

AGREEMENT

This Agreement for Goods and Services (“Agreement”) is made as of the _____ day of _____, 2024, by and between the **Town of Loxahatchee Groves**, 155 F Road, Loxahatchee Groves, Florida 33470, a municipal corporation organized and existing under the laws of the State of Florida, (“TOWN”), and **Odums Sod, Inc.**, 16571 Rembrandt Road, Loxahatchee, Florida 33470, a corporation authorized to do business in the State of Florida, (“CONTRACTOR”).

RECITALS

WHEREAS, the TOWN is in need of a contractor to provide and install sod (“GOODS AND SERVICES”) for the TOWN; and

WHEREAS, the Village of Wellington, through its competitive selection process, awarded Agreement No. ITB202312 for Annual Sod Contract (“CONTRACT”) to the CONTRACTOR for substantially the same goods and services sought by the TOWN; and

WHEREAS, the TOWN requested, and the CONTRACTOR has executed this Agreement with the TOWN for performing the GOODS AND SERVICES based on the pricing and terms and conditions of the CONTRACT; and

WHEREAS, the TOWN desires to accept CONTRACTOR’s pricing by piggy-backing the CONTRACT including all terms, conditions and pricing therein, as more fully set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. CONTRACT. The CONTRACT with the CONTRACTOR is hereby expressly made a part of this Agreement as fully as if set forth at length herein. The TOWN shall have all rights, obligations and remedies authorized to the governmental entity under the CONTRACT and all associated and applicable Contract Documents as defined therein.
3. Agreement. In accordance with the terms and conditions in the CONTRACT and pricing therein, the CONTRACTOR shall perform as requested by the TOWN.
4. Contract Documents and Conflict of Terms and Conditions. The Contract Documents for this Agreement are comprised of the following:
 - A. All written modifications and amendments hereto;
 - B. This Agreement;
 - C. CONTRACT (including the Bid, Contractors Proposal, Bid Tabulation, Award, and any Amendments, Renewals, and Extensions).

The Contract Documents of this Agreement are intended to be complementary and interpreted in harmony so as to avoid conflict with the words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict or ambiguity between or among the Contract Documents of this Agreement, the Contract Documents of this Agreement shall take precedence in the following order:

- A. All written modifications and amendments hereto;
- B. This Agreement;
- C. The CONTRACT.

5. Compensation to Contractor. Payments by the TOWN to the CONTRACTOR under this Agreement shall not exceed the amount of compensation, on the unit basis for each item (where an item is specified), as set forth under the CONTRACT. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. **The TOWN will not expend more than the amount in the approved Budget as it may be adopted each year for the GOODS AND SERVICES over the term of this Agreement.**

6. Miscellaneous Provisions.

- 6.1 The TOWN and CONTRACTOR each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 6.2 Headings and References & Exhibits: The headings contained in this Agreement are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Agreement.
- 6.3 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.
- 6.4 Entire Agreement; Amendment and Waiver: This Agreement (together with the Exhibits hereto) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Agreement, constitutes the entire agreement of the parties relating to the subject matter hereof. This Agreement may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.

- 6.5 Successors and Assigns: This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 6.6 Governing Law; Consent to Jurisdiction: This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.
- 6.7 Third Party Beneficiary rights: This Agreement shall create no rights or claims whatsoever in any person other than a party herein.
- 6.8 Severability: If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 6.9 Effective date, term and renewal: The effective date of this Agreement is the date the Agreement is approved by the TOWN Council. The term of this Agreement shall be for a term to mirror the CONTRACT which shall expire on **April 10, 2025**, or until the CONTRACTOR has completed all work that was commenced prior to that date, and the work has been reviewed, inspected, and accepted by the TOWN, inclusive of all warranty periods, whichever is later. This Agreement may be renewed for up to three (3) additional one (1) year periods consistent with the renewal of the CONTRACT.
- 6.10 Public Records: Public Records: CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the TOWN as provided under section 119.011(2), Florida Statutes, specifically agrees to:
- (a) Keep and maintain public records required by the TOWN to perform the service.
- (b) Upon request from the TOWN's custodian of public records or designee, provide the TOWN 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, Florida Statutes, or as otherwise provided by law.

- (c) 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 Contract and following completion of this Agreement if the CONTRACTOR does not transfer the records to the TOWN.
- (d) Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If the CONTRACTOR transfers all public records to the TOWN upon completion of this Agreement, 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 this Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records or designee, in a format that is compatible with the information technology systems of the TOWN.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 561-793-2418, townclerk@loxahatcheegrovesfl.gov, OR BY MAIL AT TOWN OF LOXAHATCHEE GROVES, 155 F ROAD, LOXAHATCHEE GROVES, FL 33470.

