocala. Contractor is responsible for all labor, equipment, and materials necessary to provide these services.
2. Locations may include parks, cemeteries, golf courses, retention areas, private residences, right-of-way, and other areas as designated by City personnel.

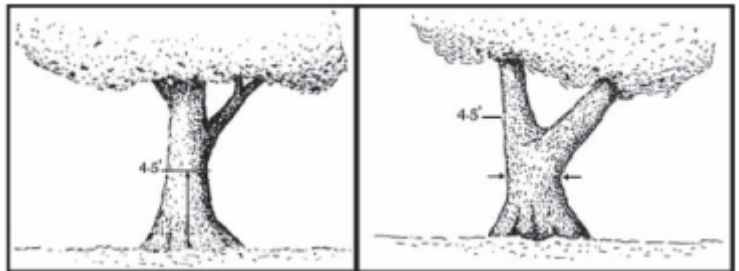
CERTIFICATION & CONTRACTOR REQUIREMENTS:

Maintenance of Traffic (MOT)/Temporary Traffic Control (TTC) Certification: Contractor must possess and maintain a MOT/TTC certification for the entire contract term. **Contractor will provide all MOT/TTC for each project as part of the tree work.**

International Society of Arboriculture (ISA) Arborist Certification: Contractor must possess and maintain an ISA Arborist certification: <http://www.isaarbor.com/certification/becomeCertified/index.aspx>

DEFINITIONS – Additional Info.

1. **Diameter Breast Height (DBH):** Contractor must physically measure the distance of the tree trunk at four and a half feet (4.5') above the ground on the tree's uphill side (if not on even ground).
 - A. If the tree forks below or bulges at 4.5', measure the circumference where the tree reaches normal size or tapers below 4.5'.
 - B. For accurate measurement, use a diameter tape or regular tape measure.
2. **Hauling:** does not apply to tree removal (lines 1-15 of **Exhibit B – Price Proposal**). Instead, hauling (lines 21-22 of **Exhibit B – Price Proposal**) applies ONLY to the hauling of debris.
3. **Diameter:** Contractor must physically measure the length of the line that cuts any straight-line segment that passes through the center of the circle. The measurement for diameter is at four and a half feet (4.5') above ground on the tree's uphill side (if not on even ground).

**PROJECT SUMMARY, DELIVERABLES AND HOURS**

1. **Execution of Work:**
 - A. Contractor shall be responsible for performing the work necessary to meet the City standards in a safe, neat, and high-quality workman-like manner using only accepted methods in carrying out the work and complying with all federal, state, and local laws, codes, and regulations. The work must be accomplished with professional methods and standards of the trade.
 - B. Normal working hours for this contract will be 7:00 AM to 5:30 PM, Monday through Friday, excluding holidays unless otherwise written authorization from the City representative is given.

- C. All non-emergency work shall be completed within **SEVEN (7)** working days after notification, at the discretion of the City representative (unless otherwise noted below).
- Contractor must respond via e-mail within 24 hours of a request to the requesting department giving an estimated start time for each project.
 - City reserves the right to question any job when the hours performed by Contractor seem excessive for the work completed.
- D. Work will be scheduled on an as-needed basis. There will be time periods when there is no work available.
- E. No tree should be pruned/trimmed in a way that alters the natural shape. Tree Trimming/Pruning will be completed using a 3-man crew.
- F. **No shearing, such as lion-tailing or topping of a tree, is allowed unless consent is given by a City representative for a specific purpose.**
- G. Contractor shall coordinate all work with the appropriate City personnel:

Department	Division	Type	Contact Name	Number	Contact Email
Public Works	Streets	Primary	Tom Casey	(352) 427-9364	tcasey@ocalafl.gov
		Alternate	Charlie Varney	(352) 351-6789	cvarney@ocalafl.gov
	Stormwater	Primary	Brian Herrick	(352) 401-6927	bherrick@ocalafl.gov
Recreation & Parks	Parks/Golf Courses	Primary	Bill Rodriguez-Cayro	(352) 425-4401	wcayro@ocalafl.gov
		Alternate	Jeff Kerley	(352) 425-8817	jkerley@ocalafl.gov
Utilities	Electric (Arborist)	Primary	Anthony Santangelo	(352) 572-0365	asantangelo@ocalafl.gov
	Water Resources	Primary	Robyn Preston	(352) 629-8471	RBPreston@ocalafl.gov
		Alternate	Shane Bailey	(352) 572-0483	sbailey@ocalafl.gov
		Alternate	Luis Acosta	(352) 572-0421	lacosta@ocalafl.gov

2. Disaster Work:

- A. Should a disaster occur, the **City of Ocala must be the Contractor's priority for any disaster work** that may harm any person or property. The City Manager will determine what constitutes a disaster.
- B. Contractor must provide telephone numbers of at least three (3) emergency contacts to all primary contacts listed above. In the event of an emergency, the City must be able to reach one of the Contractor's emergency contacts.

3. Emergency, Disaster, Holiday, and Weekend Work (3-Man Crew):

- A. Work must be completed in a timely manner.
 - i. Contractor will have **thirty (30) minutes** to arrive at the job site after the call is received.
 - ii. The hourly rate for said work shall be the Contractor's labor cost over and above the cost to provide said services in a non-emergency situation.
 - iii. Contractor shall invoice based on the tree type, size, work performed, and the emergency/disaster or holiday/weekend hourly rate.
- B. In the event of multiple urgent/after-hours requests by the City, Contractor should prioritize work as follows:
 - i. Trees blocking roadways.
 - ii. Impeded access to lift stations or water treatment facilities.
 - iii. Dead trees
 - iv. Low-hanging limbs
 - v. Any work outside of the list above will be prioritized by the City for the Contractor.
- C. In the event Contractor is unable to complete the emergency, disaster, holiday, or weekend work as required, or if the City is unable to reach the Contractor, the City reserves the right to use another Contractor.
- D. Multiple failures to respond to requests for work, and/or failures to answer emergency, disaster, holiday, and weekend work calls may result in **termination of the contract**.

- 4. **Damage:** Contractor is responsible for performing the work with utmost care and by using appropriate methods to prevent any damage to any public or private property that is adjacent to the work area. In case any public or private property gets damaged or destroyed during the work, Contractor must immediately report the same to the relevant project manager. Contractor is liable for any expense incurred for repairing or restoring the damaged property and shall ensure that the repairs or restoration are acceptable to the City. Contractor must complete the repairs or restoration no later than **one (1) month** from the date the damage occurred.

5. Debris Removal (3-Man Crew):

- A. Off-road retrieval shall be discussed with the City prior to the performance of work.
- B. Site cleanup shall include raking and removing small debris.

- C. Response within **TWENTY-FOUR (24)** hours of original notification by the City of Ocala unless otherwise agreed for a specific location.
- D. Downtown debris will be removed from the area immediately.

6. **Grinding:**

- A. Grind out stumps and surrounding surface roots even with the level of the surrounding surface. The ground must be raked smooth and level. Grinding is based on the diameter measurement price per inch.
- B. Contractor shall remove grindings, roots, and any debris.
- C. Response within **THREE (3) DAYS** of the original notification.

7. **Tree Trimming:**

- A. City's horticulturist will review the proper ways of trimming Crepe Myrtle trees with the Contractor on location, at the time of service.
- B. Palm Tree trimming may include boot removal.
- C. City implements tree trimming preparation for holiday lighting in August through September.
- D. If City implements year-round tree lighting, a lift must be used when trimming. Special care must be taken to avoid damaging lights.

8. **Maintenance of Traffic (MOT)/Temporary Traffic Control (TTC):** Maintain traffic per FDOT latest edition series index within the limits of the project for the duration of the service period. Construct and maintain detours. The Contractor is responsible for the MOT/TTC on each project.

- A. Provide facilities for access to residences, businesses, etc., along the project. Furnish, install, and maintain traffic control and safety devices during the work. Furnish and install work zone pavement markings for MOT/TTC in work areas. Provide any other special requirements for safe and expeditious movement of traffic.
- B. MOT/TTC includes all facilities, devices, and operations as required for the safety and convenience of the public within the work zone. Do not maintain traffic over those portions of the project where no work is to be accomplished or where work operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work and repair any damage to existing pavement open to traffic. FDOT Design Standards are the minimum standards for the use in the development of all Traffic Control Plans (TCPs).
- C. Contractor must have one (1) person who is MOT/TTC Certified on-site when required by the work.
- D. Contractor must provide the FDOT current standard specification section index number/sheet for the maintenance set-up per work site in accordance to the latest edition of the FDOT.
- E. ***Contractor will pull all road permits for scheduled lane & road closures.***
- F. The Project Manager will advise Contractor of permit requirements at the time of performing emergency or disaster services.

PROJECT SPECIFICATIONS

All work shall be performed in accordance with:

1. FDOT Design Standards (latest edition) available at: <https://www.fdot.gov/design/standardplans>
2. ANSI Specifications for Tree Care Operations (A300) (latest edition) available at: <https://tcia.org/>

WRITTEN QUOTES

1. Contractor shall prepare written estimates in advance of the performance of work. Written quotes shall list the location name and address. Contractor and the assigned City Project Manager shall review the estimate and agree in writing prior to the work being formally assigned.
2. Estimates shall be descriptive and detail the number of crew members, estimated number of hours, and the equipment anticipated by Contractor to be utilized and needed to complete the proposed work. Contractor and the assigned City project manager shall review the estimate and agree in writing prior to the work being formally assigned.

CONTRACTOR EMPLOYEES AND EQUIPMENT

1. Contractor must utilize competent employees in performing the work. Employees performing the work must be properly certified or qualified as required by the scope.
2. Contractor shall provide an assigned Project Manager, who will be the primary point of contact. Contractor must always provide a valid telephone number and address to the City.
3. At the request of the City, Contractor must replace any incompetent, unfaithful, abusive, or disorderly person in their employment. The City and the Contractor must each be promptly notified by the other of any complaints received.
4. Contractor's employees shall always wear suitable work clothes and personal protective equipment as defined by OSHA/FDOT.
5. Contractor will operate as an independent Contractor and not as an agent, representative, partner, or employee of the City of Ocala, and shall control their operations at the worksite, and be solely responsible for the acts or omissions of their employees.
6. Communication is required between the Contractor and each department representative.
7. During the execution of work for the City, the Contractor's employees must wear a company shirt or name badge with the company name, and all vehicles must bear the company name.

EQUIPMENT REQUIREMENTS

Contractor must own or have access to the required equipment listed below.

- i. Bucket Truck
- ii. Loader equipment transport
 - iii. Stump grinder
 - iv. Mulcher (AKA "Chipper")

CITY OF OCALA RESPONSIBILITIES

1. City of Ocala will furnish the following services/data to Contractor for the performance of services:
 - A. Access to City buildings and facilities to perform the work.
 - B. Provide access to drawings, specifications, schedules, reports, and other information prepared by/for City of Ocala pertinent to the Contractor's responsibilities.
 - C. Provide office facilities for Contractor, if needed.
2. City reserves the right to purchase any materials for Contractor to use. Contractor shall not charge a mark-up fee for material furnished by the City.

CONTRACTOR RESPONSIBILITIES

1. Contractor shall complete all work performed under this solicitation in accordance with policies and procedures of the City of Ocala and all applicable State, Federal, and local laws, policies, procedures, and guidelines.
2. All work shall conform to all existing governing authorities' codes and regulations.
3. Contractor shall obtain and pay for any additional equipment, dumping and/or disposal fees, etc., required to fulfill this contract. All disposal and dumping must be conducted in a legal manner.
4. If Contractor is advised to leave a property by the property owner or their representative, Contractor shall leave at once without altercation. Contractor shall then contact the City Project Manager immediately and advise of the reason for not completing the assigned project.
5. **Photo Submission:** After completion of each request, Contractor shall take a cellphone photo of the worksite(s) using the Solocator or Timestamp cell phone app and e-mail the photo to the City Project manager. Contractor can visit the following links for additional details regarding the Solocator or Timestamp apps: www.solocator.com or www.timestampcamera.com.
6. **Contractor is required to take a cellphone picture of the tree's diameter before work commences using an app similar to Solocator / Timestamp and text to the City's project manager. Failure to do this may result in reduced payment.**

