

CITY OF PASCAGOULA

GROUNDS MAINTENANCE AGREEMENT

Initial tree pruning, Point Park marsh maintenance, and Highway 90 causeway and south ROW maintenance, and various City property.

**P.O. Drawer 908
Pascagoula, MS 39568**

CITY OF PASCAGOULA

GROUNDS MAINTENANCE AGREEMENT

This Agreement is made and entered into on the 19th day of October, 2022, by and between The City of Pascagoula, Mississippi, acting by and through its City Council hereinafter referred to as “City” and Gulf Breeze Landscaping, LLC. hereinafter referred to as “Company”.

WITNESS:

WHEREAS, City is desirous of securing the services of a private firm or person to perform certain landscaping labor including, but not limited to, mowing and tree pruning, for City Properties as described herein under the terms and conditions specified herein; and

WHEREAS, the Company is desirous of providing said services as further set forth herein.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS:

- | | | |
|-----|--------------|------------------------------------------------------------------------------------------------------------------|
| 1.1 | Trash | Includes but is not limited to bottles, cans, paper, and plastic. |
| 1.2 | Debris | Includes but is not limited to man-made items, lumber, firewood, stumps, and includes brush from yard trimmings. |
| 1.3 | Right-of-Way | Road sides or banks of road up to 10 feet wide. |

2. TERM:

The term of the Agreement shall be for one (1) year with a two-year-renewal option upon mutual agreement by both parties. Either party may terminate the Agreement, at the end of any term, with ninety (90) days prior written notice by certified mail. The original term shall begin on **October 19, 2022** and continue through **October 18, 2023**.

The City reserves the right to continue said contract at the end of any term on a month-to-month basis for up to six (6) months with the consent of the Company. The Company and the City agree that, in such an event, they will in good faith negotiate a new contract rate (not to be less than the rate in effect at the end of the most recent term).

3. SCOPE OF WORK:

- 3.1** The scope of work to be rendered hereunder by the Company is as set forth in this agreement and in attached exhibits, as outlined below:
- 3.1.a.** Initial tree pruning, as set forth in Exhibit A.
 - 3.1.b.** Point Park brush and vegetation maintenance, as set forth in Exhibit B.
 - 3.1.c.** Highway 90 Causeway maintenance, as set forth in Exhibit C.
 - 3.1.d.** Highway 90 south right-of-way maintenance, as set forth in Exhibit D.
- 3.2** The City may designate in writing the addition or removal of a particular area or service. In the event of an addition, the parties shall negotiate in good faith toward a rate for any additions. In the event of the removal of an area or service, the Company shall not be paid for the area or service.

3.3 The Company shall not modify the schedule as set forth in Section 3.1, without prior written approval of the City.

3.4 Cost of Work

The City shall pay to the Company an amount not to exceed \$199,300.00 per year based on the prices established in Exhibits A-D, attached.

3.5 Change in Work

The Company agrees to hold prices firm through the entire term of the agreement, the only variable would be a fuel surcharge should the price of gasoline exceed \$5.25 per gallon, a total increase not to exceed 2% of total contract price.

3.6 CUTTING RESTRICTIONS

- The Company shall not mow or work any site when the ground is soft to the point that ruts from mowers, tractors, etc. will be left in the surface.
- In cases where grass cannot be mowed for 48 hours after the scheduled date the City Manager, or his designee, shall submit in writing to the Company when or if the grass is to be cut before the next scheduled time. In the event that the cutting is cancelled, payment will not be made.
- Scalping, uncut strips and clumps of grass will not be permitted. Clumps of grass will be raked up and removed from the job site on the day of the cutting and trimming by the company.
- All other grass shall be cut to a height of 1 ½" — 2".
- Grass clippings shall be collected and removed following grass cutting.

3.7 CURB, SIDEWALK, AND MEDIAN RESTRICTIONS:

- Grass shall be removed from all the concrete curbs, sidewalks and concrete medians at the onset of the contract and with every cutting.
- The method used to control the grass shall not damage the structure being maintained.
- The Company is responsible for removing any debris associated with the maintenance of curbs, sidewalks, rights-of-way, and medians. The method of grass removal is left to the discretion of the Company.

