

AUTHORITY: Act 431 of 1984  
 COMPLETION: Required

**STATE OF MICHIGAN**  
 DEPARTMENT OF NATURAL RESOURCES  
 PROCUREMENT SERVICES

525 W. Allegan St.  
 Lansing, MI 48933

PO Box 30028  
 Lansing, MI 48909

**NOTICE OF CONTRACT NO. 751B6600014**

between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
R.F.C. Inc. dba U.S. Lawns of Livonia 15040 Dumay Southgate, MI 48195	Ronald Howe	ron.howe@uslawns.net
	TELEPHONE	VENDOR ID#
	734-285-3444 (office) 734-818-0009 (cell)	2XXXXX6448

STATE CONTACT	DNR DIVISION	NAME	TELEPHONE	EMAIL
Program Manager	Parks & Recreation Division	Karis Floyd	313-396-6876	floydk@michigan.gov
Contract Administrator	Procurement Services	Ruth Thole	517-284-5673	tholer@michigan.gov

CONTRACT SUMMARY			
<b>Grounds Maintenance Services - Belle Isle Park</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
32 Months	03/01/2016	10/31/2018	Two 1-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45 Days	N/A	N/A	
MINIMUM DELIVERY REQUIREMENTS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$93,252.00			

FOR THE CONTRACTOR:

R.F.C. Inc. dba U.S. Lawns of Livonia

*Ronald Howe*  
 Authorized Agent Signature

Ronald Howe

Authorized Agent (Print or Type)

2-3-2016

Date

FOR THE STATE:

Department of Natural Resources

*Laura Gyorkos*  
 Signature

Laura Gyorkos / Purchasing Manager

Name/Title

2/5/16

Date



## STATE OF MICHIGAN

### STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and R.F.C. Inc. dba U.S. Lawns of Livonia (the “**Contractor**”), a Michigan corporation. This Contract is effective on March 1, 2016 (“**Effective Date**”), and unless terminated, expires on October 31, 2018.

This Contract may be renewed for up to two (2) additional one-year periods. Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must be clearly identifiable while on State property and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:

Ruth Thole  
Department of Natural Resources  
Procurement Services  
PO Box 30028  
Lansing, MI 48909  
[tholer@michigan.gov](mailto:tholer@michigan.gov)  
517-284-5973

If to Contractor:

Ronald Howe  
U.S. Lawns of Livonia  
15040 Dumay  
Southgate, MI 48195  
[Ron.howe@uslawns.net](mailto:Ron.howe@uslawns.net)  
734-285-3444

- 3. Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

State:  
 Ruth Thole  
 Department of Natural Resources  
 Procurement Services  
 PO Box 30028  
 Lansing, MI 48909  
[tholer@michigan.gov](mailto:tholer@michigan.gov)  
 517-284-5973

Contractor:  
 Ronald Howe  
 U.S. Lawns of Livonia  
 15040 Dumay  
 Southgate, MI 48195  
[Ron.howe@uslawns.net](mailto:Ron.howe@uslawns.net)  
 734-285-3444

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:  
 Karis Floyd  
 Department of Natural Resources  
 Belle Isle Park  
 2 Inselruhe  
 Detroit, MI 48206  
[floydk@michigan.gov](mailto:floydk@michigan.gov)  
 313-821-9844

Contractor:  
 Carol Howe  
 U.S. Lawns of Livonia  
 15040 Dumay  
 Southgate, MI 48195  
 734-818-0016

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.

<b>Employers Liability Insurance</b>	
<b>Minimal Limits:</b> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
8. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
9. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
10. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
11. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
12. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change

of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 13. Ordering.** Contractor is not authorized to begin performance until receipt of an authorizing Purchase Order.
- 14. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("State Review Period"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 17, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 15. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor shall be solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 16. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 17. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach.

Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 18, Termination for Convenience..

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

**18. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 19, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

**19. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of 90 days, provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

**20. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 21. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 22. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 23. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 24. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 25. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

  - A. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
  - B. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of

Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- C. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- D. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- E. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within five (5) calendar days from the date of termination to the other party.

**26. Records Maintenance, Inspection, Examination, and Audit.** Under MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

**27. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 17, Termination for Cause.

- 28. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 29. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 30. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 31. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 32. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 33. Non-Exclusivity.** Nothing contained in this Contract is intended nor shall be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 34. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 35. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
- 36. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 37. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

- 38. Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
- 39. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 40. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 41. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 42. Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a **“Contract Change Notice”**).

