

## AGREEMENT FOR SUPPLY AND DELIVERY OF HERBICIDES, PESTICIDES, AND FERTILIZER SERVICES AS-NEEDED

THIS AGREEMENT FOR SUPPLY AND DELIVERY OF HERBICIDES, PESTICIDES, AND FERTILIZER SERVICES AS-NEEDED ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **HOWARD FERTILIZER & CHEMICALS, LLC** a limited liability company duly organized and authorized to do business in the state of Florida (EIN: 88-4107785) ("Vendor").

**WHEREAS**, on October 24, 2023, City issued an Invitation to Bid for the provision of supply and delivery of herbicides, pesticides, and fertilizer services on an as-needed basis, ITB No.: REC/230802 (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 Howard Fertilizer & Chemicals, LLC was the second-lowest;

**WHEREAS**, Vendor was chosen as an intended awardee to provide supply and delivery of herbicides, pesticides, and fertilizer services on an as-needed basis (the "Project"); and

**WHEREAS**, Vendor certifies that Vendor 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 Vendor agree as follows:

1. **RECITALS.** City and Vendor 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 Vendor 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)
    - Exhibit B: Price Proposal (B-1 through B-2)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.
3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment necessary for Vendor 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 Vendor an amount no greater than **EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000)** (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. **Escalation.** Requests for price increases must be submitted no less than **NINETY (90) DAYS** prior to the end of the initial or renewal term along with justification and/or supporting documentation. Any approved price increase shall be based on the CPI-U and subject to a maximum negotiated increase of no more than **THREE PERCENT (3%)** annually unless there are mitigating market conditions.
  - B. **Invoice Submission.** All invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor will invoice at least once a month. The City shall provide Vendor with a cover sheet, which must be filled out correctly and submitted with each invoice. Vendor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Department of Recreation and Parks** Attn: **William Rodriguez-Cayro** Address: **1307 NW 4<sup>th</sup> Avenue, Ocala, FL 34474**, E-Mail: [Wcayro@ocalafl.gov](mailto:Wcayro@ocalafl.gov).
  - 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 Vendor; (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 Vendor within **THIRTY (30)** calendar days of the Vendor's remedy or resolution of the inadequacy or defect.
  - E. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor'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.** Vendor must be current and remain current in all obligations due to the City during the performance of services under this Agreement. Payments to Vendor 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. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor 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 **MARCH 20, 2024** and continue in effect for a term of **THREE (3) YEARS**, through and including **MARCH 19, 2027** (the "Term"). This Agreement may be renewed for **ONE (1)** optional **TWO (2) YEAR** period by written consent between City and Vendor.

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. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor 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.** Vendor shall report its progress to the City Project Manager as set forth herein. All services, work, and materials provided by Vendor 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 Vendor 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 Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Vendor'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 Vendor 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 Vendor written notice of termination in the manner specified

for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

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

B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor 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 Vendor 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 Vendor Default.** In the event that Vendor 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 Vendor to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
- (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; 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 Vendor 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, Vendor 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. Vendor 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 Vendor as permitted under this Agreement and approved by City.

10. **DELAYS AND DAMAGES.** The Vendor 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 Vendor 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 Vendor's performance. Any such evaluation will become public record.
12. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Vendor 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. **VENDOR REPRESENTATIONS.** Vendor expressly represents that:
  - A. Vendor 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 Vendor under this Agreement.
  - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
  - C. Vendor 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 Vendor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors, or executives, nor any of its affiliates, Vendors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Vendor 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..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor 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 Vendor, 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 vendor list.
14. **VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:

- A. Vendor 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. Vendor shall be solely responsible for the means, methods, techniques, sequences, or procedures and safety precautions or programs incident thereto.
  - C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
  - D. Vendor 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. Vendor 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 Vendor 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 Vendor 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 Vendor. 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.** Vendor 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 Vendor's operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If Vendor does not own vehicles, Vendor shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Vendor's Commercial General Liability policy or separate Commercial Automobile Liability policy.
18. **GENERAL LIABILITY INSURANCE.** Vendor 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 Vendor. 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.** Vendor 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. Vendor shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Vendor shall waive and shall ensure that Vendor's insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Vendor'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. Vendor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Vendor shall not be interpreted as limiting Vendor'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 Vendor's interests or liabilities or to protect Vendor from claims that may arise out of or result from the negligent acts, errors, or omissions of Vendor, any of its agents or subcontractors, or for anyone whose negligent act(s) Vendor may be liable.
- B. No insurance shall be provided by the City for Vendor under this Agreement and Vendor 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 Vendor under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Vendor 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. **Vendor 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](mailto:vendors@ocalafl.org).** Vendor'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. Vendor'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 Vendor's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Vendor 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](mailto: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 Vendor. Vendor'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. Vendor 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**. Vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Vendor 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. Vendor 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 in the course of construction.
- All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Vendor, 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 Vendor. Vendor'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 Vendor 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 Vendor or any other persons or organizations having a direct contract with Vendor, 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 Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, 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, Vendor, 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. Vendor 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. Vendor'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.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor 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 Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor 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 Vendor in its performance of its obligations under this Agreement.
26. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor 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 Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor 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.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor 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 Vendor 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 Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor 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 VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'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.org](mailto:clerk@ocalafl.org); City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

30. **AUDIT.** Vendor 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.** Vendor 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.** In accordance with Executive Order 11-116, Vendor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Vendor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.

33. **CONFLICT OF INTEREST.** Vendor 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. Vendor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor'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.** Vendor 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 Vendor, 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 Vendor:

Howard Fertilizer & Chemicals, LLC  
 Attention: Gary James  
 8306 S. Orange Avenue  
 Orlando, Florida 32809  
 Phone: 407-855-1841  
 E-mail: [csrdept@howardfert.com](mailto:csrdept@howardfert.com)

If to City of Ocala:

Daphne M. Robinson, Esq., Contracting Officer  
City of Ocala  
110 SE Watula Avenue, 3<sup>rd</sup> Floor  
Ocala, Florida 34471  
Phone: 352-629-8343  
E-mail: [notices@ocalafl.gov](mailto:notices@ocalafl.gov)

Copy to:

William E. Sexton, Esq., City Attorney  
City of Ocala  
110 SE Watula Avenue, 3<sup>rd</sup> Floor  
Ocala, Florida 34471  
Phone: 352-401-3972  
E-mail: [cityattorney@ocalafl.gov](mailto:cityattorney@ocalafl.gov)

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.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor 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).** Vendor, 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.



**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:**

**HOWARD FERTILIZER & CHEMICALS, LLC**

\_\_\_\_\_  
William E. Sexton, Esq.  
City Attorney

\_\_\_\_\_  
By: \_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_  
(Title of Authorized Signatory)



**BACKGROUND**

Vendor shall provide herbicide, pesticide, fertilizer and irrigation goods supporting the Recreation & Parks Department for the operation of turf maintenance on an ongoing and as-needed basis. The various products are listed in **Exhibit B- Price Proposal**.

**DELIVERY**

1. Supplies shall be delivered or shipped to Parks Operation Center, 1307 NW 4<sup>th</sup> Ave, Ocala, FL 34475
2. Scheduling of all deliveries shall be coordinated with the City Project Manager, William Rodriguez-Cayro, 1307 NW 4<sup>th</sup> Avenue, Ocala, Florida 34474, [wcayro@ocalafl.gov](mailto:wcayro@ocalafl.gov).
3. The majority of items will be picked up by City staff on the same day as needed in the field.

## Exhibit B - Price Proposal



### Howard Fertilizer & Chemical, LLC

**ITB# REC/230802** - Supply & Delivery of Herbicides, Pesticides & Fertilizer

ITEM	DESCRIPTION	UOM	UNIT COST
1	Merit (Insecticides)	gal.	\$ 62.78
3	Bifen(Insecticides)	gal.	\$ 42.25
5	Tal-star(Insecticides)	gal.	\$ 61.74
7	Cxross Check (Insecticides)	gal.	\$ 42.25
8	Triple Crown (Insecticides)	gal.	\$ 338.00
9	Termidor (Insecticides)	oz.	\$ 4.07
10	Dismiss (Weed Control)	oz.	\$ 10.40
11	Sulfentrazone 4Sc (Weed Control)	oz.	\$ 3.39
12	Msm (Weed Control)	oz.	\$ 4.80
13	Manor (Weed Control)	oz.	\$ 4.80
14	Celsius (Weed Control)	10 oz.	\$ 128.40
15	Triplet (Weed Control)	gal.	\$ 26.42
16	Metricor DF (Weed Control)	lbs.	\$ 27.38
17	Diquat (Weed Control)	gal.	\$ 78.67
18	Ranger pro (Weed Control)	gal.	\$ 16.97
19	Basagran T&O (Weed Control)	gal.	\$ 62.79
20	Sedge Hammer (Weed Control)	oz.	\$ 54.18
21	Certainty (Weed Control)	oz.	\$ 97.85
23	Heritage (Fungicide)	lbs.	\$ 367.00
24	Eagle 20 Ew (Fungicide)	gal.	\$ 173.46
25	Daconil (Fungicide)	gal.	\$ 84.00
26	T-mythl (Fungicide)	gal.	\$ 50.94
27	Segway (Fungicide)	oz.	\$ 11.28

## Exhibit B - Price Proposal



### Howard Fertilizer & Chemical, LLC

**ITB# REC/230802 - Supply & Delivery of Herbicides, Pesticides & Fertilizer**

ITEM	DESCRIPTION	UOM	UNIT COST
28	ALL Fertilizer (No specific Brand)	lbs.	\$ 0.40
29	Advion	lbs.	\$ 12.28
30	Tryclopyr	gal.	\$ 125.00
32	Prodiamine	gal.	\$ 72.00

### Additional Line Items

2	Arena(Insecticides)	lb.	\$ 69.00
4	Wisdom(Insecticides)	gal.	\$ 24.28
6	Gold-Star(Insecticides)	gal.	\$ 42.25
22	Azoxy 2Sc (Fungicide)	lbs.	533.33/gal
31	Triad Select	gal.	\$ -