



City of
Panama City Beach

PCB City Hall

17007 PCB Parkway
PCB, FL. 32413
P: (850) 233-5100
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Date: February 1, 2022
To: Drew Whitman, City Manager *OK
Drew*
From: Karen Ellis, Finance Director
Subject: Amendment to Turf Chemicals & Application Services Agreement

On January 13, 2022 Council approved a resolution and agreement to Southeastern Turf Grass Supply for turf chemicals. Subsequently, the vendor requested removal of the Pollution Liability Insurance terms to the agreement due to cost constraints and after further review by Lori Philput as to the size of the project, she felt it was in the City's best interest to make this accommodation. Attached is the original agreement submitted to Council, a red-line version to track the changes made, and a copy of the final version that can be forwarded on to the awarded vendor if approved.

Mayor
Mark Sheldon

Vice Mayor
Geoff McConnell

Ward 1
Paul Casto

Ward 2
Phil Chester

Ward 4
Michael Jarman

City Manager
Drew Whitman

RESOLUTION NO. 22-73

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH SOUTHEASTERN TURF GRASS SUPPLY, INC. FOR THE PURCHASE AND APPLICATION OF TURF CHEMICALS FOR THE PARKS AND RECREATION DEPARTMENT IN THE TOTAL AMOUNT OF \$97,619.60.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Southeastern Turf Grass Supply, Inc., relating to the purchase and application of turf chemicals for the Parks and Recreation Department, in the total amount of Ninety Seven Thousand, Six Hundred Nineteen Dollars and Sixty Cents (\$97,619.60), in substantially the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13th day of January, 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**TURF CHEMICALS AND APPLICATION SERVICES
AGREEMENT**

THIS SERVICES AGREEMENT is made and entered into this 2nd day of February, 2021, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and Southeastern Turf Grass Supply (Contractor).

PREMISES

1. SCOPE OF SERVICES

Contractor will provide select Turf Chemical Application Services for 72 acres of parkland and sports fields, as more particularly described in the Scope of Work and as specially defined on the bid form submitted from the Contractor.

2. COMPENSATION

As compensation for the goods and/or services contemplated herein and performance rendered by Contractor of its duties and obligations hereunder, City shall pay Contractor according to the not to exceed unit prices submitted on PCB22-18 ITB Turf Chemicals and Application Services.

3. PAYMENT

The "closure date" for work to be invoiced for payment shall be the 30th of each applicable calendar month in which services and/or product is provided, except February where it shall be the 28th. The Contractor shall submit an itemized invoice by product and/or service type to the City for the amount of work satisfactorily completed as of the closure date. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413 no later than three days after the closure date of each applicable calendar month.

4. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 5, and subject to the availability of funds appropriated for this purpose, this Agreement shall be for one (1) year with two (2), one-year optional renewal for a total of three (3) years upon mutual written agreement of both parties.

TERMINATION OF CONTRACT

- A. City Termination for Cause. The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Bidder's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work, (9) arrest or

conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Vendor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgment and discretion, the City may afford Contractor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient.

- B. City Termination for Convenience. Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to Contractor. In such event, Contractor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become City property. Upon receipt of notice, Contractor shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor may not claim any compensation not specifically provided for herein, including, but not limited to loss of anticipated profits, idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

5. COMPLIANCE WITH LAWS.

The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor shall protect and indemnify City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during the term of the contract.

6. WARRANTY

The Bidder agrees that, unless otherwise specified, the product and/or service furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Bidder gives to any customer for comparable quantities of such products and/or services and that the right and remedies provided herein are in addition