3.8 TRIMMING/PRUNING RESTRICTIONS:

- All poles, trees, shrubs, fences and etc. will be trimmed with a string trimmer or other suitable device at every scheduled cut.
- The Company is responsible for removing any debris associated with trimming. The method of trimming debris removal is left to the discretion of the Company.

3.9 TRASH AND DEBRIS RESTRICTIONS

- All trash, paper cups, cans, twigs, branches, dead flowers and all other debris shall be picked up prior to cutting. The Company will remove such material.
- Collected debris will not be left overnight at the job site.
- The Company will not burn any such material on City property. Any material shredded during the cutting process shall be raked up and removed.
- Trash shall be picked up at every job site at every scheduled cutting or trimming.

3.10 The Company shall provide toilet facilities for its employees.

- 3.11 The Company must remove its equipment from the various job-sites each night. No overnight storage of equipment or material on City property shall be permitted.
- 3.12 If a water supply source is needed and not available at a job-site, the Company shall make arrangements for its employees.
- 3.13 If needed, the Company shall make arrangements for a source of electricity.
- 3.14 The Company will provide all the labor, equipment, machinery and supervision necessary to carry out terms of this contract. The City will provide an Inspector to verify the accuracy of the Company's daily reports. This in no way relieves the Company of its responsibility to ensure the work is completed.
- 3.15 The Company represents that each site to be maintained has been inspected and accepts the conditions that exist on all such sites "as is" with regard to proposed size, length, ground condition or other matters. The City makes no warranties.
- 3.16 The Company understands that the facilities being maintained are public and open. Proper safety measures to protect the safety of all persons, as well as, public and private property shall be taken. When encountered, the Company shall immediately report any unsafe condition to the City Manager.

4. POINT OF CONTACT

- 4.1 All dealings and contacts between the Company and the City shall be directed to the City Manager, or his designee, who will serve as the City's Contract Administrator.

5. HOURS AND DAYS OF OPERATION.

- 5.1 Company's work shall not begin before 6:00 AM and may continue until sundown, Monday through Saturday, unless the City Manager, or his Designee, authorizes such work in writing 24 hours in advance.
- 5.2 The following holidays may be observed by the Company:
 - New Year's Day
 - Martin Luther King Day
 - Independence Day
 - Thanksgiving Day
 - Christmas Day

6. OFFICE:

- 6.1 The Company shall maintain an office or other such facilities within the service area through which they can be contacted by calling a local telephone number. The office shall be equipped with a telephone and shall have a responsible person in charge from 8 AM to 5 PM Monday through Friday.
- 6.2 A cell phone number shall be given to the City Manager and the Police Department for problems that may occur on weekends or after regular work hours.

7. INDEMNITY:

- 7.1 The Company agrees that it will protect, indemnify, and hold the City harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees incurred as a result of any litigation arising from Company's performance of this contract. Further, the Company will defend the City

in any suit, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property caused by negligent or willful acts or omissions of the Company, or those of its agents, contractors or employees, in connection with or as a result of this contract or the performance of its obligations hereunder; except, where and to the extent that the injury, death, loss or damage was the result of the willful misconduct of the City. These indemnification provisions are for the protection of the City only and shall not establish of themselves, any liability to third parties.

8. COMPLIANCE:

- 8.1 Company shall be responsible for all record keeping, reporting, accounting, and other documentation required of Company by applicable laws, ordinances and regulations and Company shall insure that all service provided by it under this Agreement shall be in compliance with all federal, state and local laws, ordinances, regulations and orders applicable.. This Agreement may be amended to effect changes that may occur with such laws.
- 8.2 The Company shall be licensed by the Mississippi Department of Agriculture as a commercial applicator of chemicals. The Company shall provide required evidence of license and certification.
- 8.3 The Company shall be responsible for determining the required kind and amounts of chemicals needed to accomplish work. All chemicals shall be in accordance with Mississippi State Department of Agriculture and all other state regulations.
- 8.4 The chemicals used shall be labeled appropriately and shall be suitable for use in areas where water is present.