SAFETY

1. Contractor shall be fully responsible for the provision of adequate and proper safety precautions meeting all OSHA, local, state, and national codes concerning safety provisions for their employees, subcontractors, all building and site occupants, staff, public, and all persons in or around the work area.
2. In no event shall City be responsible for any damages to any of the Contractor's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.
3. Immediately clean up and remove all debris after any work performed in the **Downtown Area**. Safety areas and site clean-up must also be completed after any tree work is performed.

Exhibit B - PRICE PROPOSAL**CONTRACT# PWD/240344B****Flyway Access, LLC DBA Conrad Tree Services****INITIAL CONTRACT TERM PRICING**

ITEM	DESCRIPTION	UOM	UNIT COST
FLAT RATE: Oak Tree - Cut down and remove debris. Area shall be raked and cleaned.			
1	0" to 12" Diameter	Per Tree	\$ 300.00
2	12" to 24" Diameter	Per Tree	\$ 987.00
3	24" to 36" Diameter	Per Tree	\$ 2,121.00
4	36" to 48" Diameter	Per Tree	\$ 2,437.00
5	48" + Diameter	Per Tree	\$ 3,105.00
FLAT RATE: Pine Tree - Cut down and remove debris. Area shall be raked and cleaned.			
6	0" to 12" Diameter	Per Tree	\$ 200.00
7	12" to 24" Diameter	Per Tree	\$ 783.00
8	24" to 36" Diameter	Per Tree	\$ 1,704.00
9	36" to 48" Diameter	Per Tree	\$ 1,784.00
10	48" + Diameter	Per Tree	\$ 2,137.00
FLAT RATE: Other Trees - Cut down and remove debris. Area shall be raked and cleaned.			
11	0" to 12" Diameter	Per Tree	\$ 625.00
12	12" to 24" Diameter	Per Tree	\$ 927.00
13	24" to 36" Diameter	Per Tree	\$ 1,765.00
14	36" to 48" Diameter	Per Tree	\$ 2,103.00
15	48" + Diameter	Per Tree	\$ 2,206.00
Miscellaneous			
16	Tree Trimming/Pruning (including debris removal) 3-man crew.	Per Hour	\$ 300.00
17	Emergency/Disaster / Holidays / Weekends Work 3-man crew	Per Hour	\$ 300.00
18	Debris removal - including site cleanup 3-man crew	Per Hour	\$ 150.00
19	Grind stumps & roots remove chips, by diameter. Area shall be clean and level when finished.	Per Inch	\$ 4.01
20	Cut and toss - clearing access paths from fallen storm debris when time is of the essence and/or in areas not accessible by hauling equipment or areas where hauling equipment is not allowed 3-man crew	Per Hour	\$ 400.00
21	Hauling - Full Load - 50 cubic yards for tree trimming activities, only.	Per Load	\$ 500.00
22	Hauling - Half Load - 25 cubic yards for tree trimming activities, only.	Half Load	\$ 250.00
23	Crane Service - Includes truck and crane operator	Per Hour	\$ 200.00

DRUG FREE WORKPLACE REQUIREMENTS

1. Drug free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D).
2. Contractor entering Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements in accordance with the Drug Free Workplace Act of 1988.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. Contractor will ensure that conduct and communication at the DMS and with all personnel will not be discriminatory, inappropriate or offensive and the City shall have the right to request replacement personnel when violations of this policy occur.
2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by

rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Successful Proposer may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

1. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the contract, and for disbarment as a Contractor and subcontractor as provided in 29 CFR § 5.12.13.5.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)

1. Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
2. Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.
3. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. Compliance with the Contract Work Hours and Safety Standards Act:
 - **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or

a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- **Withholding for unpaid wages and liquidated damages.** The City of Ocala shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