to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

7. INSURANCE AND INDEMNIFICATION

- A. Contractor shall at its expense maintain in force during the Term the following described insurance on policies and insurers acceptable to the City. All such insurance shall name the City, its officers, employees and agents as additional insured:
- 1) Workers Compensation and Employer's Liability Insurance Coverage. Limits of coverage shall not be less than \$1,000,000 each accident; \$1,000,000 disease each employee; and \$1,000,000 disease aggregate.
 - 2) Commercial General Liability. Coverage shall include bodily injury; property damage and personal injury liability and limits of coverage shall not be less than \$1,000,000 combined single limit for each occurrence and \$2,000,000 aggregate.
 - 3) Business Automobile Liability Coverage. Coverage shall include bodily injury and property damage and limits shall not be less than \$1,000,000 combined single limit for each accident.
 - 4) Excess or Umbrella Liability Coverage. Coverage shall not be less than \$1,000,000 each occurrence and aggregate.
- B. City shall at its option and expense maintain in force during the Term such fire, casualty, and extended coverage insurance covering any City owned improvements on the Site as the City may desire.
- C. Contractor shall at its option and expense maintain in force during the Term such fire, casualty and extended coverage insurance on Contractor's personal property located on the Site, including trade fixtures, equipment, machinery, inventory or other personal property belonging to or in the custody of Contractor, and all such policies may waive any right of subrogation against the City.
- D. All coverage maintained by Contractor pursuant to Subparagraph (a) shall be provided by companies registered and licensed to sell insurance in the state of Florida and which may legally provide the coverage set forth herein, and shall be provided by companies reasonably satisfactory to the City and in form and substance reasonably satisfactory to the City, and shall provide that coverage will not be subject to cancellation, termination, revocation or material change except after thirty (30) days' prior written notice to the City.
- E. Within ten (10) days of the date of this agreement, and thereafter upon the written request of the City, Contractor shall furnish to the City such certificates of coverage and certified copies of policies pursuant to subparagraph (a). In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Tina Kunst, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.

8. INDEMNIFICATION: Regardless of the coverage provided by any insurance, the successful Bidder shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Bidder, its sub-Bidders, agents, servants or employees during the course of performing services or caused by the goods provided pursuant to these Bid documents and/or resultant contract.

A. If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Contractor under this Agreement, the City shall promptly cause notice of the claim to be delivered to the Contractor and shall afford the Contractor and its counsel, at the Contractor's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.

B. Due to the nature of the services to be provided and the potential impact to the City for loss of work supplies, the Contractor cannot disclaim consequential or inconsequential damages related to the performance of this contract. The Contractor shall be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or sub-consultants. There are no limitations to this liability.

9. ATTORNEY'S FEES

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

10. TIME

Time is of the essence in this Agreement.

11. FORCE MAJEURE

The Contractor's failure or inability to perform the stated scope of services at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

12. REMEDIES

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the City, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have. Failure to cure a breach of a material term hereunder within four (4) hours of Contractor's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

13. ASSIGNMENT

This Agreement is not assignable.

14. SEVERABILITY

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. MODIFICATIONS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Contractor.

16. WAIVER

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. NOTICES

Any notice required by this Agreement shall be directed to the parties as follows:

As to City:

Drew Whitman, City Manager
17007 Panama City Beach Parkway
Panama City Beach, FL 32413

As to Contractor:

Contract Representative: Jonathan Wickes
Title/Position: President
Email address: JCWICKES@bellsofusa.net
Mailing address: 6942 Phillips Pkwy. Dr. N.
JACKSONVILLE, FL 32256
Phone/Cell: 904-260-9565

18. ENTIRE AGREEMENT

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them.

IN WITNESS WHEREOF, the Contractor has executed this Agreement as of the day and year first above written.

Signed in the presence of: Contractor

Witness 1 *[Signature]*

(Print Name): Dustin Hendon

By: *[Signature]*

Jeanne Wicker
AS President

Witness 2 *[Signature]*

(Print Name): Ashley Carlton

ATTEST:

**THE CITY OF PANAMA
CITYBEACH, FLORIDA,**
a municipal corporation

Lynne Fasone

City Clerk

By: *[Signature]*

Drew Whitman , City Manager

* Accepted as Amended 2/1/2022 by
City Manager & Finance Department.

[Signature]
2/2/2022

EXHIBIT A

Required Services and approximate service schedule employed during an average year.

Service	Notes	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Soil Aeration and Compaction	BLEC Equipment Highly Preferred												
PRG Seed Application	4,000 Pounds per Application Seed to be supplied by City												
Oxadiazon Application	2 Gallons per Treatment (2 Pounds of AI per Acre)												
Fipronil Application	0.1 Gallons per Treatment (0.13 Pounds of AI per Acre)												

EXHIBIT B

Satellite Image of Frank Brown Park and Aaron Bessant Park



to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

7. INSURANCE AND INDEMNIFICATION

A. Contractor shall at its expense maintain in force during the Term the following described insurance on policies and insurers acceptable to the City. All such insurance shall name the City, its officers, employees and agents as additional insured:

~~6)1)~~ Workers Compensation and Employer's Liability Insurance Coverage. Limits of coverage shall not be less than \$1,000,000 each accident; \$1,000,000 disease each employee; and \$1,000,000 disease aggregate.

~~7)2)~~ Commercial General Liability. Coverage shall include bodily injury; property damage and personal injury liability and limits of coverage shall not be less than \$1,000,000 combined single limit for each occurrence and \$2,000,000 aggregate.

~~8)3)~~ Business Automobile Liability Coverage. Coverage shall include bodily injury and property damage and limits shall not be less than \$1,000,000 combined single limit for each accident.

~~9)4)~~ Excess or Umbrella Liability Coverage. Coverage shall not be less than \$1,000,000 each occurrence and aggregate.

~~10)~~ Pollution Liability Insurance: Contractor/Sub-Contractor/Vendor shall secure and maintain from the effective date of the Contract/Purchase Order until the end of the applicable warranty period the minimum Pollution Liability Insurance coverage and limits required by this Exhibit. The policy shall be submitted to the City for review and approval before commencement of the scope of work. Failure of the City to identify deficiencies in the Pollution Liability Insurance provided by Contractor/Sub-Contractor/Vendor shall not relieve Contractor/Sub-Contractor/Vendor from any obligations.

~~— Minimum limits are: Including Cleanup Cost~~

~~— \$5,000,000 per occurrence or claim~~

~~— \$5,000,000 policy aggregate.~~

~~— The coverage shall be as follows: Contractor/Sub-Contractor/Vendor shall provide Pollution Liability Insurance covering all asbestos, lead, and any other pollution operations. If the policy contains a general aggregate, this aggregate must apply on a per-project basis and shall be evidenced on Contractor/Sub-Contractor/Vendor's Certificate of Insurance.~~

~~— The limits shall not be subject to reduction as to the Contractor/Buyer or Owner because of any claim asserted against the Contractor/Sub-Contractor/Vendor other than in connection with the Scope. The policy must read "to pay on behalf of" (instead of indemnify).~~

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~~In addition, the following coverages must be included: (1) Completed Operations (five (5) year continuation beyond completion of the Scope); (2) Broad Form Contractual and Independent Contractors (including coverage for third party over claims); (3) On-Site, Off-Site and In-Transit exposures; and (4) Loading and Unloading. Exclusions or restrictions pertaining to mold and EIFS are not permitted. The coverage may be written on an "occurrence" or "claims made" basis. If written on a "claims made" basis, the retroactive date must be included to coincide with the effective date of the Subcontract/Purchase Order, and an extended reporting period (three (3) years minimum) must be included.~~

~~The coverage may be written on an "occurrence" or "claims made" basis. If written on a "claims made" basis, the retroactive date must be included to coincide with the effective date of the Subcontract/Purchase Order, and an extended reporting period (three (3) years minimum) must be included.~~

- B. City shall at its option and expense maintain in force during the Term such fire, casualty, and extended coverage insurance covering any City owned improvements on the Site as the City may desire.
 - C. Contractor shall at its option and expense maintain in force during the Term such fire, casualty and extended coverage insurance on Contractor's personal property located on the Site, including trade fixtures, equipment, machinery, inventory or other personal property belonging to or in the custody of Contractor, and all such policies may waive any right of subrogation against the City.
 - D. All coverage maintained by Contractor pursuant to Subparagraph (a) shall be provided by companies registered and licensed to sell insurance in the state of Florida and which may legally provide the coverage set forth herein, and shall be provided by companies reasonably satisfactory to the City and in form and substance reasonably satisfactory to the City, and shall provide that coverage will not be subject to cancellation, termination, revocation or material change except after thirty (30) days' prior written notice to the City.
 - E. Within ten (10) days of the date of this agreement, and thereafter upon the written request of the City, Contractor shall furnish to the City such certificates of coverage and certified copies of policies pursuant to subparagraph (a). In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Tina Kunst, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.
8. **INDEMNIFICATION:** Regardless of the coverage provided by any insurance, the successful Bidder shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Bidder, its sub-Bidders, agents, servants or employees during the course of performing services or caused by the goods provided pursuant to these Bid documents and/or resultant contract.