9. INSURANCE

9.1 During the term of this agreement, Company shall maintain in full force and effect the following insurance; including, provisions from all carriers that policies will not be canceled until at least thirty (30) days prior written notice has been given to the City.

- A. Workmen's Compensation Statutory
- B. Employer's Liability- \$500,000 Per occurrence
- C. Bodily Injury- (Except Auto) \$500,000 Per occurrence
\$500,000 Aggregate
- D. Property Damage Liability- (Except Auto) \$300,000 Per occurrence
\$500,000 Aggregate
- E. Automobile Bodily Injury- \$500,000 Per Person
- F. Liability \$500,000 Per occurrence
- G. Automobile Property – (Damage Liability) \$500,000 Per occurrence
- H. Excess Umbrella Liability \$500,000 Per occurrence

9.2 Company shall provide the City a 'Certificate of Insurance' evidencing the required coverage's and amounts with the City to be named as an additional insured by endorsement. Said coverage will be maintained throughout the life of this Agreement.

9.3 Company agrees to provide for its worker's compensation carrier, a waiver of subrogation rights.

10. COMPANY'S PERSONNEL:

10.1 The Company shall assign a qualified person or persons to be in charge of its performance of this Agreement and shall notify the City of such person/s in writing and

whenever changes occur.

- 10.2 Each driver shall, at all times, carry a valid State of Mississippi Commercial Driver's License for the type of vehicle being driven.
- 10.3 The Company shall provide operating and safety training for all personnel.
- 10.4 The Company shall deny no person employment for reasons of age, race, color, sex, creed, religion, national origin, disability or veteran status. The Company shall comply with all local, state, and federal regulations concerning employment practices.
- 10.5 All persons employed by the Company shall be competent, skilled and qualified in the performance of work to which they are assigned.
- 10.6 All personnel shall maintain a courteous and respectful attitude toward the public at all times. The Company shall direct its employees to avoid loud and/or profane language at all times during performance of their duties.
- 10.7 At no time shall Company's employees solicit, request or receive gratuities of any kind.
- 10.8 The Company shall inform its employees that anyone who engages in misconduct or is incompetent or negligent in the proper performance of their duties or is dishonest, disorderly, intoxicated or discourteous, shall be subject to discharge by the Company.

11. EQUIPMENT:

- 11.1 The Company shall provide safe and adequate equipment in good mechanical condition, sufficient to perform the work contemplated under the contract.
- 11.2 The City shall have the right to inspect the equipment and any equipment records related to the performance of this Agreement.

12. DISPUTES:

Omitted.

13. STANDARDS FOR MEASURING RESULTS:

- 13.1 The Company owner or his designee shall meet the last Monday of each month with the City Manager or his designee to discuss performance of the Agreement and any quality controls desired by the City, if necessary.
- 13.2 It is the intent of this agreement to ensure the Company provides labor and maintenance associated with grounds upkeep as set forth herein. To this end, the Company shall provide the City with a yearly schedule of the work. The schedule shall be provided at the onset of the contract. The City Manager or his designee will then provide the Company with a list of changes for the next month at the monthly meeting.
- 13.3 The City Manager, or his designee, will monitor the work on a day-to-day basis. A daily report of work completed by the Company the previous day shall be submitted no later than 7:00 AM the next day. Work under this Agreement shall be done in a professional and workmanlike manner. If work is believed to be unsatisfactory, the Inspector shall notify the Company in writing. The Company shall remedy the defective work within 24 hours of notification. Failure to remedy the defective work will result in the company not receiving compensation for that portion of work.

- 13.4 Damages caused by the Company to public or private property shall be repaired within 48 hours.
- 13.5 Unsatisfactory performance may result in fines being imposed on Company after written notice as provided in accordance with Section 18 and as set forth below.

