

Sample Agreement

THIS MAINTENANCE AGREEMENT ("Agreement") is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Document, generally described as agronomic, horticultural and recurring services ("Services") for Sandridge Golf Club ("Club"), located at 5300 73rd Street, Vero Beach, Florida. Services will be provided as detailed in Request for Proposals (RFP) 2020034 and Contractor's response to the RFP.

ARTICLE 2 - TERM

This Agreement shall be effective for a period of five years from the Effective Date (October 1, 2020), unless earlier terminated as provided herein. OWNER shall have the option to renew this agreement for two additional five year terms, based on Contractor concurrence and determination that renewal is in the best interest of the OWNER.

ARTICLE 3 - PAYMENT

Owner shall make monthly payments, equal to one twelfth of the annual total price, on the last Friday of each month.

Year 1 total contract price	\$
Year 2 total contract price	\$
Year 3 total contract price	\$
Year 4 total contract price	\$
Year 5 total contract price	\$

All payments for services shall be made to the CONTRACTOR by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.). Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under this Agreement, the RFP, or the Public Construction Bond.

ARTICLE 4 - CONTRACT PRICE ADJUSTMENT

The Contractor may request an annual rate adjustment in writing to the County no later than June 1 of the year in which Contractor would like the rate adjustment to go into effect. Such rate adjustments are subject to approval by the Board of County Commissioners. If approved, the rate adjustment would become effective October 1 of that year. No adjustment will be considered prior to 2025.

The rate of adjustment shall be based on 75-percent of the change in the Consumer Price Index (CPI) between the month of April in the prior year (CPI1) and the month of April in the current year (CPI2). The CPI shall be the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CWUR0300SA0). The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three percent (3.0%) of the previous rate.

FORMULA FOR CALCULATING ANNUAL RATE ADJUSTMENT

Annual Adjustment (as a Percentage) AA = $((CPI2 - CPI1) / CPI1) * 0.75$);
New Rate = Round $((Current\ Rate + AA * Current\ Rate), 2)$

When there is a CPI decrease, the County may request a commensurate decrease in the same manner.

ARTICLE 5 - INDEMNIFICATION

CONTRACTOR shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Work.

ARTICLE 6 – INSURANCE

CONTRACTOR shall not commence work until they have obtained all the insurance required under this section, and until such insurance has been approved by the OWNER. CONTRACTOR's insurance shall be primary. OWNER shall be named as an additional insured for both General Liability and Automobile Liability. CONTRACTOR shall maintain the following limits of insurance during the term duration of this agreement.

General Liability

Each Occurrence \$500,000
Fire Damage-any one fire \$50,000
Medical Expenses-any one person \$5,000
Personal and Advertising Injury \$500,000
General Aggregate \$500,000
Combined Single Limit \$500,000

Automobile Liability – Combined Single Limit \$500,000

Worker's Compensation as required by the State of Florida

Each accident \$100,000
Each Disease – Each employee \$100,000
Each disease – policy limit \$500,000

The policy shall cover the CONTRACTOR, all employees, and/or volunteers, and all independent contractors, subcontractors and professional contractual persons hired or retained by CONTRACTOR.

All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida. The insurance policies procured shall be "Claims Made" policies or as generally available on the open insurance market. The Insurance Carriers shall supply Certificates of Insurance evidencing such coverage to the OWNER's Management Department prior to the execution of this Agreement.

The insurance companies selected shall send written verification to the OWNER's Risk Management Department that they will provide 30 days written notice to OWNER's Department of Risk Management of its intent to cancel or terminate.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposal documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
- E. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents consist of the following:

- (1) This Agreement (pages 1 to __ , inclusive);
- (2) Public Construction Bond (pages to , inclusive);
- (3) Certificate(s) of Liability Insurance
- (4) Request for Proposals 2020034
- (5) Addenda (numbers to , inclusive);
- (6) CONTRACTOR'S Submitted Proposal (pages __ to __, inclusive);
- (7) Drug Free Workplace Form (pages __ to __, inclusive)
- (8) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages __ to __, inclusive);
- (9) Certification Regarding Prohibition Against Contracting with Scrutinized Companies
- (10) Certification Regarding Lobbying
- (11) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;

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- b) Work Change Directives;
- c) Change Order(s).

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

Terms used in this Agreement will have the meanings indicated in the Request for Proposals.

9.02 *Assignment of Contract*

No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Venue*

This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

9.06 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of

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the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

Article 10 - TERMINATION OF CONTRACT

A. The occurrence of any of the following shall constitute a default by CONTRACTOR and shall provide the OWNER with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the OWNER may have under this Contract or under law:

- (1) if in the OWNER's opinion CONTRACTOR is improperly performing work or violating any provision(s) of the Contract Documents;
- (2) if CONTRACTOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the County's Representative pursuant to an inspection;
- (3) if in the OWNER's opinion CONTRACTOR's work is being unnecessarily delayed and will not be finished within the prescribed time;
- (4) if CONTRACTOR assigns this Contract or any money accruing thereon or approved thereon; or
- (5) if CONTRACTOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property.

B. OWNER shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide CONTRACTOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the OWNER.

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- C. If the CONTRACTOR fails to correct or cure within the time provided in the preceding Sub-Article B, OWNER may terminate this Contract by notifying CONTRACTOR in writing. Upon receiving such notification, CONTRACTOR shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the OWNER may authorize CONTRACTOR to restore any work sites.
- D. The CONTRACTOR shall be liable for:
- (1) any new cost incurred by the OWNER in soliciting bids or proposals for and letting a new contract; and
 - (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
 - (3) any court costs and attorney's fees associated with any lawsuit undertaken by OWNER to enforce its rights herein.
- E. The OWNER shall pay CONTRACTOR for all work satisfactorily completed prior to the effective date of termination.
- F. TERMINATION FOR CONVENIENCE: OWNER may at any time and for any reason terminate CONTRACTOR's services and work for OWNER's convenience. Upon receipt of notice of such termination CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:
- (1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,
 - (2) such other costs actually incurred by CONTRACTOR as are permitted by the prime contract and approved by the OWNER.
- Contractor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.
- G. TERMINATION IN REGARDS TO F.S. 287.135: TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement was approved on _____, with an effective date of October 1, 2020.

OWNER:

INDIAN RIVER COUNTY

By: _____

Susan Adams, Chairman

By: _____

Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____

Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____

Deputy Clerk

(SEAL)

Designated Representative:

Name: Bela Nagy

Title: Director of Golf

Address: 5300 73rd Street, Vero Beach, FL

Phone: 772-770-5003

Email: bnagy@ircgov.com

CONTRACTOR:

By: _____

(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____

(Where applicable)

Agent for service of process: _____

Designated Representative:

Name: _____

Title: _____

Address:

Phone: _____

Email: _____

(If CONTRACTOR is a corporation or a partnership,
attach evidence of authority to sign.)