

GENERAL SERVICES CONTRACT CONTRACT NO. 19051

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Clear Waters, Inc. ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Scope of Services. CONTRACTOR will provide Pond Maintenance services to the CITY as further described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. *Reserved.*

Section 3. Compensation and Payments; Limitations.

(a) Unless the Exhibits specifically provides for reimbursement of expenses, the compensation described herein will be CONTRACTOR's sole compensation for the services to be provided.

(b) Subject to the provisions of Subsection 3(c), the CITY will pay CONTRACTOR \$40,200 for the services to be performed, at the rate of \$1,675 monthly. This pricing is based on the Price Schedule attached hereto and incorporated herein as Exhibit B.

(c) The pricing referenced above is subject to adjustments pursuant to SI 3 of the Special Instructions included in the City's Invitation to Bid No. 19051 (the "ITB"). For ease of reference, Exhibit B includes SI 3. The City Manager may approve changes in the pricing as referenced in SI 3 pursuant to a change order. The change order will include as an attachment a revised Price Schedule and a statement of the revised monthly and annual pricing.

(d) Except for any expenses specifically provided for in the Exhibits, CONTRACTOR will be solely responsible for all of costs CONTRACTOR incurs in meeting its obligations herein.

Section 4. Billing; Manner of Payment. In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices only for services provided and accepted in accordance with the requirements of this Contract. CONTRACTOR may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the Effective Date.

(b) The CITY will pay CONTRACTOR based on the pricing above, as may be adjusted for work completed by CONTRACTOR during the period billed, provided that such work is reflected on CONTRACTOR's invoice.

(c) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where payment is for the cost incurred for certain reimbursables (such as for subcontractors or air travel), the invoice must include proof that CONTRACTOR has paid such costs.

(d) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is improper, or pay CONTRACTOR the amount due.

Section 5. Standard of Performance. CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

Section 7. Documents. All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required, or upon termination or expiration of this Contract.

Section 8. Public Records.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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 CONTRACT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

Section 9. Effective Date and Term.

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 2 years, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 3 Terms of 1 year each, by providing CONTRACTOR written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONTRACTOR.

Section 10. Termination of Contract.

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Except as provided in Section 10(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 10(b) for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

Section 11. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 12. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful

conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

Section 13. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) **Coverage and Amounts.**

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

(2) **Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy will provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent will be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the Insurer will waive its rights of subrogation, if any, against the CITY on each of the types of required insurance coverage listed above.

(b) **Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all

required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) **Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) **Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract.

(f) **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

Section 14. Bonds. No bonding is required for this project.

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:
Attn: Shannon Ponitz, Utilities Director
City of Daytona Beach
125 Basin Street, Suite 100
Daytona Beach, FL 32114
Fax: 386-671-8801

To CONTRACTOR:
Attn: Harold E. Wolfe, Vice President
Clear Waters, Inc.
64 Bay Harbour Dr
Ponce Inlet, FL 32127
Fax: 386-767-4713

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

Section 16. Personnel. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

Section 19. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) **Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then **the Parties are** released to pursue any judicial remedies available to them.

Section 20. General Terms and Conditions.

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

(c) **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

(d) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

(e) **No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract.

(f) **Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(i) **Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(j) **Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(l) **Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(m) **Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants the he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of ITB and Bid.** The ITB and CONTRACTOR's responsive bid are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the ITB and Proposal, the ITB will govern. In case of conflicts between **Composite Exhibit C** and other provisions of this Contract, including **Exhibits A and B**, this Contract will govern.

(o) **Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

THE CITY

CLEAR WATERS, INC.