Fines will be assessed on a per occurrence basis

- A. \$50.00 Fine
- Failure to provide requested documents and reports as outlined in this Agreement.
 - Failure to remove debris from a particular area as scheduled.
 - Failure to maintain maximum vegetative height, as outlined in this Agreement.
 - Failure to remove debris from worksite on day of scheduled cleaning.
 - Equipment left at job site overnight.
 - Failure to adhere to regulations 3.6, 3.7, 3.8 or 3.9
- B. \$100.00 Fine
- Failure to repair damaged customer property.
 - Not providing approved schedule.
 - Changing schedule without proper notification.
 - The misuse of chemicals that cause damage to property or that don't properly alleviate problem. Example: Chemical applied to kill grass and it does not die.
 - Failure to keep scheduled meeting.
- C. Non-payment
- Unsatisfactory or incomplete work for which written notice has been given.

14. BOND:

During the term of this contract, the Company shall furnish to the City a corporate surety bond or bonds as security for the performance of the covenants and conditions contained in this Contract. The surety bond shall be valued at \$100,000. The Company shall pay premiums for the bond and the Company shall furnish evidence of the payment of the premiums, from time to time, to the City, upon the City's request. The surety on the bond shall be a corporate surety company authorized to do business in the State of Mississippi and the attorneys in fact who sign the said bond must file with the bond a certified and dated copy of their Powers of Attorney. A single bond covering all contracts between Company and City shall be sufficient.

15. FORCE MAJEURE:

Neither the Company nor the City shall be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, act of God, or other similar or different contingency beyond the reasonable control of the Company or City.

16. RECOURSE UPON DEFAULT:

Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the covenants or conditions contained herein for ten (10) working days after the other party has given the party breaching or defaulting written notice, the other party may: (a) terminate this Agreement as of any date which the said other party may select, provided said date is at least twenty (20) days after the tenth (10) working day in which the breaching party may commence to cure the default; (b) cure the breach or default at the expense of the breaching or defaulting party, and/or (c) have recourse to any other right or remedy to which it may be entitled by law. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of

the same or any subsequent breach or default. Both parties recognize that time is of the essence in carrying out the terms of this Agreement.

17. NATURE OF AGREEMENT

This Agreement shall not constitute a franchise or exclusive right to perform any other work than that which is contemplated in this agreement. Nothing in this Agreement shall be construed as creating a joint venture, or an employer - employee relationship. Company is an independent contractor and is not an agent of the City.

18. NOTICE:

A letter addressed and sent by certified United States mail to each Party at the business address specified shall be sufficient notice whenever required for any purpose in this Agreement. The addressees designated at these addresses may be changed from time to time by written notice sent by certified U.S. Mail as provided herein.

City: City of Pascagoula
P.O. Drawer 908
Pascagoula, MS 39568
Attention: City Manager

Company: Gulf Breeze Landscaping, LLC
P.O. Box 347
Gautier, MS 39553

19. MODIFICATION:

This Agreement constitutes the entire Agreement and understanding between the parties hereto, and shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

20. LAW TO GOVERN:

This Agreement shall be governed by the laws of the State of Mississippi both as to interpretation and performance. Any litigation arising out of this Agreement shall be filed and maintained in the courts of Jackson County, Mississippi, to the exclusion of all other venues. In the event litigation is initiated in relation to this Agreement and the Company is the prevailing party, the Company shall not be entitled to recover attorneys' fees from the City.

21. SEVERABILITY:

In case of one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been stated herein.

22. MISCELLANEOUS

- 22.1 To the extent authorized and permitted by Mississippi law, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.
- 22.2 Whenever the consent, approval or cooperation of one party is expressly or implicitly required or necessary by the terms hereof or to effect successful performance of the other party, such consent, approval or cooperation shall not be unreasonably withheld,

denied or delayed.

- 22.3 Neither party shall assign any portion of this Agreement, or the Agreement itself, to any third party without the express written permission of the non-assigning party.
- 22.4 The City shall pay Contractor's invoices within 45 days of receipt thereof.
- 22.5 To the extent the terms of this Agreement conflict with the terms contained in the Exhibits hereto, the terms of this Agreement shall control.

Witness the signatures of the parties by their duly authorized representatives on this the _____ day of _____, 2022.

ATTEST:

The City of Pascagoula, Mississippi

Gulf Breeze Landscaping, LLC

City Manager

Owner/President

Attest

Attest

By City Clerk