# STATE OF MICHIGAN

## Contract 751B6600014 Grounds Maintenance Services – Belle Isle Park

### EXHIBIT A - STATEMENT OF WORK CONTRACT ACTIVITIES

This is a Contract for Grounds Maintenance Services at Michigan Department of Natural Resources (DNR) Belle Isle Park located in Detroit, Michigan. This exhibit identifies the requirements of the Contract.

#### 1. Contract Activities

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary to perform grounds maintenance services.

##### A. Service Area:

Services are defined in four areas (See Exhibit C – Map for location of each area):

- 1) Area A – seven (7) acres; services performed on a Bi-Weekly basis during the period July 1 through October 31; estimated 9 service occurrences per year.
- 2) Area B – nine (9) acres; services performed on a Bi-Weekly basis during the period April 1 through October 31; estimated 15 service occurrences per year.
- 3) Area C – 16 acres; services performed on a Bi-Weekly basis during the period April 1 through October 31; estimated 15 service occurrences per year.
- 4) Area D – 36 acres; services performed on a Bi-Weekly basis during the period April 1 through October 31; estimated 15 service occurrences per year.

##### B. Clean up Specifications.

- 1) DNR is responsible for clearing all tree and brush debris from mowing areas and removing low hanging branches that may pose a safety hazard to the general public. Contractor will not be responsible for removing any tree/brush debris but is responsible for moving any stray branch to avoid mowing over it.
- 2) DNR is responsible for daily litter cleanup, including cleanup following Park events. Contractor's responsibility is only to pick up the stray litter items that are in mower/trimmer path to avoid running equipment over litter. Before/during mowing, Contractor shall pick up and properly dispose of all litter, debris, etc. in areas to be mowed. No litter or debris shall be driven over by any cutting device.
- 3) Contractor should advise the DNR Program Manager of any areas with conditions that impede trimming or mowing. DNR and Contractor will develop a system to mark areas (place flags or other method) needing DNR attention.

##### C. Mowing Specifications.

- 1) Grass shall be mown to a height of three inches (3").
- 2) Areas with naturalized daffodil bulb plantings shall not be mown until after flowers have bloomed and plants have had enough growing time to rejuvenate bulbs. Contractor will be provided a list/map of planted locations.
- 3) Mowing equipment must not create ruts or cause any type of damage to grounds.
- 4) Mowing equipment shall be kept at a distance from and not cause damage to trees, fences, and fence/sign posts. Considerable damage to trees and wooden posts has been caused by mowing equipment and due diligence must be taken to avoid exacerbating the existing damage. (See Liquidated Damages, Section 10.)
- 5) Mowing shall be done so as to blow grass clippings away from the public and all structures and vehicles. Vehicles are not to be sprayed with grass clippings, dirt, stones or other debris.
  - a) Contractor shall be responsible for repair, replacement or cleanup of damages incurred to State managed property or private owned property as a result of carelessness of the Contractor while performing Contract Activities.

- 6) Grass clippings shall be blown or swept from all walkways, parking areas, and driving areas after mowing.
- 1) Grass clippings shall be collected only as necessary. The Contractor shall comply with all regulations pertaining to yard clippings and their disposal according to State and Federal Guidelines (see Exhibit B - Excerpts from Natural Resources & Environmental Protection Act 451 of 1994).

#### D. Trimming Specifications

- 1) Trimming shall be performed with string type trimmers or hand shears around structures, trees, curbs, fences, posts, walks, drives, etc.
- 2) Grass and weeds around trees and fence/sign posts shall be trimmed by a means not damaging to the trees' bark or to the posts. Considerable damage to trees and wooden posts has been caused by string trimmers and due diligence must be taken to avoid exacerbating the existing damage. Use of plastic shields is recommended with string type trimmers. (See Liquidated Damages, Section 10.)
- 3) New growth of vines, trees, etc. shall be trimmed a minimum of two (2) feet around fencing, guard rails, etc.
- 4) Grass and weeds shall be trimmed a minimum of six (6) feet from edges of drives, ramps, parking lots and walkways, including around rocks.
- 5) Grass clippings, dirt and debris must be blown or swept from all walkways, parking areas and driving areas after trimming. Vehicles are not to be sprayed with grass clippings, dirt, stones or other debris.
  - a) Contractor shall be responsible for repair, replacement or cleanup of damages incurred to State managed property or private owned property as a result of carelessness of the Contractor while performing Contract Activities

#### E. "On-call" additional services

Optimal weather conditions or special events may warrant services to be performed more frequently than the bi-weekly schedule specified. If the DNR Program Manager determines additional mowing/trimming services are necessary, the Contractor will be contacted with the request for service. Services must be provided by the Contractor within 24 hours following contact by the DNR Program Manager or designee.