By: _____
Derrick L. Henry, Mayor

By: Harold E. Wolf
Printed Name: Harold E. Wolf

Date: _____

Title: Vice President
Date: 10-30-18

Attest: _____
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

EXHIBIT A: Scope of Services

I. IN GENERAL

- a. The Contractor will furnish all labor, materials, equipment, and supervision for pond and aquatic management services for locations throughout the City. Services will include good environmental and aquatic management practice, using methods with a wide margin of safety for fish, waterfowl and human life, and to comply with applicable laws and rules.
- b. The Contractor will complete the Pond Maintenance Inspection Checklist (See Attachment 1) on the status of each pond and its banks, pond safety and hardscape. Deficient items will be reported to the City's Utilities Stormwater Coordinator, Thurlan (Beaver) Wiggins, 671-8525; wigginsthurlan@codb.us
- c. The Contractor will provide the services outlined below on a monthly basis for each lake (pond). All visits will be scheduled for optimum estimated effectiveness.
- d. Mechanical removal is preferred over chemical. The method of removal will be determined by the City's Utilities Field Coordinator.
- e. Due to impairment of local surface waters of the state, copper based products will not be approved for use as a chemical weed control.
- f. The Contractor will provide environmentally safe chemicals, and meet all federal, state, county and city regulations. Only chemicals and materials manufactured using the highest standards and quality will be used in the performance of this contract.
- g. The Contractor will provide a copy of the label for each product will be included with bid submittals. Product labels must be submitted with the bid.
- h. Chemicals will be used only for the type(s) of applications listed on each label.
- i. The Contractor's personnel will have in possession, at all times, all permits, licenses, Safety Data Sheets (SDS) and other information required by federal, state and local regulations. Submit copies of permits and applicable licenses with your submittal.
- j. Contractor will provide SDS to the City's Utilities Field Coordinator prior to beginning work.
- k. No material or chemical will be used beyond its expiration date.
- l. Herbicides will only be applied to City property by an applicator specifically licensed for that chemical and a copy of the applicator's license will be included with the bid. If Contractor will subcontract this service, a copy of the subcontractor's license will be included with the bid submittal.
- m. Herbicides used will be non-toxic to fish, wildlife and humans.
- n. Make at **minimum** one visit per month per site.
- o. Contractor will notify City Utilities Field Coordinator of any water use restrictions BEFORE use of any products which may require such restriction, in person with written instructions.
- p. Contractor will provide to the City its employees' names and contact information before commencing work. If the Contractor changes personnel the City will be notified and copies their applicable licenses will be submitted to the City prior to beginning work.
- q. All employees of the Contractor working on City property will be instructed by the City's Utilities Field Coordinator in what constitutes acceptable condition of all items on the Pond Maintenance Inspection Checklist (Attachment 1). Instruction will take place within two weeks after Contract award at City facility to be determined.
- r. Contractors may perform services between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding City recognized holidays.
- s. Contractor will be provided keys for access to those ponds protected by a locked gate.

- t. The City will be responsible for trash and debris removal after contact by the Contractor.
- u. The City will be responsible for stabilization of any pond erosion found by the Contractor.

II. MONTHLY SERVICES

- a. Contractor will monitor water conditions in specified areas and provide weed control services consistent with the scope of work and good aquatic management practices.
- b. Contractor will schedule visits for optimum results and notify the appropriate City representative when the visits will be conducted. Herbicide application will not be done when winds are greater than 5 MPH or rain is imminent.
- c. The Contractor will complete a minimum of one monthly pond maintenance inspection checklist per pond site (Attachment 1).
- d. Contractor will contact the City's storm water supervisor within 24 hours of pond treatment and inspection when items on the pond maintenance report are found deficient.
- e. Contractor will send a copy of the report to the City's Utilities Field Coordinator electronically within 48 hours of the each pond inspection.

