

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**FIRST AMENDMENT TO YELLOWSTONE LANDSCAPE
GROUNDS MAINTENANCE PROPOSAL PURSUANT TO
CHOICE PARTNERS COOPERATIVE CONTRACT 15/023JN-02**

THIS FIRST AMENDMENT is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, (hereinafter "County") and Yellowstone Landscape (hereinafter "Yellowstone"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "Parties").

THAT, WHEREAS, the parties have previously executed that certain Proposal for Grounds Maintenance services for various locations on or about November 12, 2019, pursuant to Choice Partners Purchasing Cooperative Contract No. 15/023JN-02, (hereinafter referred to as the "Agreement"), and incorporated by reference herein; and

WHEREAS, the parties desire to amend certain portions of the Ground Maintenance Proposal, including the addition of a service location(s) and an increase to the maximum compensation, as described in Exhibit A attached hereto, and incorporated herein for all purposes; and

WHEREAS, Yellowstone represents that it is qualified and desires to perform such services.

NOW, THEREFORE, the following changes are incorporated as if a part of the original Agreement:

1. **Services.** Yellowstone shall provide Services as described in the attached Exhibit A.
2. **Time for Performance.** The time for performance of the Scope of Services by Yellowstone shall begin with receipt of the Notice to Proceed from County, to be scheduled at a time that is mutually agreeable between the Parties but without reasonable delay. This Contract shall terminate on September 30, 2020, unless terminated sooner in accordance with the terms of this Agreement. Yellowstone shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

3. **Compensation.** Yellowstone's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services provided is One Hundred Ten Thousand, Eight Hundred Two and 00/100 dollars (\$110,802.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
4. **Limit of Appropriation.** Yellowstone clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available a total maximum annual sum of One Hundred Ten Thousand, Eight Hundred Two and 00/100 dollars (\$110,802.00), specifically allocated to fully discharge any and all liabilities County may incur. Yellowstone does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Yellowstone may become entitled to and the total maximum sum that County may become liable to pay to Yellowstone shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Ten Thousand, Eight Hundred Two and 00/100 dollars (\$110,802.00), annually.
5. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
6. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
7. **Confidential Information.** Yellowstone expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T. CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Yellowstone shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

8. **Insurance.** Prior to commencement of Service, Yellowstone shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Yellowstone shall provide certified copies of insurance endorsements and/or policies if requested by County. Yellowstone shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services.
- A. Yellowstone shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - i. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - ii. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - iii. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - iv. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Yellowstone shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
 - C. If required coverage is written on a claims-made basis, Yellowstone warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
 - D. Yellowstone shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.

- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
 - F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Yellowstone.
- 9. **Indemnity.** YELLOWSTONE SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF YELLOWSTONE, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF YELLOWSTONE OR ANY OF YELLOWSTONE'S AGENTS, SERVANTS OR EMPLOYEES.
- 10. **Independent Contractor.** In the performance of work or services hereunder, Yellowstone shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Yellowstone or, where permitted, of its subcontractors. Yellowstone and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
- 11. **Termination.**
 - A. Termination for Convenience. County may terminate this Agreement at any time upon thirty (30) days written notice.
 - B. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - C. If Yellowstone fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - D. If Yellowstone materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
 - E. If, after termination, it is determined for any reason whatsoever that Yellowstone was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

- F. Upon termination of this Agreement, County shall compensate Yellowstone in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Yellowstone's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
 - G. If County terminates this Agreement as provided in this Section 11, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Yellowstone.
 - H. If County terminates this Agreement prior to the termination date, County shall not be subject to any early termination fee or other penalty.
12. **Performance Warranty.** Yellowstone warrants to County that Yellowstone has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Yellowstone will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
13. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
14. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law or Fort Bend County and are included by County regardless of content.
- A. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Yellowstone verifies Yellowstone does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - B. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Yellowstone represents pursuant to Section 2252.152 of the Texas Government Code, that Yellowstone is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
15. **Resolution Against Human Trafficking.** By signature below, Yellowstone acknowledges that the County is opposed to Human Trafficking and that no county funds will be used in support of services or activities that violate human trafficking laws.

IN WITNESS WHEREOF, this Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Amendment and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

YELLOWSTONE LANDSCAPE:

KP George
County Judge


Authorized Agent- Signature

ATTEST:

Chris Cathey

Authorized Agent- Printed Name

Sr. Business Dev. Mgr.

Laura Richard, County Clerk

Title

02/24/2020

Date

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 110,802.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT A: Grounds Maintenance Proposal (2020-2021 Pricing)

i:\agreements\2020 agreements\purchasing\yellowstone landscape\first amendement to proposal.docx (LSL 2.19.20)
Contract Req #20-FAC+100136-A1

EXHIBIT A

YELLOWSTONE LANDSCAPE PROPOSAL

DATED: DECEMBER 18, 2019



713.462.8552 tel
713.960.6461 fax

10892 Shadow Wood Drive
Houston, TX 77043

www.yellowstonelandscape.com

Fort Bend County

301 Jackson St
Richmond, TX 77469

December 18, 2019

GROUND MAINTENANCE PROPOSAL: Choice Partners Contract No.15/023JN-02

We hereby propose to furnish all labor, equipment and materials needed for the completion of the work described below:

DEFINITION OF WORK TO BE PERFORMED:

- Mow and Line trim Turf areas within the highlighted areas indicated on the map.
- Sweep/power blow to clean up landscape related grass, etc.
- Remove all trash from landscaped areas, parking lot, and trash receptacles.
- Trim and Weed Landscape bed areas
- Irrigation Inspections
- Landscape Bed Maintenance

GROUND MAINTENANCE BID 2019-2020

Yellowstone Landscape proposes the following for the landscape maintenance services for Fort Bend County Facilities:

2020-2021 Pricing			
Sienna Annex	\$/Visit	Visits	Yrly Total
Weekly Maintenance	\$ 565.00	42	\$ 23,730.00
Biweekly Maintenance	\$ 57.00	20	\$ 1,140.00
Irrigation Inspection	\$ 262.00	12	\$ 3,144.00
SubTotal			\$ 28,014.00
Monthly Billable Amount			\$ 2,334.50
CAD	\$/Visit	Visits	Yrly Total
Weekly Maintenance	\$ 278.00	42	\$ 11,676.00
Irrigation Inspection	\$ 98.00	12	\$ 1,176.00
SubTotal			\$ 12,852.00
Monthly Billable Amount			\$ 1,071.00
OEM	\$/Visit	Visits	Yrly Total
Weekly Maintenance	\$ 278.00	42	\$ 11,676.00
Irrigation Inspection	\$ 98.00	12	\$ 1,176.00
SubTotal			\$ 12,852.00
Monthly Billable Amount			\$ 1,071.00
Coroners Office	\$/Visit	Visits	Yrly Total
Weekly Maintenance	\$ 278.00	42	\$ 11,676.00
Irrigation Inspection	\$ 98.00	12	\$ 1,176.00
Subtotal			\$ 12,852.00
Monthly Billable Amount			\$ 1,071.00
Transportation Dept	\$/Visit	Visits	Yrly Total
Weekly Maintenance	\$ 792.00	42	\$ 33,264.00
Ditch Maintenance (Bi-weekly)	\$ 396.00	20	\$ 7,920.00
Irrigation Inspection	\$ 254.00	12	\$ 3,048.00
Subtotal			\$ 44,232.00
Monthly Billable Amount			\$ 3,686.00
FT Bend Cty Total			\$ 110,802.00

Submitted by: Chris Cathey

Date: 12/18/2019

Fort Bend County Sienna Annex Maintenance Schedule

[illegible]