CLEAN AIR ACT AND THE FEDERAL POLLUTION CONTROL ACT

1. Clean Air Act

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The Contractor agrees to report each violation to the City and Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Regional Office of the Environmental Protection Agency.
- The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

2. Federal Water Pollution Control Act

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- The Contractor agrees to report each violation to the City and Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Regional Office of the Environmental Protection Agency.
- The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SUSPENSION AND DEBARMENT

1. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR §180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the State of Florida and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C throughout the period of the contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
5. Consultant certifies it is not so listed as excluded or disqualified from contracting and shall confirm same for every subcontractor receiving any payment in whole or in part from federal funds.

ACCESS TO RECORDS

The following access to records requirements applies to this contract:

1. Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

DHS SEAL, LOGO AND FLAGS

Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance may be used to fund the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CONFLICT OF INTEREST

Contractor must disclose in writing any potential conflict of interest to the City or pass-through entity in accordance with applicable Federal policy.

MANDATORY DISCLOSURES

Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

UTILIZATION OF MINORITY AND WOMEN FIRMS (M/WBE)

1. Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
2. Contractor shall document efforts to utilize M/WBE firms including what firms were solicited as suppliers and/or subcontractors as applicable and submit this information to the City for all emergency services provided under this Agreement.

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended):

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352.
2. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
3. Contractor's certification of compliance with certification requirements under 10 CFR Part 601 New Restrictions on Lobbying is attached and incorporated by reference into and made part of the Agreement.

BID TABULATION & NOTICE OF INTENT TO AWARD



ProRfx ID: ITB02122400000022
 Notifications Sent: 159
 Bids: 3

Buyer: Brittany Craven
 Buyer Phone: 352-629-8544
 Email: bcraven@ocalafl.gov

03/08/2024 - Notice of Intent to Award to Marion Tree Trimming & Stump Removal and Flyway Access, LLC DBA Conrad Tree Services pending City Council approval. **MULTI-AWARD CONTRACT**

ITB# PWD/240344 - Citywide Tree Trimming and Removal Services				Marion Tree Trimming & Stump Removal		Flyway Access, LLC DBA Conrad Tree Services		Top Notch Tree Care & Professional Services, LLC* (REJECTED)	
				Ocala, FL		Ocala, FL		Ocala, FL	
ITEM	DESCRIPTION	UOM	EST QTY	UNIT COST	EXTENDED COST	UNIT COST	EXTENDED COST	UNIT COST	EXTENDED COST
FLAT RATE: Oak Tree - Cut down and remove debris. Area shall be raked and cleaned.									
1	0" to 12" Diameter	10	Per Tree	\$ 200.00	\$ 2,000.00	\$ 300.00	\$ 3,000.00	\$ 300.00	\$ 3,000.00
2	12" to 24" Diameter	10	Per Tree	\$ 1,000.00	\$ 10,000.00	\$ 987.00	\$ 9,870.00	\$ 1,000.00	\$ 10,000.00
3	24" to 36" Diameter	10	Per Tree	\$ 2,200.00	\$ 22,000.00	\$ 2,121.00	\$ 21,210.00	\$ 1,500.00	\$ 15,000.00
4	36" to 48" Diameter	10	Per Tree	\$ 2,600.00	\$ 26,000.00	\$ 2,437.00	\$ 24,370.00	\$ 1,800.00	\$ 18,000.00
5	48" + Diameter	10	Per Tree	\$ 2,950.00	\$ 29,500.00	\$ 3,105.00	\$ 31,050.00	\$ 2,000.00	\$ 20,000.00
FLAT RATE: Pine Tree - Cut down and remove debris. Area shall be raked and cleaned.									
6	0" to 12" Diameter	10	Per Tree	\$ 175.00	\$ 1,750.00	\$ 200.00	\$ 2,000.00	\$ 320.00	\$ 3,200.00
7	12" to 24" Diameter	10	Per Tree	\$ 700.00	\$ 7,000.00	\$ 783.00	\$ 7,830.00	\$ 520.00	\$ 5,200.00
8	24" to 36" Diameter	10	Per Tree	\$ 1,500.00	\$ 15,000.00	\$ 1,704.00	\$ 17,040.00	\$ 699.00	\$ 6,990.00
9	36" to 48" Diameter	10	Per Tree	\$ 1,800.00	\$ 18,000.00	\$ 1,784.00	\$ 17,840.00	\$ 700.00	\$ 7,000.00
10	48" + Diameter	10	Per Tree	\$ 2,200.00	\$ 22,000.00	\$ 2,137.00	\$ 21,370.00	\$ 250.00	\$ 2,500.00
FLAT RATE: Other Trees - Cut down and remove debris. Area shall be raked and cleaned.									
11	0" to 12" Diameter	10	Per Tree	\$ 500.00	\$ 5,000.00	\$ 625.00	\$ 6,250.00	\$ 475.00	\$ 4,750.00
12	12" to 24" Diameter	10	Per Tree	\$ 1,000.00	\$ 10,000.00	\$ 927.00	\$ 9,270.00	\$ 700.00	\$ 7,000.00
13	24" to 36" Diameter	10	Per Tree	\$ 1,800.00	\$ 18,000.00	\$ 1,765.00	\$ 17,650.00	\$ 1,000.00	\$ 10,000.00
14	36" to 48" Diameter	10	Per Tree	\$ 1,900.00	\$ 19,000.00	\$ 2,103.00	\$ 21,030.00	\$ 1,500.00	\$ 15,000.00
15	48" + Diameter	10	Per Tree	\$ 2,000.00	\$ 20,000.00	\$ 2,206.00	\$ 22,060.00	\$ 1,000.00	\$ 10,000.00
LINE-ITEM FLAT RATE TOTAL				\$ 225,250.00		\$ 231,840.00		\$ 137,640.00	
Miscellaneous									
16	Tree Trimming/Pruning (including debris removal) 3-man crew.	Per Hour		\$ 300.00	\$ 300.00	\$ 300.00	\$ 300.00	\$ 275.00	\$ 275.00
17	Emergency/Disaster / Holidays / Weekends Work 3-man crew	Per Hour		\$ 250.00	\$ 250.00	\$ 300.00	\$ 300.00	\$ 600.00	\$ 600.00
18	Debris removal - including site cleanup 3-man crew	Per Hour		\$ 125.00	\$ 125.00	\$ 150.00	\$ 150.00	\$ 50.00	\$ 50.00
19	Grind stumps & roots remove chips, by diameter. Area is to be clean and level when finished.	Per Inch		\$ 3.50	\$ 3.50	\$ 4.01	\$ 4.01	\$ 3.50	\$ 3.50
20	Cut and toss - clearing access paths from fallen storm debris when time is of the essence and/or in areas not accessible by hauling equipment or areas where hauling equipment is not allowed 3-man crew	Per Hour		\$ 300.00	\$ 300.00	\$ 400.00	\$ 400.00	\$ 200.00	\$ 200.00
21	Hauling - Full Load - 50 cubic yards for tree trimming activities, only.	Per Load		\$ 600.00	\$ 600.00	\$ 500.00	\$ 500.00	\$ 400.00	\$ 400.00
22	Hauling - Half Load - 25 cubic yards for tree trimming activities, only.	Half Load		\$ 225.00	\$ 225.00	\$ 250.00	\$ 250.00	\$ 250.00	\$ 250.00
23	Crane Service - Includes truck and crane operator	Per Hour		\$ 250.00	\$ 250.00	\$ 200.00	\$ 200.00	\$ 120.00	\$ 120.00
MISC. LINE-ITEM TOTAL					\$ 2,053.50		\$ 2,104.01		\$ 1,898.50
TOTAL BID AMOUNT (Line items 1-23)					\$ 227,303.50		\$ 233,944.01		\$ 139,538.50

*Bid rejected as non-responsive. Bidder did not attend the mandatory pre-bid meeting as required per the Solicitation Documents.