III. NPDES REQUIREMENTS

- a. Contractor will provide proper certification and licensing from the Florida Department of Agriculture and Consumer Services (FDACS) for all personnel applying pesticides or herbicides on City property or rights-of-way. By January 1, 2014, all personnel applying fertilizer will be trained and certified through the Green Industry (GI) BMP Program and FDACS. By January 1, 2014, all personnel will have been trained through the GI BMP Program and have obtained a limited certification for urban landscape commercial fertilizer application under Section 482.1562, F.S.
- b. All commercial applicator of fertilizer will have and carry in their possession at all time when applying fertilizer, evidence of certifications by the Florida Department of Agricultural and Consumer Services a Commercial Fertilizer Applicator License as per 5E-14.117(18) FAC.
- c. Contractor will comply with the minimum requirements of the Urban Turf Fertilizer Rule RE-1.003(2) FAC •Fertilizer used will meet Florida-friendly fertilizer requirements pursuant to Section 403.9337 F.S.
- d. Fertilizer and Pesticide application must meet minimum requirements of the most recent edition of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008.
- e. Fertilizer should not be applied within ten (10) feet of any inlet, curb and gutter, public street, pond, stream watercourse, lake canal or wetland as defined by the FDEP Chapter 62-340 FAC. Fertilizer may be applied within 3 ft. of a water body if applicator is equipped with a spreader deflector.
- f. A ten foot low maintenance zone is required from any pond, stream, watercourse, canal, ditch, lakes wetland or from the top of a seawall. No mowed or cut vegetative material may be deposited in any water body. Care must be taken to prevent erosion of the surface soils in this ten (10) zone. Contractor will set mechanical mowers to prevent the exposing of bare soil on pond slopes, ditches, wetlands, stream and lakes. The low maintenance zone will be suitably vegetated at all times to ensure soil stability.
- g. Fertilizers applied to turf within the City will be formulated and applied in accordance with requirements and direction provided by Rule 5E-1.003(2) FAC, Labeling for Urban Turf Fertilizers.

- h. In no case will grass clipping, vegetative material, and /or vegetative debris be washed, swept or blown off into storm water drains, curbs and gutters, ditches, conveyance, water bodies, wetlands or sidewalks or roadway. Any material that is accidentally so deposited will be immediately removed to the maximum extent practicable.
- i. All materials and equipment used in the performance of this contract will be owned by the Contractor and will be inspected for proper operation and calibration prior to each use.
- j. Contractor vehicles and equipment will be maintained in a safe, clean and sanitary condition to avoid producing environmental pollutants at all times. Vehicles, equipment, and fuel containers will be inspected on a regular basis for leakage, and faulty seals and defects will be repaired immediately. The city reserves the right to inspect all vehicles and equipment on a random basis to insure compliance with the paragraph. Equipment that does not comply with these requirements will be removed from service.
- k. Contractor's employees will be appropriately dressed in uniforms that identify the Contractor at all times. All work will be performed in a professional manner.
- l. Vehicles and watercraft will have the company name and phone number on each side, legible for a distance of 50 feet.

IV. INVOICING:

The monthly invoices will include:

- a. A summary of the type and amount of fertilizer used at each location.
- b. A summary of the type and amount of any chemicals and /or pesticides used at each pond, ditch, roadway or park location.
- c. Location and amount of trash picked up from the right of ways.

ATTACHMENT 1
MONTHLY POND MAINTENANCE INSPECTION CHECKLIST

Date: _____ **Inspected by:** _____

Pond # _____ **Pond Name:** _____

Fence/Gate/Lock

Fence/Gate/Lock in good condition? (YES/NO/N.A.)

Is there any fence damage? (YES/NO) Type of fence _____

Trash/Debris/Pollutants

Excessive trash/debris in pond? (YES/NO)

Is there any evidence of pollutants such as oil/gasoline/or other pollutants within the pond? (YES/NO)

Algae

Are there any excessive buildups of algae? (YES/NO) Type

treatment?

Erosion

Is there any noticeable erosion along the pond berm? (YES/NO)

Hazards

Any hazards to the Public? (YES/NO) Where & what type?

Comments: _____

EXHIBIT B:

PRICE SCHEDULE

POND MAINTENANCE 2019

ITB 19051

ITEM	LAKE/POND	LOCATION	ACRES	MONTHLY	UOM	QTY	ANNUAL COST
1	B5 Pond	Maley/Adams	4.2 acres	\$ 95. ⁰⁰	month	12	\$ 1140. ⁰⁰
2	B6 Pond	Bellevue Avenue (950)	19.8 acres	\$ 300. ⁰⁰	month	12	\$ 3600. ⁰⁰
3	Cedar Street	Cedar and Hudson	.31 acres	\$ 30. ⁰⁰	month	12	\$ 360. ⁰⁰
4	Cypress Park Pond #1	Cypress Park	8' deep 14,000 sq ft	\$ 30. ⁰⁰	month	12	\$ 360. ⁰⁰
5	Cypress Park Pond #2	Cypress Park	2.5' deep 5,400 sq ft	\$ 15. ⁰⁰	month	12	\$ 180. ⁰⁰
6	Florida Tennis Center Lake / Pond	Deuce Court (1)	2.3 acres	\$ 100. ⁰⁰	month	12	\$ 1200. ⁰⁰
7	Golf Course Ponds	600 Wilder	18 ponds 13 acres	\$ 225. ⁰⁰	month	12	\$ 2700. ⁰⁰
8	Lagoni Circle (front)	Wright St (w of Derbyshire)	.44 acres	\$ 25. ⁰⁰	month	12	\$ 300. ⁰⁰
9	Lagoni Circle pond (center)	Wright St (w of Derbyshire)	.15 acres	\$ 25. ⁰⁰	month	12	\$ 300. ⁰⁰
10	Lagoni Circle pond (back)	Wright St (w of Derbyshire)	1.32 acres	\$ 25. ⁰⁰	month	12	\$ 300. ⁰⁰
11	Pond RWWTP	3651 LPGA BLVD	1.25 acres	\$ 80. ⁰⁰	month	12	\$ 960. ⁰⁰
12	Municipal Stadium (2 Ponds)	LPGA Blvd (3777)	6.5 combined acres	\$ 175. ⁰⁰	month	12	\$ 2100. ⁰⁰
13	North Street Pond	North Street (Washington/ Nova)	8.75 acres	\$ 120. ⁰⁰	month	12	\$ 1440. ⁰⁰
14	Police Department	Williamson / Mason Ave	2.0 acres	\$ 80. ⁰⁰	month	12	\$ 960. ⁰⁰
15	Police Department	Williamson / Mason Ave	0.7 acres	\$ 50. ⁰⁰	month	12	\$ 600. ⁰⁰
16	Third and Imperial	Third / Imperial Drive	1.5 acres	\$ 65. ⁰⁰	month	12	\$ 780. ⁰⁰
17	Madison Ave. Ponds (3)	Madison Ave. west of Nova Rd.	4.25 acres	\$ 105. ⁰⁰	month	12	\$ 1260. ⁰⁰
18	Midtown Cultural Center	925 George W. Engram Blvd.	1.68 acres	\$ 80. ⁰⁰	month	12	\$ 960. ⁰⁰
19	ISB POND (south side of ISB)	Eastside of ISB bridge	.5 acres	\$ 50. ⁰⁰	month	12	\$ 600. ⁰⁰

\$ 1675.⁰⁰ TOTAL \$ 20,100.⁰⁰

EXHIBIT B continued

SI 3. PRICE ADJUSTMENTS. The contract prices are expected to remain firm during the original contract term, plus subsequent renewals. In the event that the Contractor has an increase in operational expenses, the Contractor may request an increase in unit prices. The Contractor may seek an increase only after twenty-four (24) months of service has been provided. Once requested, regardless if the increase is approved; the Contractor must perform satisfactory service for an additional twelve (12) months prior to another request for an increase of unit costs. The reason for an increase in unit costs must be outside of the Contractor's control. The written request for an increase will be submitted to the Purchasing Department. This written request will indicate the additional cost over the original bid amount per unit. Any request must be submitted with bona fide documentations that indicate the additional costs to the Contractor that is being passed on to the consumer. No adjustment will be made for inefficiency in operation or for additional profit. Any adjustment will be based on the latest yearly increase, calculated as a percentage, in the PPI (Producer Price Index) as published by the Bureau of Labor Statistics within the line item, "Agricultural & commercial pesticides and chemicals (commodity code 0653-0109)" (133.4-Apr 2018). Price adjustment not to exceed 3%. The PPI 4 months prior to due date is used so that they index is fixed and not adjusted. If requesting any price increase for future renewal options, the PPI for "Agricultural & commercial pesticides and chemicals (commodity code 0653-0109)" of four months prior to the request date will be used to determine percentage.

Any increase in prices is at the sole discretion of the City. If the City approves the additional costs, the costs will not be implemented for thirty (30) calendar days. If the City rejects the price increase, the Contractor may choose to terminate the contract after a sixty (60) day written notice. The City may seek a price de-escalation using the same methods.

To find the PPI for "Agricultural & commercial pesticides and chemicals (commodity code 0653-0109)" Log on <https://beta.bls.gov/dataViewer/view/timeseries/WPU06530109>.

Composite Exhibit C is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk