

RESOLUTION NO. 22-136

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH MCCALL SOD FARM, INC., FOR THE PURCHASE OF BERMUDA SOD FOR THE PARKS AND RECREATIONS DEPARTMENT ON A PER UNIT BASIS.

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 McCall Sod Farm, Inc., relating to the purchase of Bermuda Sod for the Parks and Recreations Department, on a per unit basis, in substantially the form **attached** as Exhibit A 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 28th day, April 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

PCB BERMUDA SOD

PARKS AND RECREATION SOD AGREEMENT

THIS PARKS AND RECREATION SOD AGREEMENT is made and entered into this _____ day of _____, 2022, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and **MCCALL SOD FARM, INC.** (Contractor).

PREMISES

1. SCOPE OF SERVICES

Contractor will provide Sod for the City of Panama City Beach Parks and Recreation Department for the unit prices set forth on attached Exhibit A, on an as-needed basis.

If the Contractor believes that any particular work/service is not within the scope of work/service of the contract, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular work/service is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work/service as changed and at the cost stated for the work/service within the scope. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of this agreement.

2. PAYMENT

The Contractor will invoice for payment to the City when the City takes possession after satisfactory inspection of the delivered Sod. 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 calendar month.

3. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 15, and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect upon its execution by the parties and continue for a period of one (1) year, with two (2) one-year optional renewals if mutually agreed upon by both parties.

4. INSURANCE

Bidder shall at its expense maintain in force during the Term the insurance on policies and insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit B.

Within thirty days of the date of the approval of this contract by the City, and thereafter upon the written request of the City, Bidder shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance Requirements. 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

PCB BERMUDA SOD

City Beach, FL 32413.

5. 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.

If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Bidder under this Agreement, the City shall promptly cause notice of the claim to be delivered to the successful Bidder and shall afford the Bidder and its counsel, at the Bidder'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.

6. WARRANTY

The Contractor agrees that, unless otherwise specified, the product and/or service furnished shall be covered by the most favorable commercial warranty the Contractor 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. ATTORNEY'S FEES

Should either party institute any legal action or proceeding to enforce this Agreement, or for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with such legal action or proceeding.

8. TIME

Time is of the essence in this Agreement.

9. 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 twenty-four (24) 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 are governed by the laws within the State of Florida.

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10. CHOICE OF LAW & VENUE

This Agreement shall be governed by the laws of the State of Florida. Any legal proceeding regarding this Agreement shall be brought in the 14th Judicial Circuit in Bay County, Florida.

11. ASSIGNMENT

This Agreement is not assignable.

12. 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.

13. 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.

14. 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.

15. TERMINATION AND SUSPENSION

- 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, Contractor's: (1) failing to carry forward and deliver the product 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 Contractor 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

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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.

16. NOTICES

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

A. As to City:

City Representative: Drew Whitman

Title/Position: City Manager

Address: 17007 Panama City Beach Pkwy., PCB, FL 32413

Phone: 850-233-5100

B. As to Contractor:

Contract Representative: _____

Title/Position: _____

Email address: _____

Mailing address: _____

Phone/Cell: _____

17. VERIFY.

E-VERIFY: Contractor is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021 and requiring all sub-contractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit(s) for

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the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be eligible for or awarded a City contract for a period of 1 year after the date of termination.

18. 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.

[Remainder of this page is intentionally left blank]

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

Signed in the presence of:

CONTRACTOR

By: _____
MCCALL SOD FARM, INC.

Print Name: _____

Witness 1 _____

(Print Name): _____

Witness 2 _____

(Print Name): _____

ATTEST:

**THE CITY OF PANAMA CITY BEACH,
FLORIDA,**

a municipal corporation

By: _____
Drew Whitman, City Manager

Lynne Fasone, City Clerk

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**EXHIBIT A
(Vendor quote/unit price schedule)**

City of Panama City Beach



Request for Quote

Requesting Department: Parks and Recreation

Vendor Name: McCall Sod Farm

Date Vendor Notified: 3/25/2022

Deadline to submit quote: 3/28/2022

Summary

The City of Panama City Beach is seeking quotes for the following items:

The City is requesting quotes for Certified Bermuda Sod. The City prefers Certified Tiftuf Bermuda or a product that is part of the Tiff Tough and Tifway 419 Bermuda Family. Vendor to identify the actual type of Bermuda sod which they are submitting a price quote for.

The City of Panama City Beach is a tax exempt entity and our certificate can be provided upon request.

ITEM NAME	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
<u>Certified Bermuda TifTuf</u>	Pallet (500 sq ft)	1.00	\$140.00	\$140.00
	Roll (250 sq ft)	1.00	\$72.50	\$72.50
Bermuda 419	Pallet (500 sq ft)	1.00	\$120.00	\$120.00
	Roll (250 sq ft)	1.00	\$62.50	\$62.50
				\$0.00
				\$0.00
Expected Delivery within 7 days of order				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00

COMMENTS	SUBTOTAL	<hr/>
	* Additional costs	<hr/>
	* Delivery	\$.10 per square foot
	*Other Costs	<hr/>
	TOTAL QUOTE	<hr/> <hr/>

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**EXHIBIT B
(INSURANCE REQUIREMENTS)**