

PURCHASE OF BALLFIELD CLAY PRODUCTS & CONDITIONERS
Contract No. B240216WCD

THIS IS AN AGREEMENT ("Agreement"), dated the ____ day of _____ 20____, by and between:

CITY OF COOPER CITY, a municipal corporation organized and existing under the laws of the State of Florida and whose address is 9090 SW 50th Place, Cooper City, Florida 33328 (hereinafter referred to as the "City"),

and,

SiteOne Landscape Supply LLC., a Foreign Corporation located at **300 Colonial Center Parkway; Suite 600, Roswell, GA 30076**, (hereinafter referred to as the "CONTRACTOR"), who is authorized to do business in the State of Florida.

City and CONTRACTOR may each be referred to herein as "party" or collectively as "parties".

WHEREAS, the City desires to enter into an agreement with the CONTRACTOR for the CONTRACTOR to provide **ballfield clay products and conditioners, and additional clay from the Vendor in connection with "Purchase of Ballfield Clay Products & Conditioners"**; and

WHEREAS, the City Code provides authority for the City to select and contract through the use of the competitive bid process of another government entity as an exception to the otherwise required formal bidding process; and

WHEREAS, the parties wish to incorporate the terms and conditions of **Contract No. B240216WCD**, between **Lee County** and the CONTRACTOR for **The Purchase of Ball Field Clay Products and Conditioners**. ("**Lee County Agreement**"). The **Lee County Agreement** Contract is attached hereto as Appendix "A" and incorporated herein; and

WHEREAS, the Parties agree to add the provisions of this agreement to the **Lee County Agreement** as set forth herein; and

WHEREAS, CONTRACTOR has agreed to honor the prices and terms and conditions of the **Lee County Agreement** Contract; and

WHEREAS, City desires to retain the services of CONTRACTOR by "accessing/piggybacking" the **Lee County Agreement** Contract; and

WHEREAS, the City has reviewed the scope of services of the competitively advertised **Lee County Agreement**, and has determined that it is an agreement that can be used by the City; and,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

ARTICLE 1. PREAMBLE

The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows:

1) This Agreement; 2) Appendix A – Contract No. **B240216WCD** and any associated amendments, modifications addenda, exhibits and attachments; 3) **B240216WCD** solicitation and any associated addenda, exhibits and attachments 4) the Contractor's Submittal.

ARTICLE 3. NATURE OF THE AGREEMENT

In all other respects, the terms and conditions of the **Lee County Agreement** Contract, are hereby ratified and shall remain in full force and effect under this "piggybacking" arrangement, as provided by the terms of this Agreement. All recitals, representations, and warranties of CONTRACTOR made in those documents are restated as if set forth fully herein, made for the benefit of the City, and incorporated herein.

The prices, terms and conditions of the **Lee County Agreement** shall govern the relationship between the City and CONTRACTOR, except as amended below:

- A. The Scope of Services for the Work ("Work") to be performed under this Agreement shall be as set forth in the **Lee County Agreement**, except said Work shall be performed in and for the City.
- B. All payments shall be governed by the Local Government prompt Payment Act as provided under §§218.70-.80, Florida Statutes.

ARTICLE 4. TERM

The term of this agreement shall be effective upon execution of this agreement by both parties and shall terminate on the same date as the **Lee County Agreement** Contract; **June 17, 2027**. Subject to any renewal as provided in the **Lee County Agreement** Contract, it is expressly stipulated and agreed that this agreement shall run concurrently and in conjunction with the **Lee County Agreement** Contract throughout the specified term.

The City may extend this Agreement for up to an additional one hundred eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension.

ARTICLE 5. NOTICE

Notice hereunder shall be provided in writing by certified mail, return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

CITY:

a) to the Project Manager

City of Cooper City, Parks and Recreation Department
Attention: Jennifer McMahon
9090 S.W. 50th Place
Cooper City, Florida, 33328-4227
Telephone No. (954) 434-4300 X 223
jmcmahon@CooperCity.gov

and,

b) to the Contract Manager

City of Cooper City, Procurement
Attention: Tyrone White
9090 S.W. 50th Place
Cooper City, Florida 33328-4227
Telephone No. (954) 434-4300 X 268
Purchasing@CooperCity.gov

Copy To:

Jacob G. Horowitz, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
JHorowitz@gorencherof.com

For CONTRACTOR:

SiteOne Landscape Supply LLC.
Monique Potts
300 Colonial Center Parkway; Suite 600
Roswell, GA 30076
Telephone No. (239) 707-9776
jscott@siteone.com

ARTICLE 6. PAYMENT FOR GOODS/SERVICES AND AMOUNT OBLIGATED

The CONTRACTOR warrants that it has reviewed the City's requirements and has asked such questions and conducted such other inquiries as the CONTRACTOR deemed necessary in order to determine the price the CONTRACTOR will charge to provide the Goods/Services to be performed under this Agreement. The compensation for all Goods/Services performed under this Contract, including all costs associated with such Work, shall be paid in accordance with Appendix A – Contract No. **B240216WCD**. The City shall have

no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the City and the CONTRACTOR.

All Work undertaken by the CONTRACTOR before City's approval of this Agreement or after the expiration of this contract shall be at the CONTRACTOR'S risk and expense.

ARTICLE 7. PRICING

Pricing shall be as stipulated in and in accordance with the pricing listed within Appendix A – **Contract No. B240216WCD** for the term of the contract, including any option-to-renew or extension periods; however, the CONTRACTOR may offer incentive discounts to the City at any time during the contract term, including any renewal or extension thereof.

ARTICLE 8. COMPENSATION AND METHOD OF PAYMENT

The CONTRACTOR may bill the City periodically, but not more than once per month, upon invoices certified by the CONTRACTOR pursuant to with the pricing listed within Appendix A – Contract No. **Contract No. B240216WCD**. All invoices shall be taken from the books of account kept by the CONTRACTOR, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the City, shall show the City's contract number, and shall have a unique invoice number assigned by the CONTRACTOR. In accordance with Section 218.74 of the Florida Statutes, the time at which payment shall be due from the City shall be forty-five (45) calendar days from receipt of a proper invoice.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the CONTRACTOR to the City to: AccountsPayable@coopercity.gov. The City may at any time designate a different email address, address or contact person by giving written notice to the Contractor.

ARTICLE 9. INDEMNIFICATION

The CONTRACTOR agrees at all times to indemnify, hold the City harmless and, at the City's option, defend or pay for any attorney selected by the City to defend the City, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, losses, liabilities, expenditures or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from the CONTRACTOR's negligent acts, errors, or omissions.

ARTICLE 10. INSURANCE

CONTRACTOR shall provide City with proof of insurance and bonding as required by **Contract No. B240216WCD**. CONTRACTOR hereby confirms that the City is named as an additional insured under the provisions of CONTRACTOR'S insurance.

CONTRACTOR shall not commence the Work unless and until the requirements for insurance have been fully met by CONTRACTOR and appropriate evidence thereof, in the City's sole discretion, has been provided to and approved by the City.

ARTICLE 11. PUBLIC RECORDS

A. Public Records: CONTRACTOR shall comply with The Florida Public Records Act as follows:

1. Keep and maintain public records in the CONTRACTOR's possession or control in connection with the CONTRACTOR's performance under this Agreement that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request by City's records custodian, provide City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
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 this Agreement.
4. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of CONTRACTOR shall be delivered by CONTRACTOR to City, at no cost to City, within seven days. All records stored electronically by CONTRACTOR shall be delivered to CITY in a format that is compatible with City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.
5. CONTRACTOR'S failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 434-4300, PRR@COOPERCITY.GOV, OR BY MAIL: CITY OF COOPER CITY – CITY CLERK'S OFFICE, 9090 SW 50TH PLACE, COOPER CITY, FL 33328.

ARTICLE 12. SCRUTINIZED COMPANIES

- A. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- B. If this Agreement is for more than one million dollars, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR , its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- C. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions, then they shall become inoperative.

ARTICLE 13. ASSIGNMENT

Neither party may assign its rights or obligations under this Agreement without the written consent of the other.

ARTICLE 14. SEVERABILITY

This Agreement sets forth the entire agreement between CONTRACTOR and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

ARTICLE 15. GOVERNING LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any dispute under this Agreement shall be an appropriate court of competent jurisdiction in Broward County, Florida.

ARTICLE 16. E-VERIFY

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees.

Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Cooper City. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Cooper City; and
- C. The Contractor shall 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 registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors 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 for 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 twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 17. CONTRIBUTIONS PROHIBITED

Pursuant to Section 2-26 of Cooper City Code, no lobbyist, or vendor shall give a campaign contribution, directly or indirectly, to a candidate for the office of Mayor or Commissioner. No candidate for Mayor or Commissioner, or member of the City Commission shall, directly or indirectly, solicit, accept or deposit into such candidate's campaign account any campaign contribution from a lobbyist, or vendor.