- 6.11 Preparation: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- 6.12 PALM BEACH COUNTY IG: In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.
- 6.13 All notices required in this Agreement shall be sent by certified mail, return receipt requested, and sent to the addresses appearing on the first page of this Agreement.
- 6.14 The TOWN is exempt from payment of Florida State Sales and Use Tax. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the TOWN, nor is the CONTRACTOR authorized to use the TOWN'S Tax Exemption Number in securing such materials.
- 6.15 As provided in F.S. 287.135, by entering into any agreement with the TOWN, or performing any work in furtherance hereof, the CONTRACTOR certifies that at the time the CONTRACTOR submits a bid or proposal for a contract or before the CONTRACTOR

enters into or renews a contract with an agency or local governmental entity for goods or services of \$1 million or more, the company must certify that the CONTRACTOR is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List , or the Scrutinized Companies with Activities in Iran Terrorism Sectors List and that it does not have business operations in Cuba or Syria. Also, at the time a CONTRACTOR submits a bid or proposal for a contract or before the CONTRACTOR enters into or renews a contract with an agency or local governmental entity for goods or services of any amount, the CONTRACTOR must certify that it is not participating in a boycott of Israel. If the Town determines, using credible information available to the public, that a false certification has been submitted by the CONTRACTOR, the TOWN's Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.

7. Indemnity.

- 7.1 The parties recognize that the CONTRACTOR is an independent contractor. The CONTRACTOR agrees to assume liability for and indemnify, hold harmless, and defend the TOWN, its council members, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the CONTRACTOR in the performance of this Agreement. The CONTRACTOR's liability hereunder shall include all attorney's fees and costs incurred by the TOWN in the enforcement of this indemnification provision. This includes claims made by the employees of the CONTRACTOR against the TOWN and the CONTRACTOR hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.
- 7.2 Subject to the limitations set forth in this Section, CONTRACTOR shall assume control of the defense of any claim asserted by a third party against the TOWN and, in connection with such defense, shall appoint lead counsel, in each case at the CONTRACTOR's expense. The TOWN shall have the right, at its option, to participate in the defense of any third party claim, without relieving CONTRACTOR of any of its obligations hereunder. If the CONTRACTOR assumes control of the defense of any third party claim in accordance with this paragraph, the CONTRACTOR shall obtain the prior written consent of the TOWN before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the CONTRACTOR shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the TOWN and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the TOWN, be

detrimental in any material respect to the TOWN's reputation; (ii) the third party claim seeks an injunction or equitable relief against the TOWN; or (iii) the CONTRACTOR has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

- 7.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. CONTRACTOR expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the TOWN may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The parties agree that the monetary limits of Section 768.28(5), Florida Statutes, apply to claims against the TOWN based in tort or contract regardless of whether such limits would apply in the absence of this clause.

8. Insurance.

- 8.1 CONTRACTOR shall procure and maintain and shall cause any subcontractor of CONTRACTOR to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to TOWN. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- 8.2 Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee. Worker's compensation coverage in "monopolistic" states is administered by the individual state and coverage is not provided by private insurers. Individual states operate a state administered fund of workers compensation insurance which set coverage limits and rates.
- 8.3 Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, and products. The policy shall contain a severability of interest provision and shall be endorsed to include TOWN and TOWN's officers, employees, and consultants as additional insureds.

- 8.4 Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- 8.5 Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- 8.6 TOWN shall be named as an additional insured on CONTRACTOR's insurance coverage.
- 8.7 Prior to commencement of Services, CONTRACTOR shall submit certificates of insurance acceptable to TOWN.
- 8.8 Except for Professional Liability and Workers' Compensation, all policies shall contribute as primary. All policies provided by CONTRACTOR shall include a waiver of subrogation.

9. E-Verify. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, CONTRACTOR shall:

- 9.1 Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- 9.2 Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- 9.3 Maintain copies of all subcontractor affidavits for the duration of the Contract Documents and provide the same to Subscriber upon Request;
- 9.4 Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- 9.5 Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- 9.6 Be aware that if TOWN terminates this Agreement under Section 448.095(2)(e), Florida Statutes, CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which this Agreement is terminated and will be liable for any additional costs incurred by TOWN as a result of termination of this Agreement.

IN WITNESS WHEREOF, the TOWN and CONTRACTOR have caused this Agreement to be executed the day and year shown above.

CONTRACTOR: ODUMS SOD, INC., a Florida corporation

By: _____
Warren L. Prescott, Jr., President

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me, by means of __ physical presence or __ online notarization this _____ day of _____, 2024 by Warren L. Prescott, Jr. as President of Odums Sod, Inc., a corporation authorized to do business in the State of Florida, and __ who is personally known to me or __ who has produced the following _____ as identification.

Notary Public

Print Name: _____
My commission expires: _____

**TOWN OF LOXAHATCHEE GROVES,
FLORIDA**

By: _____
Anita Kane, Mayor

ATTEST

Town Clerk

Approved as to form and legal sufficiency:

Office of the Town Attorney