#### F. Work Schedule

- 1) Services shall be typically performed on a bi-weekly basis (every two weeks). Services for Areas B, C, and D will commence as directed by the DNR Program Manager, when conditions warrant services to begin – approximately April 1 each year. Services for Area A will commence following the Detroit Belle Isle Grand Prix road race, approximately July 1, each year. All services will end approximately October 31 each year.
- 2) During inclement weather, services may be skipped or rescheduled at the discretion of the DNR Program Manager. The DNR Program Manager or designee shall notify the Contractor by phone if regular service is not needed or should be rescheduled. The schedule adjustment following a skipped service must be mutually agreed upon by the DNR Program Manager and the Contractor.
- 3) Contractor will be provided a schedule of Park events occurring during the week. DNR Program Manager and Contractor will coordinate services to work around Park events taking place during the service period. **Contract Activities must not impede or disrupt Park events.**

#### G. Work Hours

The Contractor may provide Contract Activities on regular work days, Monday through Friday, between the hours of 8:00 a.m. and 10:00 p.m. Eastern Time. The Contractor may NOT work on weekends due to high visitor use at the Park.

## 2. Equipment Requirements:

The Contractor is responsible for supplying all equipment needed to complete Contract Activities, including ground maintenance equipment, safety equipment, fuel, and transportation.

- A. A variety of suitable equipment – mowers, power blowers, line trimmers, hand tools, etc. – must be provided in sufficient numbers to adequately perform the Contract Activities in an approved safe, competent manner.

- B. In the event of mechanical breakdown, the Contractor will be expected to provide backup equipment so that Contract Activities are performed as specified. Equipment failure WILL NOT constitute an acceptable reason for failure to provide services.
- C. The Contractor must use care and caution at all times while performing grounds maintenance services on State property, especially when operating equipment near parked vehicles and pedestrians. Contractor is financially responsible for damage to State and private property and personal bodily injury caused by negligence, unsafe work practices, operator error, or misuse of equipment.
- D. Under no circumstances shall the DNR be responsible for any damage to the Contractor's equipment due to obstacles encountered on State property.
- E. The Contractor has the option to utilize the fenced area behind the Park Administration Building (the White House) for storage and staging of equipment and employee parking; no storage building is available. There will be no charge to the Contractor for use of this area. If the Contractor chooses to use the area, Contractor must provide a lock for the gate (doubled locked with the State's lock so that both Contractor and State have access). The Contractor will be allowed to bring in a storage container and self-contained fuel tank.

### **3. Contractor Personnel Requirements:**

- A. Carol Howe is designated the Contractor's Program Manager who will be directly responsible for the day-to-day operations of the Contract. The Contractor's Program Manager must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24 hours.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of the Contractor's Program Manager. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

The Contractor's Program Manager will not be removed from the assigned role on this Contract without the prior written consent of the State. Removal of the Contractor's Program Manager without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing the Program Manager for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Program Manager's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

- B. The Contractor must have staff to adequately perform the Contract Activities. Four (4) trained personnel will be dedicated to Contract Activities during each service occurrence.
- C. Contractor's personnel must be appropriately attired and must wear proper protective equipment while performing Contract Activities. Contractor's personnel must be clearly identifiable while on State managed property.

### **4. Disclosure of Subcontractors:**

The Contractor will not utilize subcontractor(s) for the performance of this Contract.

### **5. Project Management:**

The Contractor will carry out this project under the direction and control of the DNR Program Manager.

The DNR Program Manager will be in continual contact with the Contractor's Program Manager to advise of park events/activities which may impact services or advise of adjustments to service schedules.

Work must be performed in a timely, professional manner with no disruption to park events and little or no disruption to visitor activities. Under optimum conditions, the Contractor shall complete work in approximately 1.2 hours in Area A (7 acres); approximately 1.5 hours in Area B (9 acres); approximately 2.0 hours in Area C (16 acres); and approximately 4.5 hours in Area D (36 acres).

## **6. Reporting Requirements:**

Following completion of each service occurrence – either bi-weekly service or “on-call” service – the Contractor shall meet with the DNR Program Manager, or designee, and provide a log/map indicating the areas where services were performed. The Contractor and DNR Program Manager, or designee, will review the log/map and verify services were performed as logged/mapped. In the event services are not completed as specified, service charges must be pro-rated to reflect the deficiency. The log/map must be signed by the DNR Program Manager, or designee, indicating acceptance.

## **7. Pricing:**

### **A. Price Term**

Pricing is firm for the length of the initial term of the Contract ending October 31, 2018.

### **B. Price Changes**

Following the expiration of the initial term of the Contract, price changes will be considered if renewal or extension options are requested by the DNR.

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

## **8. Ordering:**

A Purchase Order is the appropriate authorizing document for ordering and payment of Contract Activities. The State will issue a blanket Purchase Order(s) each year to authorize Contract activities during the current fiscal year.

## **9. Invoices and Payment**

- A. All invoices shall reflect actual work done; services must not be invoiced in advance of actual performance. Invoice amount must be pro-rated if Services are not completed during the bi-weekly period.
- B. All invoices submitted to the State must include: (a) invoice date; (b) purchase order number; (c) quantity invoiced; (d) description of the Contract Activities; (e) date Contract Activities were performed; (f) unit price; and (g) total price.
- C. The State will only disburse payments for Contract Activities through Electronic Funds Transfer (EFT).
- D. Payment terms are Net 45 Days.

## **10. Liquidated Damages**

DNR will be planting landscape trees and replacing wooden posts, benches. If in the performance of Contract Activities newly planted trees or new posts are damaged, Contractor may be charged liquidated damages. It may be impracticable to fix the actual loss and damage sustained by the State; therefore, liquidated damages may be charged as follows:

- Tree – actual cost of 4' sapling of like or similar species.
- Post – actual cost of post of like material and dimensions.

# STATE OF MICHIGAN

## Contract 751B6600014 Grounds Maintenance Services – Belle Isle Park

### EXHIBIT B - EXCERPTS FROM NATURAL RESOURCES & ENVIRONMENTAL PROTECTION ACT 451 OF 1994

#### **324.11521 YARD CLIPPINGS.**

Sec 11521. (1) If the owner or operator of a landfill or a municipal solid waste incinerator knows or should know that solid waste to be disposed of includes yard clippings that are generated or collected, or both, on land that is owned by a county, municipality, or a state facility, the owner or operator of the landfill or municipal solid waste incinerator shall not accept the solid waste for disposal.

(2) Beginning on March 28, 1995, if the owner or operator of a landfill or a municipal solid waste incinerator knows or should know that solid waste to be disposed of includes yard clippings from any source, the owner or operator of the landfill or municipal solid waste incinerator shall not accept the solid waste for disposal.

(3) This section does not apply to yard clippings that are diseased or infested.

#### **324.11522 OPEN BURNING OF GRASS CLIPPING OR LEAVES.**

Sec. 11522. (1) Beginning on March 28, 1995, the open burning of grass clippings or leaves, or both, is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance, which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) This section does not allow a county or municipality to permit open burning of grass clippings or leaves, or both, by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

# STATE OF MICHIGAN

## Contract 751B6600014 Grounds Maintenance Services – Belle Isle Park

### EXHIBIT C - MAP OF SERVICE AREAS



#### Section A

Service is bi-weekly, beginning July 1, 2016 and ending October 31, 2016. This area is 7 acres and has an estimated 9 service occurrences.

#### Section B

Service is bi-weekly, beginning approximately April 1 and ending October 31. There are 9 acres and has an estimated 15 service occurrences

#### Section C

Service is bi-weekly, beginning approximately April 1 and ending October 31. There are 16 acres and has an estimated 15 service occurrences

#### Section D

Service is bi-weekly, beginning approximately April 1 and ending October 31. There are 36 acres and has an estimated 15 service occurrences

# STATE OF MICHIGAN

## Contract 751B6600014 Grounds Maintenance Services – Belle Isle Park

### EXHIBIT D - PRICING

Item No.	Unit	Description	Price per Occurrence
1	EA	Area A; approx. 7 acres Bi-Weekly Service; mow, trim and cleanup. Approx. July 1 to October 31 Estimated 9 service occurrences per year	\$ <u>185.00</u>
2	EA	Areas B, C and D; approx. 61 acres Bi-Weekly Service, mow, trim and cleanup. Approx. April 1 to October 31 Estimated 15 service occurrences per year	\$ <u>1,614.00</u>
3	EA	Area A; approx. 7 acres Additional “on-call” or event services	\$ <u>185.00</u>
4	EA	Area B; approx. 9 acres Additional “on-call” or event services	\$ <u>238.00</u>
5	EA	Area C; approx. 16 acres Additional “on-call” or event services	\$ <u>423.00</u>
6	EA	Area D; approx. 36 acres Additional “on-call” or event services	\$ <u>952.00</u>