ARTICLE 18. TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate this Contract for convenience (without cause) upon providing a thirty (30) day written notice to the Contractor. Termination for convenience is effective on the termination date stated in the written notice provided by the City. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Contract. The City shall only be liable for reasonable costs incurred by the Contractor prior to notice of termination. The City shall be the sole judge of "reasonable costs."

ARTICLE 19. TERMINATION FOR CAUSE

The City reserves the right to terminate this Contract, in part or in whole, or place the Contractor on probation, or to avail itself of all other remedies available at law and equity, inclusive injunctive relief and specific performance, in the event the Contractor fails to perform in accordance with the terms and conditions stated herein. Following breach of the Contract by the Contractor, the City shall provide written

notice specifying the breach to the Contractor and advising the Contractor that the breach must be cured immediately, or this Contract may be terminated by the City. The City further reserves the right to suspend or debar the Contractor in accordance with the Sec. 2-266 of Cooper City Procurement Code, resolutions and/or other governing legislation. The Contractor will be notified by letter of the City's intent to terminate if, following the initial notice of breach, the Contractor fails to timely or adequately, and to the satisfaction of the City, cure said breach. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the terminated Contractor. The Contractor shall be responsible for all other direct damages incurred by the City arising out of the breach.

ARTICLE 20. AUDITS – ACCESS TO RECORDS

The City, through its duly authorized representatives and governmental agencies, shall have access to and the right to examine and reproduce any of the Awarded Bidder's books, documents, papers and records and of its Subcontractors and Suppliers which apply to all matters of the City for a minimum of three years after the expiration of this Contract and any extension thereof. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Contract.

CONTRACTOR will grant access to the Commission Auditor to all financial and performance-related records, property, and equipment purchased in whole or in part with government funds. CONTRACTOR agrees to maintain an accounting system that provides accountancy records that are supported with adequate documentation and procedures for determining the allowability and allocability of costs.

ARTICLE 21. CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED

Pursuant to Section 287.138, Florida Statutes ("F.S."), entities submitting a bid, proposal, quote or other response, or otherwise entering into a contract with a governmental entity are required to affirm by way of an Affidavit that the entity is not giving a government of a foreign country of concern, as listed in Section 287.138, F.S., access to an individual's personal identifying information if: a) the entity is owned by a government of a foreign country of concern; b) a government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern as is set forth in Paragraphs 2(a)–(c) of Section 287.138, F.S. The affirmation by the Contractor shall be in the form provided by the City. This Agreement shall not be effective unless and until Contractor executes such Affidavit.

ARTICLE 22. KIDNAPPING, CUSTODY OFFENSES, HUMAN TRAFFICKING AND RELATED OFFENSES AFFIDAVIT

By entering into, amending, or renewing this Agreement, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Agreement"), as applicable, the Contractor is obligated to comply with the provisions of Section 787.06, Florida Statutes ("F.S."), "Human Trafficking," as amended, which is deemed as being incorporated by reference in this Agreement. All definitions and requirements from Section 787.06, F.S., apply to this Agreement.

This compliance includes the Contractor providing an affidavit that it does not use coercion for labor or services. This attestation by the Contractor shall be in the form attached to this Agreement as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the "Affidavit") and must be executed by the Contractor and provided to the City when entering, amending, or renewing this Agreement.

This Agreement shall be void if the Contractor submits a false Affidavit pursuant to Section 787.06, F.S., or the Contractor violates Section 787.06, F.S., during the term of this Agreement, even if the Contractor was not in violation at the time it submitted its Affidavit.

(REMAINDER INTENTIONALLY LEFT BLANK)

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

CITY OF COOPER CITY, a Florida municipal corporation

ATTEST:

BY: _____
CITY MANAGER

BY: _____
CITY CLERK

BY: _____
CITY MAYOR

APPROVED AS TO LEGAL FORM:

BY: _____
CITY ATTORNEY

WITNESSED BY:

SiteOne Landscape Supply LLC. a Foreign Corporation

Signature

BY: _____

Print Name

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____, as _____ of **SiteOne Landscape Supply LLC.**, and acknowledged that he has executed the foregoing instrument for the use and purposes mentioned in it and that the instrument is the act and deed of _____, as _____ **SiteOne Landscape Supply LLC.**, and who is personally known to me or has produced _____ as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid this ____ day of _____, 20____.

NOTARY PUBLIC

Print or Type Name

My Commission Expires: _____