

## AGREEMENT FOR SUBSTATION WEED CONTROL SERVICES

THIS AGREEMENT FOR SUBSTATION WEED CONTROL SERVICES – is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **BIO-TECH CONSULTING, INC.**, a for-profit corporation duly organized and authorized to do business in the State of Florida (EIN: 74-3101893) ("Contractor").

**WHEREAS**, on April 19, 2022, City issued a Request for Quotation ("RFQ") for the provision of single application weed control services at Ocala Electric Utility substations throughout the City, RFQ No.: ELE/220300 (the "Solicitation"); and

**WHEREAS**, a total of five (5) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the quotation submitted by Bio-Tech Consulting, Inc. was found to be the lowest; and

**WHEREAS**, Contractor was selected to provide single application weed control services at Ocala Electric Utility substations throughout the City (the "Services");

**NOW THEREFORE**, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

**Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Service (A-1 through A-3)

Exhibit B: Substation Locations and Square Footage (B-1)

3. **SCOPE OF SERVICES.** Contractor shall provide all materials, labor, supervision, tools, accessories, equipment, and permits necessary for Contractor to perform its obligations under this Agreement as set forth the attached **Exhibit A - Scope of Service** and Contract Documents. The Scope of Work under this Agreement may only be adjusted by written amendment executed by both parties.

4. **COMPENSATION.** City shall pay Contractor a lump sum amount of **TWO THOUSAND, NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$2,950)** (the "Contract Sum") as full and complete compensation for the timely and satisfactory completion of the Services in compliance with the Contract Documents. The pricing under this Agreement may only be adjusted by written amendment executed by both parties
  - A. **Invoice Submission.** All invoices submitted by Contractor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Contractor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Electric Utility**, 1805 NE 30th Ave Bldg. 400 Ocala, FL 34471 Attn: **Lisa M. Crouthamel**, E-Mail: [LCrouthamel@OcalaFl.org](mailto:LCrouthamel@OcalaFl.org); Telephone: (352) 351-6646.
  - B. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
  - C. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Contractor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Contractor within **THIRTY (30)** calendar days of the Contractor's remedy or resolution of the inadequacy or defect.
  - D. **Excess Funds.** If due to mistake or any other reason Contractor receives payment under this Agreement in excess of what is provided for by the Agreement, Contractor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Contractor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgment at the highest rate allowed by law.
  - E. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Contractor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement and the Contract Documents. This Agreement shall become effective and commence on MAY 25, 2022 and continue for a term of ONE (1) YEAR, through and including MAY 24, 2023. This Agreement may be renewed for ONE (1) additional TWO-YEAR (2-Year) period by written consent between City and Contractor.
  - A. Contractor shall mobilize and commence work no later than SEVEN (7) working days from the date of issuance of a Notice to Proceed for the Services by City. At no time will the Contractor be allowed to lag behind.
  - B. **All work shall be substantially completed by Contractor in a manner satisfactory to the City Project Manager within THIRTY (30) days of the start date indicated on the Notice to Proceed and ready for final payment within SEVEN (7) days of substantial completion.**
  - C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension of the Time for Performance must be submitted in a writing delivered to the City Project Manager, along with all supporting data, within SEVEN (7) calendar days of the occurrence of the event giving rise to the need for adjustment unless the City allows an additional period of time to ascertain more accurate data. All requests for adjustments in the Contract Time shall be determined by City.
  - D. As to any delay, inefficiency, or interference in this performance of this Agreement caused by any act or failure to act by City, the Contractor's sole remedy shall be the entitlement of an extension of time to complete the performance of the affected work in accordance with the Contract Documents. Contractor agrees to make no claim for extra or additional costs attributable to said delays, inefficiencies, or interference, except as provided in this Agreement.
  - E. None of the provisions of this section shall exclude City's right of recovery for damages caused by delays or inefficiencies caused by any act or failure to act by Contractor, to include costs incurred by City for the procurement of additional professional services.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party (

"Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

- A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.
- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Contractor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

7. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and materials provided by Contractor under this Agreement shall be provided under the direction and to the satisfaction and approval of the Project Manager.

- A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials furnished, or workmanship performed, the rate of progress of the work, the interpretation of the plans and specifications, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Contractor in its quotation. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.
- B. Neither the Project Manager's review of Contractor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, procedures, or safety precautions or programs incident Contractor's furnishing and performing the work.

8. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
- (1) Contractor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
  - (2) Contractor provides material that does not meet the specifications of the Agreement;
  - (3) Contractor fails to complete the work required within the time stipulated in the Agreement; or
  - (4) Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Contractor cannot or will not perform to the requirements of the Agreement.
- B. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
- C. **City's Remedies Upon Contractor Default.** In the event that Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
- (1) City shall be entitled to terminate this Agreement without further notice;
  - (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
  - (3) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination; and
  - (4) City shall be entitled to recovery from Contractor any actual excess costs by: (i) deduction from any unpaid balances owed to Contractor; or (ii) any other remedy as provided by law.

- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Contractor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
  - E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.
9. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Contractor's performance. Any such evaluation will become public record.
10. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.
11. **CONTRACTOR REPRESENTATIONS.** Contractor expressly represents that:
- A. Contractor has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Contractor under this Agreement.
  - B. Contractor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Contractor in the Contract Documents, and that the City's written resolution of same is acceptable to Contractor.
  - C. Contractor has had an opportunity to visit, has visited, and has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Contractor's own investigation.
  - D. Contractor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.

E. **Public Entity Crimes.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Contractor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Contractor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

12. **CONTRACTOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Contractor:

- A. Contractor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
- B. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedures, and safety precautions or programs incident thereto.
- C. Contractor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
- D. Contractor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
- E. Contractor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Contractor and City may otherwise agree in writing.

13. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive



arrangement with Contractor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.

14. **STORAGE OF MATERIALS/EQUIPMENT.** Contractor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnished by Contractor or City) to be utilized in the performance of or incorporated into the work.
15. **RESPONSIBILITIES OF CITY.** City or its Representative shall issue all communications to Contractor. City has the authority to request changes in the work in accordance with the terms of this Agreement and with the terms in **Exhibit A**. City has the authority to stop work or to suspend any work.
16. **COMMERCIAL AUTO LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Contractor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Contractor's commercial automobile liability insurance policy must name, as an additional insured, the City of Ocala, a political subdivision of the State of Florida, and its officials, employees, and volunteers.
17. **GENERAL LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
  - A. One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
  - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
  - C. Coverage for contractual liability is also required.
  - D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Contractor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
18. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Contractor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's



liability insurance in amounts required by applicable statutes. Contractor shall ensure any and all subcontractors have coverage as required by applicable statutes. Contractor is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is required. **Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.**

19. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Contractor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Contractor's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Contractor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Contractor is responsible for paying any and all deductibles or self-insured retention. Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the City. Approval will not be unreasonably withheld.
- C. Certificates of Insurance. Contractor shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating\* of A-V or greater. Renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471** prior to the policy expiration.
- D. Failure to Maintain Coverage. In the event Contractor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Contractor under this Agreement, Contractor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Contractor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

F. Mandatory Endorsements for All Required Policies. All required policies shall include: (i) endorsement that waives any right of subrogation against the City of Ocala for any policy of insurance provided under this Agreement or under any state or federal worker's compensation or employer's liability act; and (ii) endorsement to give the City of Ocala no less than **THIRTY (30)** days written notice (with the exception of non-payment of premium which requires a **TEN (10)** calendar day notice) in the event of cancellation or material change.

20. **SAFETY/ENVIRONMENTAL.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons that may be affected thereby;
- B. All work, materials, and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

21. **TRAFFIC CONTROL AND BARRICADES.** Contractor shall mitigate impact on local traffic conditions to all extents possible. Contractor is responsible for establishing and maintaining appropriate traffic control and barricades. Contractor shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all locations where work is being done under this Agreement.

22. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

23. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Contractor, subcontractor, or of any of their agents or employees. nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.
24. **DELAYS AND DAMAGES.** The Contractor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Contractor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
25. **EMERGENCIES.** In an emergency affecting the welfare and safety of life or property, Contractor, without special instruction or authorization from the City Project Manager, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury. Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Project Manager. Contractor shall be required to provide to the City Project Manager with the names, addresses and telephone numbers of those representatives who can be contacted at any time in case of emergency. Contractor's emergency representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by City or public inspectors.
26. **INDEPENDENT CONTRACTOR STATUS.** Contractor acknowledges and agrees that under this Agreement, Contractor and any agent or employee of Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Contractor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Contractor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part

of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Contractor in its performance of its obligations under this Agreement.

27. **ACCESS TO FACILITIES.** City shall provide Contractor with access to all City facilities as is reasonably necessary for Contractor to perform its obligations under this Agreement.
28. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
29. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Contractor under this Agreement be abandoned, or should Contractor become insolvent, or if Contractor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
30. **PUBLIC RECORDS.** Contractor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Contractor shall:
  - A. Keep and maintain public records required by the public agency to perform the service.
  - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Contractor does not transfer the records to the public agency.
  - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to the public agency upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: [clerk@ocalafl.org](mailto:clerk@ocalafl.org); City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

31. **AUDIT.** Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
32. **PUBLICITY.** Contractor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
33. **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit [www.e-verify.gov](http://www.e-verify.gov) for more information regarding the E-Verify System.
34. **CONFLICT OF INTEREST.** Contractor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City.

Contractor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Contractor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.

35. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
36. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
37. **INDEMNITY.** Contractor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Contractor, its agents, and employees.
38. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
39. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Contractor: Bio-Tech Consulting, Inc.  
Attention: Jason McCord  
3025 East South Street  
Orlando, Florida 32803  
Phone: 407-894-5969  
E-mail: [jmccord@bio-techconsulting.com](mailto:jmccord@bio-techconsulting.com)

If to City of Ocala: Daphne M. Robinson, Esq., Contracting Officer  
City of Ocala  
110 SE Watula Avenue, 3rd Floor  
Ocala, Florida 34471  
Phone: 352-629-8366  
Fax: 352-690-2025  
E-mail: [notices@ocalafl.org](mailto:notices@ocalafl.org)

Copy to: Robert W. Batsel, Jr., Esquire  
Gooding & Batsel, PLLC  
1531 SE 36<sup>th</sup> Avenue  
Ocala, Florida 34471  
Phone: 352-579-6539  
Fax: 352-579-1289  
E-mail: [rbatsel@lawyersocala.com](mailto:rbatsel@lawyersocala.com)

40. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

41. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR



RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

42. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
43. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
44. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
45. **MUTUALITY OF NEGOTIATION.** Contractor and City acknowledge that this Agreement is a result of negotiations between Contractor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
46. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

47. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
48. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
49. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
50. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
51. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
52. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Agreement on 06 / 27 / 2022.

ATTEST:

CITY OF OCALA

*Angel B. Jacobs*

Angel B. Jacobs  
City Clerk

*Ken Whitehead*

Ken Whitehead  
Assistant City Manager

Approved as to form and legality:

BIO-TECH CONSULTING, INC.

*Robert W. Batsel, Jr.*

Robert W. Batsel, Jr.  
City Attorney

*John Miklos*

By: John Miklos  
(Printed Name)

Title: President  
(Title)

## BACKGROUND

Contractor shall provide all labor, equipment, tools and applicators necessary to provide one time weed control at Ocala Electric Utility (OEU) substations throughout the City. These services shall consist of chemical and mechanical methods, including applying herbicide/pre-emergent on the gravel covered interior grounds at approximately twenty (20) electric substations located throughout the City of Ocala as listed in **Exhibit B – Substation Locations**.

## LICENSING

Contractor must possess and maintain a **Florida Commercial Right of Way Applicator license** to use restricted strength herbicides.

## PROJECT SUMMARY

1. **Specifications:** The Vendor will be required to perform the following services for the City of Ocala:
  - a) All vegetation located inside the substation must be treated and killed with professional strength herbicide.
  - b) A 100% coverage and 90% kill rate is required for all spraying.
  - c) Pre-emergent for vegetation must be applied to the entire gravel covered ground at all substations to inhibit new growth. Please see Exhibit C – Square Footage of Substation Locations.
  - d) Proper equipment must be used to apply herbicide/pre-emergent.
2. **Working Hours:** The City of Ocala Electric Utility normal working hours are Monday through Thursday 7 am to 5 pm. Contractor shall observe City's holiday schedule. Scheduling of work, and work conducted outside of normal work hours must be approved and coordinated with the City Project Manager.

## VENDOR EMPLOYEES AND EQUIPMENT

1. Contractor is responsible for verifying that all employees providing services to the Ocala Utility Service (OUS) possess a valid Florida driver's license and possess the required license(s).
2. Contractor shall not assign/subcontract any work without the prior written approval of the Ocala Utility Service (OUS). The OUS reserves the right to decline any assignments/subcontracting.
3. All contractor employees are required to wear shirts or have a badge which identifies their company, and all trucks belonging to the contractor must bear the company's name.
4. At least one (1) crewmember must communicate fluently in English.
5. Contractor shall ensure that all of its personnel are properly qualified, trained, certified and licensed in accordance with all applicable local, state and federal rules, regulations laws, and standards to perform the work assigned
6. All damages are to be reported to the User Department where final decision will be made (by the City) as to replacement and/or repairs. All replacement and/or repairs will be performed at no additional cost to the City.

7. The Department does not include an allowance for delays caused by the effects of inclement weather, however, the Department may grant time extensions, on a day-to-day basis for delays caused by the effects of rains or other inclement weather conditions. No additional compensation will be made for delays caused by the inclement weather
8. Contractor will be responsible for performing work necessary to meet the City's standards in a safe, neat, and high-quality workman-like manner using only accepted methods in carrying out the work and complying with all Federal, State, and Local laws. All work shall conform to all existing governing authorities Codes and Regulations. The work must be accomplished with professional methods and standards of the trade. The Contractor shall be responsible for the provision of adequate and proper safety precautions for both the workmen and all persons in or around the work area.
9. Vendor must utilize competent employees in performing the work. Employees performing the work must be properly licensed or qualified as required by the scope/project.
10. The Vendor shall provide an assigned Project Manager, who will be the primary point of contact. Vendor must provide a valid telephone number and address at all times to the City Project Manager. The telephone must be answered during normal working hours or voicemail must be available to take a message.
11. At the request of the City, the Vendor must replace any incompetent, unfaithful, abusive, or disorderly person in their employment. The City and the Vendor must each be promptly notified by the other of any complaints received.
12. The employees of the Vendor must wear suitable work clothes and personal protective equipment as defined by OSHA. Employees shall be clean and in as good appearance as the job conditions permit.
13. Vendor will operate as an independent contractor and not as an agent, representative, partner or employee of the City of Ocala, and shall control their operations at the work site, and be solely responsible for the acts or omissions of their employees.
14. No smoking is allowed on City property or projects.
15. Vendor must possess/obtain all required equipment to perform the work. A list of equipment shall be provided to the City upon request.

## **VENDOR RESPONSIBILITIES**

1. The Vendor shall complete all work performed under this solicitation in accordance with policies and procedures of the City of Ocala and all applicable State and Federal laws, policies, procedures, and guidelines.
2. Vendor is responsible for any and all damages including but not limited to buildings, curbing, pavement, landscaping, or irrigation systems caused by their activity. Should any public or private property be damaged or destroyed, the Vendor at their expense, shall repair or make restoration as acceptable to the City of destroyed or damaged property no later than one (1) month from the date damage occurred.
3. If the Vendor is advised to leave a property by the property owner or their representative, the Vendor shall leave at once without altercation. Vendor shall then contact the City Project Manager within 24 hours and advise of the reason for not completing the assigned project.

**SITE HOUSEKEEPING AND CLEANUP**

**Cleanup:** The Vendor shall keep the premises free at all times from accumulation of waste materials and rubbish caused by operations and employees.

**SAFETY**

1. The Contractor(s) shall be fully responsible for meeting all OSHA, local, state, and national codes concerning safety provisions for their employees, sub-contractors, staff, public, etc. Vendor shall be responsible for all damage to buildings, curbing, pavement, landscaping, or irrigation systems caused by the delivery or removal of materials. In no event shall the City be responsible for any damages to materials, equipment or clothing that is lost, damaged, destroyed, or stolen. Any emergency situations must be reported immediately to the Project Manager.
2. In no event shall the City be responsible for any damages to any of the Vendor's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.

**EXHIBIT B - SUBSTATION LOCATIONS****CONTRACT# ELE/220300**

<b><u>SUBSTATION</u></b>	<b><u>ADDRESS</u></b>	<b><u>SQUARE FOOTAGE</u></b>
AIRPORT	509 SW 49 AVE, 34474	53,312
BASELINE	950 NE 58 AVE, 34470	25,821
DAYCO #2	3100 SE MCMP., 34471 (ON DAYCO, IND. GROUND)	3,850
DEARMIN	2779 SE 36 AVE, 34471	11,457
DIXIE	3150 SE 1 AVE, 34471	21,384
ENZIAN	2300 NE 24 ST 34470	25,024
ERGLE	4255 NE 38 TR., 34470	109,416
MARICAMP / DAYCO#1	3116 SE MCMP., 34471	16,038
NORTH	1827 NE 7 AVE., 34470	44,148
NUBY'S CORNER	10678 NE CR 314 34488 (SHARPES FERRY ROAD)	17,816
OCALA PALMS	5290 N US HWY 27, 34474	42,036
PADDOCK MALL	2546 SW 27 AVE, 34474	23,320
RICHMOND HEIGHTS	2171 NW 17 PL., 34475	25,258
RICHMOND #2	1858 NW 31 ST., 34475 (OCALA RECYCLING'S GROUND)	4,331
SHADY ROAD	471 SW 27 AVE., 34474	21,216
SHADY #2	650 SW 27 AVE., 34474 (CLOSETMAID'S GROUND)	4,256
SHARPES FERRY	670 NE 36 AVE., 34470	19,656
SHAW	3650 SW 42 ST., 34474	152,881
WATER PLANT	1810 NE 36 AVE., 34470 WHITE (DOWNTOWN)	25,821
WHITE	1101 SE 1 TR., 34471	43,264

**TOTAL SQ. FT. 690,305****Total Acreage 15.84**



<b>TITLE</b>	FOR SIGNATURES - Agreement for Substation Weed Control...
<b>FILE NAME</b>	FOR SIGNATURES - ... (ELE 220300).pdf
<b>DOCUMENT ID</b>	4ce90ba2e720e4121dfdc0e5943989eb5f0e3fa0
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## Document History



SENT

**06 / 15 / 2022**

14:43:12 UTC-4

Sent for signature to Robert W. Batsel, Jr. (rbatsel@lawyersocala.com), Bio-Tech Consulting, Inc. (jmccord@bio-techconsulting.com), Ken Whitehead (kwhitehead@ocalafl.org) and Angel Jacobs (ajacobs@ocalafl.org) from biverson@ocalafl.org  
IP: 216.255.240.104



VIEWED

**06 / 27 / 2022**

10:30:09 UTC-4

Viewed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)  
IP: 216.255.247.55



SIGNED

**06 / 27 / 2022**

10:31:02 UTC-4

Signed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)  
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VIEWED

**06 / 27 / 2022**

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Viewed by John Miklos (john@bio-techconsulting.com)  
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**06 / 27 / 2022**  
10:45:52 UTC-4

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**06 / 27 / 2022**  
16:31:53 UTC-4

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**06 / 27 / 2022**  
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## Document History



**06 / 28 / 2022**  
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**06 / 28 / 2022**  
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