



- B. Any services to be performed by Contractor shall be scheduled at a time that is mutually agreeable between the parties, in accordance with Fort Bend County Road and Bridge hours of operation.

**Section 2. Personnel**

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

**Section 3. Compensation and Payment**

- A. Contractor shall be paid at a unit price rate of \$38.00 per acre to complete mowing of county right-of-ways to include weed eating, and at a unit price rate of \$65.00 per acre for finish cut mowing of County right-of-ways, in accordance with Choice Partners COOP #20/030MR.
- B. The Maximum Compensation for the performance of Services is seven hundred fifty thousand dollars and 00/100 cents (\$750,000.00), for the term of this contract. In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.
- C. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- D. Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County an original copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoice and approve it within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

**Section 4. Limit of Appropriation**

Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of seven hundred fifty thousand dollars and 00/100 cents (\$750,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

**Section 5. Time of Performance**

The time for performance of the Scope of Services by Contractor shall begin upon execution by County and shall terminate on September 30, 2023, unless terminated sooner in accordance with the terms of this Agreement. Contractor 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. This Agreement shall not automatically renew, but may be renewed by written agreement of the parties.

**Section 6. Modifications and Waivers**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

**Section 7. Termination**

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
  - 1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
    - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
    - b. If Contractor 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.

2. If, after termination, it is determined for any reason whatsoever that Contractor 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 7A above.
- C. Upon termination of this Agreement, County shall compensate Contractor 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. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
  - D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

**Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

**Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

**Section 10. Insurance**

- A. Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor 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. Contractor 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:

1. Workers' Compensation insurance in accordance with the laws of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
  2. 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.
  3. 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.
  4. Business Automobile Liability insurance 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. If required coverage is written on a claims-made basis, Contractor 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.
- C. Contractor 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.
- D. 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.
- E. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

**Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

**Section 12. Proprietary or Confidential Information**

- A. Contractor 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 Consultant 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. The terms and conditions of the Agreement are not proprietary or confidential information.

**Section 13. Independent Contractor**

- A. In the performance of work or services hereunder, Contractor 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 contractor or, where permitted, of its subcontractors.
- B. Contractor 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.

**Section 14. Notices**

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

If to County: Fort Bend County  
ATTN: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

With a copy to: Fort Bend Purchasing  
Attn: Purchasing Agent  
301 Jackson Street,  
Richmond, Texas 77469

If to Contractor: Yellowstone Landscape  
Attn: \_\_\_\_\_  
10892 Shadow Wood  
Houston, Texas 77043

C. Notice is effective only if the party giving or making the Notice has complied with subsections 15.1 and 15.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 15. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, including HIPAA, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 16. Performance Warranty**

Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Contractor 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.

**Section 17. Assignment and Delegation**

Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent.

**Section 18. 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.

**Section 19. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit(s), this Agreement controls.

**Section 25. Human Trafficking**

BY ACCEPTANCE OF CONTRACT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND 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.

**Section 26. Certain State Law Requirements for Contracts**

26.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

26.2 Texas Government Code Section 2252.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor 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.

*{EXECUTION PAGE FOLLOWS}*

*{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}*

IN WITNESS WHEREOF, this Agreement 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 Agreement and the exhibit(s) hereto. The effective date of this Agreement is the date of the last signature hereto.

**FORT BEND COUNTY**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

**YELLOWSTONE LANDSCAPE**

  
\_\_\_\_\_  
Authorized Agent - Signature

Chris Cathey  
\_\_\_\_\_  
Authorized Agent – Printed Name

Sr. Business Development Manager  
\_\_\_\_\_  
Title

10/25/2022  
\_\_\_\_\_  
Date

**AUDITOR’S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 750,000.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

Exhibit A: Yellowstone Scope of Service – COOP #20/030MR

i:\agreements\2023 agreements\purchasing\purchasing\yellowstone landscape (23-purch-100152)\agreement for row mowing services (lsl 10.18.22, rev 10.24.22).docx

# EXHIBIT A



# Ft. Bend County ROW Mowing Choice Partners COOP #20/030MR

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## **MOWING OF COUNTY RIGHT-OF-WAYS:**

Contractor shall furnish all labor, equipment, fuel, and supervision to mow or shred plant growth along county right-of-ways as required by the County Road Commissioner.

Fort Bend County will replace any and all traffic control devices damaged during mowing (i.e. stop signs, bridge markers). However, Fort Bend County reserves the right to deduct \$154.00 per traffic devise from Contractors invoice.

Contractor is responsible for mowing and weed eating right-of-ways from right-of-way to right-of-way line.

Proper equipment must be used for the designed use.

Slope mowers are to be used for mowing of ditches and back slopes that cannot be reached by other equipment.

15' mowers are to be used on wide areas and slight sloped ditches.

5' or 6' mowers are to be used to trim and other areas as directed by the Fort Bend County Road Commissioner.

Weed eaters are to be used around culverts, signs, and mailboxes.

Work must commence and cease in accordance with Road and Bridge hours of operation, unless otherwise authorized by the Fort Bend County Road Commissioner.

The unit of measurement for mowing shall be per acre and shall consist of one complete mowing of the required area.

Contractor shall submit invoices for the actual mowing accomplished to the Fort Bend County Road Commissioner's Office. Mowing will be paid for at the unit bid price, per acre and shall be full compensation for furnishing all labor, materials, supervision, equipment and supplies required to complete all items of work specified herein.

The mowing period shall begin on or about October 1<sup>st</sup> and continue through September 30<sup>th</sup>. The successful contractor shall be notified three (3) days in advance of proposed cycle mowing date. The contractor may be asked to split crews and have a crew on the North Zone and South Zone at the same time. The contractor shall complete all mowing within the specified work time unless raining, acts of God, or notification by the Fort Bend County Road Commissioner has prevented this from being accomplished. The contractor shall notify the Fort Bend County Road Commissioner for an inspection of the finished mowing site and receive signed approval for acceptance of completed work.

The Fort Bend County Road Commissioner will direct mowing locations, time frame and acreage.

Estimated Acreage:

Fort Bend County estimates that approximately 3000 acres of County right-of-ways will require mowing during the term of this contract.

Minimum Equipment Required:

Vendors are required to provide the following, at a minimum, of the equipment utilized when performing mowing services for Fort Bend County as specified herein. Failure to do so is grounds of cancellation:

Tractors with Slope Mowers – 1 each  
15' Mowers – 4 each  
5' or 6' Mowers – 1 each  
Weed Eaters – 3 each

#### **FINISH CUT MOWING OF COUNTY RIGHT-OF-WAYS:**

Estimated  
Acreage:180

Fort Bend County estimates that approximately 180 acres of County right-of-ways will require finish cut mowing during the term of this contract.

Equipment:

Rotary mowers will normally be required to mow right-of-ways. Mowers shall have adjustable cutting heights (maximum of 4" and minimum of 2-1/2"). All mowers shall be equipped with safety chains to prevent damage to property and persons by debris expelled from under the mower. Mowers shall be equipped with chains of sufficient length and spacing around the mower to prevent debris from exiting from beneath the mower deck.

All mowers shall be kept in good operating condition and shall be maintained at all times to provide clean, sharp cuts.

#### Execution Of Work:

Prior to commencing services, Fort Bend County shall arrange a conference between the Road and Bridge Department and the contractor. In this meeting, the contractor will outline contractor's proposed mowing procedures and submit contractor's plans for performing the work with safety for the general public. Plans, specifications, unusual conditions, methods for marking non-mow areas and other pertinent issues regarding work will be discussed.

Mowing times will be determined by Fort Bend County. Mowing cycle from November through March is typically one (1) time per month. Mowing cycle from April through October is typically two (2) times per month.

The contractor shall mobilize within a 48 hour notice from Fort Bend County Road and Bridge and shall complete each mowing cycle within seven (7) working days unless prevented by weather conditions. Any weather related time extensions requested by the contractor and granted by the County should be in writing. The contractor shall notify the County representative to request inspection of each finished mowing site and receive approval by the County for acceptance of completed work.

If the contractor fails to complete the work within each seven (7) day mowing cycle time, or extension time granted in writing by the County, then the contractor shall pay to the County, as liquidated damages, the sum of one hundred (\$100) dollars for each working day that the contract is in default for that mowing cycle. The sum shall be treated as liquidated damages and not as a penalty, and the County may withhold from the contractor's compensation such sums as liquidated damages.

Mowers shall be operated at speeds appropriate to produce quality cutting.

Mower operators will establish cutting paths that provide 100% traverse coverage of each area required to be mowed. Missed strands of vegetation or areas not uniformly cut will be re-cut at no additional expense subject to final approval by the County.

The required mowing areas are located through-out Fort Bend County and shall include right-of-way curbed line to fence line, right-of-way down slopes, channel bottoms and tops of banks from the top of slope to the boundary, to designated width or, to obstruction such as fence, or assigned berm width.

Ruts, holes and other disfigurement caused by the contractor's mowing equipment shall be the responsibility of the contractor to restore to original condition. If contractor is in doubt as to soil conditions (wet, muddy, etc.) before mowing, he is required to contact the County representative before commencing work.

The contractor shall not park unattended equipment within thirty (30) feet of ravel lanes or streets.

Fort Bend County reserves the right to add and/or delete roads and streets.

Prior to roads and streets being added, Fort Bend County will evaluate with the Contractor.

#### Edging:

All sidewalks, curb lines, medians, and other surfaces in the Fort Bend County right-of-way, which turf grass, or weeds can grow, will be edged with an edger (not a weed eater) on the same day of mowing.

#### Line Trimming:

All railing, posts, fence lines, retaining walls, structures and other protruding obstacles around which turf grass, rye grass, or weeds can grow must be cleared with a weed eater on the same day of mowing.

#### Debris Thrown on the Roadway:

The contractor shall immediately remove and properly dispose of any debris thrown on any roadway (tires, shopping carts, signs, limbs, etc.). In addition to debris removal, mud that is tracked or dragged onto any roadway by mowers shall be removed immediately. Grass clippings are to be blown clear of roadways.

#### Litter:

The contractor shall provide litter and all debris pick-ups prior to each mowing cycle on every acre of the mowing area. Debris includes, but is not limited to, tires, shopping carts, stake signs and tree limbs. Contractor will be required to cooperate with others to avoid mowing of litter as directed by the County.

#### Wildflowers:

The contractor shall conduct all mowing operations so as to avoid clearing or removing stands of wildflowers before the seeds have matured, unless otherwise directed by the County.

#### Inspections and Acceptance of Work:

Fort Bend County reserves the right to inspect the work under contract at any time for final acceptance.

#### Contractor Supervision:

The contractor shall provide, at contractor's own expense, competent, full-time supervision of the work at all times while work is in progress. All work shall be performed and completed in a thorough, workmanlike manner by skilled and experienced workers, and in accordance with the latest proven practices of the trade.

#### Compliance with Codes:

Contractor shall comply with all County, State and Federal Codes, Laws, in force at the time of award of contract and applicable to such work. Contractor shall obtain, at their own expense, such permits, certificates and licenses as may be required in the performance of the work specified.

#### Storage:

Fort Bend County does not assume responsibility for any materials, tools and equipment stored on or about the premises. The contractor upon completion of the work shall clear each area of all items.

#### Protection:

The contractor shall provide adequate protection to persons, adjacent property and utilities, and shall avoid interference with such persons, property and facilities. Contractor shall furnish all barricades, warning lights and other safety devices necessary for the safety and protection of the public and shall remove them upon completion of this contract. These safety and protection devices must be in accordance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

#### Daily Cleanup:

The contractor shall confine to the site all materials and refuse generated by his operations. Materials and/or equipment, which are stored on-site, shall be stored in an orderly manner. Materials, which become scattered in adjacent areas, shall be collected and returned to the site or otherwise satisfactorily disposed.

#### Responsibility For Property:

Contractor shall assume full responsibility for any loss of or damage to private and public property by employees or agents of the contractor and will reimburse the

private or public entity in the event of any loss of or damage to said property. Fort Bend County shall not be responsible for loss or damage to contractor's property from any cause.

Assignment:

Contractor shall not sell, assign, transfer or convey these services, in whole or in part, without the prior written consent of Fort Bend County and as a condition of such consent, contractor shall remain liable for completion of the services in the event of default by the successor contractor or assignee.