



CITY WIDE LANDSCAPE MAINTENANCE AGREEMENT BETWEEN
THE CITY OF PEMBROKE PINES AND
ELAN LAWN AND LANDSCAPE, INC.

THIS IS AN AGREEMENT ("Agreement"), dated the 18th day of November, 2020 by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

ELAN LAWN AND LANDSCAPE, INC., as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a business address of **6600 SW 188TH AVENUE, SOUTHWEST RANCHES, FL 33172** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

ARTICLE 1
PREAMBLE

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **August 25, 2020**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide citywide landscaping maintenance as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

"IFB" # PSPW-20-06
"Citywide Landscape Maintenance"

1.2 On **September 22, 2020**, the bids were opened at the offices of the City Clerk.



1.3 On **November 4, 2020**, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described herein below.

1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the services for various City locations as more particularly described in and in accordance with the Scope of Services outlined in the specifications, **"IFB" # PSPW-20-06** attached hereto and made a part hereof as **Exhibit "A"** and CONTRACTOR's response thereto, attached hereto and made a part hereof as **Exhibit "B"**. CONTRACTOR agrees to do everything required by this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form.

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the CONTRACTOR'S expense.

2.4 CONTRACTOR shall schedule regular meetings with the CITY representatives at least once a month to discuss the progress of the work and maintenance of the citywide fencing project, as more specifically described in **Exhibit A**.

2.5 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.6 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are



applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

ARTICLE 3 **TERM AND TERMINATION**

3.1 CONTRACTOR shall perform the services associated with the Property as identified in **Exhibit "A"** attached hereto and made part hereof, for an initial five (5) year period commencing December 28, 2020 and ending on December 27, 2025.

3.2 This Agreement may not be renewed.

3.3 **Post Contractual Obligations.** In the event that the term of this agreement expires, the CONTRACTOR agrees to continue providing services, at the current rates, on a month to month basis until the CITY establishes a new contract for services.

3.4 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon seven days written notice by the terminating party to the other party for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.5 **Default by CONTRACTOR.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.

ARTICLE 4 **COMPENSATION AND METHOD OF PAYMENT**

4.1 The CITY hereby agrees to compensate CONTRACTOR monthly, for all services performed and materials provided by CONTRACTOR as provided for in **Exhibit "B"**, attached hereto and by reference made a part hereof. The total annual compensation amount SHALL NOT EXCEED ONE MILLION EIGHT HUNDRED TWENTY THOUSAND FIVE HUNDRED THIRTY-EIGHT DOLLARS (\$1,820,538.76) during the first year which includes an owner's contingency in the amount of eighty five thousand dollars (85,000.00) and the cost to provide a performance bond in the amount of twenty-nine thousand one hundred seventy-eight dollars and seventy-six cents (\$29,178.76). Contract amount shall be eligible for an annual CPI adjustment according to the terms as set forth in **EXHIBIT "A"**.

4.1.1 This contingency authorizes the CITY to execute change orders up to the amount of the contingency without the need to obtain Commission approval. **It is hereby understood**



and agreed that the CONTRACTOR shall not expend any dollars in connection with the owner's contingency or allowance without the expressed prior written approval of the CITY's authorized representative. Any owner's contingency funds that have not been utilized at the end of the project will remain with the CITY, the CONTRACTOR shall only be paid for the proposed project cost as approved by the City Commission along with any owner contingency expenses that were approved by the CITY's authorized representative.

4.2 All payments shall be governed by the Florida Prompt Payment Act, as set forth in §§ 218.70-218.80, Florida Statutes.

4.4 **Method of Billing and Payment.**

4.4.1 The CITY shall within thirty (30) days, from the date the City's Public Service Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Public Services Director or his/her assignees.

4.4.2 Payment will be made to CONTRACTOR at:

**Elan Lawn and Landscape Services, Inc.
6600 SW 188th Avenue
Southwest Ranches, FL, 33332**

**ARTICLE 5
CHANGES IN SCOPE OF WORK**

5.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibit "A"**, to be provided under this Agreement. These changes will affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 CONTRACTOR shall continue work when seeking change order unless work has not been authorized herein, or by written amendment or change order, executed by the parties hereto, with the same formality, equality, and dignity herewith. Work to be performed while a seeking change order which has not been described herein or in a separate written agreement shall be performed at the CONTRACTOR's own risk. CITY shall not be responsible for any payments requested pursuant to a change order until the change order is approved by the CITY.

5.3 In no event will the CONTRACTOR be compensated for additional work which has not been described in a separate written agreement executed by the parties hereto.



ARTICLE 6

INDEMNIFICATION

6.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns and employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from performance or non-performance of this Agreement or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.

6.2 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

6.3 CONTRACTOR's aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement, plus the compensation received by CONTRACTOR.

6.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

6.5 CONTRACTOR shall be liable for any accident, loss, injury or damages to persons and/or property arising out of and/or resulting from CONTRACTOR's performance of the work required by this Agreement.

6.6 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or § 768.28, Florida Statutes, as may be amended from time to time.

ARTICLE 7

INSURANCE

7.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR



shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

7.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ ☐

7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000



5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No



7.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption.

Yes No



7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No



7.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability



Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No

- ☐ * 7.6.4 Umbrella/Excess Liability Insurance in the amount of \$_____ as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

Yes No

- ☒ 7.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.7 Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final



payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

- ☐ * 7.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ☐ * 7.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$1,000,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.



Yes No

- ☐ * 7.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the CITY, the CONTRACTOR and subcontractors of the project. The CONTRACTOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right at its sole discretion to utilize the CONTRACTOR's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONTRACTOR purchasing the Builder's Risk insurance for the project, the CONTRACTOR shall allow the CITY the opportunity to analyze the CONTRACTOR's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONTRACTOR's Builder's Risk Insurance, the CONTRACTOR shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONTRACTOR shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONTRACTOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the determination as to what limits are appropriate for the given project.

7.7 REQUIRED ENDORSEMENTS

- 7.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 7.7.2 Waiver of all Rights of Subrogation against the CITY.
- 7.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 7.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 7.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 7.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

7.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

7.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.



7.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

ARTICLE 8

NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 9

INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business,



and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 10

AGREEMENT SUBJECT TO FUNDING

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 11

UNCONTROLLABLE FORCES

11.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

11.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 12

GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

ARTICLE 13

SIGNATORY AUTHORITY

CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

ARTICLE 14

DEFAULT OF CONTRACT & REMEDIES



14.1 **Damages.** CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement, or for losses sustained by CITY resultant from CONTRACTOR's failure to perform in accordance with the requirements of this Agreement.

14.1.1 **Liquidated Damages.** As a breach of the service provided by this Agreement would cause serious and substantial damage to CITY Property, and the nature of this Agreement would render it impracticable or extremely difficult to fix the actual damage sustained by CITY by such breach, it is agreed that, in case of breach of service wherein CONTRACTOR fails to maintain the Property, leaving the said property in disrepair, CITY may elect to collect liquidated damages for each such breach, and CONTRACTOR will pay CITY as liquidated damages, and not as penalty, FIVE HUNDRED DOLLARS (\$500.00) for every day of such malfunction. This sum is the agreed upon amount by which CITY will be damaged by the breach of such service. An election to seek such remedies shall not be construed as a waiver of any legal remedies CITY may have as to any subsequent breach of service under this Agreement.

14.2 **Correction of Work.** If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

14.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

14.3.1 The abandonment of the Property by CONTRACTOR for a period of at least seven (7) business days.

14.3.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Public Services Director relative thereto.

14.3.3 The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

14.3.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.



14.3.5 The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

14.4 **Remedies in Default.** In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of this Agreement. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement.

14.4.1 Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to CONTRACTOR.

14.4.2 CITY may complete the Agreement, or any part thereof, either by day labor, hiring a subcontractor, or by re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR together with the costs incident thereto to such default.

14.4.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

14.4.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

ARTICLE 15

BANKRUPTCY

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 16

MERGER; AMENDMENT



This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

ARTICLE 17

DISPUTE RESOLUTION

17.1 **Arbitration.** In addition to any other remedy provided hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

17.2 Operations During Dispute.

17.2.1 In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

17.2.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's Property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

17.2.3 Notwithstanding the other provisions in this Section, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

ARTICLE 18

PUBLIC RECORDS

18.1 CITY is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:



18.1.1 Keep and maintain public records required by the CITY to perform the service;

18.1.2 Upon request from the CITY's custodian of public records, provide the CITY 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;

18.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

18.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

18.2 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the default in accordance with the provisions set forth in **Article 14** of this Agreement.

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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

**ARTICLE 19
MISCELLANEOUS**

19.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.



19.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

19.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

19.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

19.5 **No Contingent Fees.** 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 Agreement, 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 other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

19.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY:	Charles F. Dodge, City Manager
	City of Pembroke Pines
	601 City Center Way, 4 th Floor
	Pembroke Pines, Florida 33025



Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR: **Michael Garcia,**
Elan Lawn and Landscape Services, Inc.
6600 SW 188th Avenue
Southwest Ranches, FL, 33332
E-mail: office@elanlawn.com
Telephone No: 954-961-6138
Facsimile No: 954-961-5052

19.7 **Binding 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.

19.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

19.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

19.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

19.11 **Entire Agreement and Conflicts.** This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, Exhibit A and Exhibit B, this Agreement shall govern, then Exhibit A, and then Exhibit B.

19.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.



19.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

19.14 **Protection of CITY Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

19.15 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

19.16 **Compliance with Statutes.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

19.16.1 **Services to be Performed at CITY Schools.** CONTRACTOR shall comply with Chapter 1012, Florida Statutes, which requires Level II background screening for individuals whom are vendors performing services at a Florida public school or district, if applicable.

19.17 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

19.17.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

19.17.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

19.17.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to § 215.473, Florida Statutes; or

19.17.2.2 Is engaged in business operations in Syria.

19.18 **Domestic Partnership.**



19.18.1 CONTRACTOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that **(check only one box below)**:

- ☐ CONTRACTOR currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances; or
- ☐ CONTRACTOR will comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- ☐ CONTRACTOR will not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- ☒ CONTRACTOR does not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances because of the following allowable exemption **(check only box below)**:
 - ☒ CONTRACTOR does not provide benefits to employees' spouses in traditional marriages; or
 - ☐ CONTRACTOR provides an employee the cash equivalent of benefits because CONTRACTOR is unable to provide benefits to employees' Domestic Partners or spouses despite making reasonable efforts to provide them. To meet this exception, CONTRACTOR shall provide a notarized affidavit that it has made reasonable efforts to provide such benefits. The affidavit shall state the efforts taken to provide such benefits and the amount of the cash equivalent. Case equivalent means the amount of money paid to an employee with a Domestic Partner or spouse rather than providing benefits to the employee's Domestic Partner or spouse. The case equivalent is equal to the employer's direct expense of providing benefits to an employee's spouse; or
 - ☐ CONTRACTOR is a religious organization, association, society, or any non-profit charitable or educational institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society; or
 - ☐ CONTRACTOR is a governmental agency.

19.18.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

19.18.3 CONTRACTOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONTRACTOR is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONTRACTOR may not be in compliance with the provisions of



this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONTRACTOR's records pertaining to its benefits policies and its employment policies and practices.

19.18.4 CONTRACTOR must conspicuously make available to all employees and applicants for employment the following statement:

“During the performance of a contract with the City of Pembroke Pines, Florida, the CONTRACTOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples”.

If CONTRACTOR has questions regarding the application of Section 35.39 of the City of Pembroke Pines Code of Ordinances to CONTRACTOR's duties pursuant to this Agreement, contact Human Resources at (954) 954-392-292 or drotstein@ppines.com.

19.18.5 By executing this Agreement, CONTRACTOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

SIGNATURE PAGE FOLLOWS



IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

Marlene D. Graham 11/19/2020
MARLENE D. GRAHAM, CITY CLERK

Charles F. Dodge
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

Quentin Morgan 10.8.2020
Name: Quentin Morgan
OFFICE OF THE CITY ATTORNEY



CONTRACTOR:

ELAN LAWN AND LANDSCAPE SERVICES, INC.

By: Michael Garcia
Name: Michael Garcia
Title: President

STATE OF FL
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 07 day of October, 2020, by Michael Garcia of ELAN LAWN AND LANDSCAPE SERVICES, INC., a Florida Profit Corporation. He/she is personally known to me or has produced FL ID as identification.



M Garcia
NOTARY PUBLIC
Maria Garcia
(Name of Notary Typed, Printed or Stamped)

Title or Rank

Serial number, if any



City of Pembroke Pines, FL

601 City Center Way
Pembroke Pines, FL
33025
www.ppines.com

Agenda Request Form

Agenda Number: 10.

File ID: 20-0749	Type: Purchase	Status: Passed
Version: 1	Agenda Section:	In Control: City Commission
Short Title: Award of PSPW-20-06 Citywide Landscape Maintenance		File Created: 10/07/2020
		Final Action: 11/18/2020

Title: MOTION TO AWARD IFB # PSPW-20-06 "CITYWIDE LANDSCAPE MAINTENANCE" TO THE MOST RESPONSIVE/RESPONSIBLE BIDDER, ELAN LAWN AND LANDSCAPE SERVICES, INC. IN AN ANNUAL AMOUNT NOT TO EXCEED \$1,820,538.76, WHICH INCLUDES THE COST TO PROVIDE A PAYMENT AND PERFORMANCE BOND IN THE AMOUNT OF \$29,178.76, AND AN OWNER'S CONTINGENCY IN THE AMOUNT OF \$85,000.

***Agenda Date:** 11/18/2020

Agenda Number: 10.

Internal Notes:

Attachments: 1. Citywide Landscape Maintenance Agreement - Vendor Executed (includes Exhibit A and Exhibit B), 2. PSPW-20-06 Bid Tabulation, 3. Email Regarding Brightview Landscaping at City Center, 4. 2018-2020 Landscape Maint. Bid Comparison

Indexes:

1 City Commission 11/18/2020 approve Pass
Action Text: A motion was made by Commissioner Good Jr., seconded by Commissioner Siple, to approve Item #10. The motion carried by the following vote:
Aye: - 5 Mayor Ortis, Vice Mayor Schwartz, Commissioner Good Jr.,
Commissioner Castillo, and Commissioner Siple
Nay: - 0

PROCUREMENT PROCESS TAKEN:

- Chapter 35 of the City's Code of Ordinances is titled "PROCUREMENT PROCEDURES, PUBLIC FUNDS."

- Section 35.15 defines an Invitation for Bid as "A written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated therein and

specifically defining the commodities or services for which bids are sought. The invitation for bid shall be used when the city is capable of specifically defining the scope of work for which a service is required or when the city is capable of establishing 15 precise specifications defining the actual commodities required. The invitation for bid shall include instructions to bidders, plans, drawings and specifications, if any, bid form and other required forms and documents to be submitted with the bid."

- Section 35.18 of the City's Code of Ordinances is titled "COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED; EXCEPTIONS."

- 35.18(A) states, "A purchase of or contracts for commodities or services that is estimated by the Chief Procurement Officer to cost more than \$25,000 shall be based on sealed competitive solicitations as determined by the Chief Procurement Officer, except as specifically provided herein."

- Section 35.19 of the City's Code of Ordinances is titled "SEALED COMPETITIVE BIDDING PROCEDURE."

- Section 35.19(A) states "All sealed competitive solicitations as defined in § 35.18 shall be presented to the City Commission for their consideration prior to advertisement."

- Section 35.21 of the City's Code of Ordinances is titled "AWARD OF CONTRACT."

- Section 35.21(A) of the City's Code of Ordinances is titled "City Commission approval."

- Section 35.21(A)(1) states, "An initial purchase of, or contract for, commodities or services, in excess of \$25,000, shall require the approval of the City Commission, regardless of whether the competitive bidding or competitive proposal procedures were followed."

SUMMARY EXPLANATION AND BACKGROUND:

1. On August 19, 2020, the City Commission authorized the advertisement of #PSPW-20-06 "Citywide Landscape Maintenance" which was advertised on August 25, 2020.
2. The purpose of this solicitation was to seek proposals from qualified firms for landscape maintenance services on City owned properties and Right of Ways (ROW).
3. On September 22, 2020, the City opened seven (7) proposals from the following vendors:

Vendor Name	Cost Including P&P Bond
Brightview Landscape Services, Inc.	\$1,703,632.00
Elan Lawn and Landscape Services, Inc	\$1,735,538.76
Superior Landscaping & Lawn Service, Inc.	

\$1,783,241.52

Mainguy Landscape Services

\$1,784,356.55

Aaron Agriculture

\$2,019,100.20

Juniper Landscaping

\$2,468,425.39

← YRY Homes, LLC.

NO BID

4. The Public Services Department has deemed Brightview Landscape Services, Inc. as non-responsible, because their contract with SMG for landscaping services at the City Center was requested to be terminated by City Administration.

5. The Public Services Department has reviewed the bids and has deemed Elan Lawn And Landscape Services, Inc. to be the most responsive/responsible bidder.

6. In addition, Elan Lawn And Landscape Services, Inc. has also completed the Equal Benefits Form and has utilized the following allowable exemption, stating that "the Contractor does not provide benefits to employees' spouses in traditional marriages."

7. A comparison between the current contract amount and the 2020 bid amount for Citywide Landscape Maintenance reflects that the current contract amount is \$1,654,295.00 compared to a 2020 bid amount of \$1,735,538.76. Please note that the aforementioned amounts include the cost to provide a payment and performance bond and exclude cost of owner's contingency.

8. The Public Services Department would like to add an owner's contingency (approximately 4.897%) to cover any additional services needed which will increase the total cost from \$1,735,538.76 to \$1,820,538.76.

9. The agreement is for an initial five (5) year period with no renewal terms, and the contract shall be eligible for an annual CPI adjustment according to the terms set forth in EXHIBIT "A" of the contract.

10. Request City Commission to award IFB # PSPW-20-06 "Citywide Landscape Maintenance" to the most responsive/responsible bidder, Elan Lawn And Landscape Services, Inc in an amount not to exceed \$1,820,538.76, which includes the cost to provide a payment and performance bond in the amount of \$29,178.76, and an owner's contingency in the amount of 85,000.

FINANCIAL IMPACT DETAIL:

a) Initial Cost: \$1,820,538.76

b) Amount budgeted for this item in Account No: Funds are budgeted in various accounts throughout the City, under object code # 34990 (Contractual services -other)

c) Source of funding for difference, if not fully budgeted: Not Applicable.

d) 5 year projection of the operational cost of the project:

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues	\$0	\$0	\$0	\$0	\$0
Expenditures	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76
Net Cost	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76	\$1,820,538.76

e) Detail of additional staff requirements: Not Applicable.

**AGREEMENT COVER MEMORANDUM**

To:	City Attorney, City Manager and City Clerk.	From:	Public Services	Date:	12/28/2020
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Attached please find for your final review and execution a new agreement [provide a brief summary of the services/items covered by the agreement, as well as a brief explanation of why Commission approval is/is not needed, and if any other related/previous agreement(s) exist together with the expiration date(s)].

Company:	Elan Lawn and Landscape INC
Contract Purpose:	Landscape Maintenance
Contract Description:	Agreement for the maintenance of landscaping throughout the city

Agreement Type:	Master	Effective Date:	12/28/2020
		Commencement Date:	12/28/2020
		Expiration Date:	12/27/2025
Contract Type:	Services (Contractual)	Renewal Options:	none
Financial Impact:	Expense	Notice Period:	5 years
Contract Value:	\$1,820,538.76	Notice Date:	TBD
Contract Value Description:	Bid amount \$1,706,360.00 Contingency \$85,000.00 Bond Cost \$29,178.76		

Department:	Public Services	For Commission Review:	Yes	
Contract Manager:	Jim Mulvaney	Approved by Commission:	Yes	
Procurement Method:	Formal Solicitation, IFB	Commission Date (if Approved or Pending):	11/18/2020	
Procurement Summary:	IFB # PSPW-20-06	Final Motion:	Passed	
		Reason For Commission Review:	Contract value exceeds \$25,000	
Account Coding(s):	account # 100-541-6002-34990 (Contractual services -other)	Insurance Required:	Yes	Reviewed by Risk Dept.
		Bonds Required:	Performance Bond	Approved by Public Services
Reviewed by Dept. Head:	Steven Buckland			



Procurement Approval:	Approved by Commission.
Additional Notes:	
Attachments	(2) Originals, Signed/Notarized/Witnessed by Vendor <ul style="list-style-type: none">• Exhibit A – IFB # PSPW-20-06 – (Electronically Sent)• Exhibit B – Contractor's Response – (Electronically Sent)• Commission Approval• Certificate of Liability Insurance
Agreement Cover Memo Reviewed by:	X <u>Steven Buckland</u> _____ Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/09/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Horizons Insurance & Financial Services, Inc. 10620 Griffin Rd # 103 Cooper City FL 33328		CONTACT NAME: Mauricio Giraldo PHONE (A/C, No, Ext): (954) 862-1735 FAX (A/C, No): (833) 342-2682 E-MAIL ADDRESS: mauricio@thehorizonsfinancial.com	
INSURED Elan Lawn and Landscape Services Inc 6600 SW 188 AVE Southwest Ranches FL 33332		INSURER(S) AFFORDING COVERAGE INSURER A: EVANSTON INS CO INSURER B: INFINITY ASSURANCE INSURANCE COMPANY INSURER C: SCOTTSDALE INS CO INSURER D: INSURER E: INSURER F:	
		NAIC # 35378 39497 41297	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		3AA381610	01/30/2020	01/30/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			509820044327001	01/30/2020	01/30/2021	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Pollution Liability	X		CPLMOL104854	12/07/2020	12/07/2021	Each Occurrence \$1,000,000 General Aggregate \$2,000,000

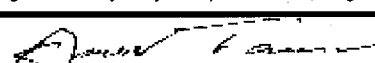
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The certificate holder City of Pembroke Pines is an additional insured in regards to the commercial general liability policy and Pollution Liability Policy.

CERTIFICATE HOLDER**CANCELLATION**

City Of Pembroke Pines 601 City Center Way Pembroke Pines, FL 33025	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Mauricio Giraldo Agent

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CERTIFICATE OF LIABILITY INSURANCE							Date 7/10/2020	
Producer: Plymouth Insurance Agenc 2739 U.S. Highway 19 N. Holiday, FL 34691 (727) 938-5562				This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the coverage afforded by the policies below.				
Insured: South East Personnel Leasing, Inc. & Subsidiaries 2739 U.S. Highway 19 N. Holiday, FL 34691				Insurers Affording Coverage			NAIC #	
				Insurer A: Lion Insurance Company			11075	
				Insurer B:				
				Insurer C:				
				Insurer D:				
Insurer E:								
Coverages <small>The policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.</small>								
INSR LTR	ADDL INSRD	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	Limits		
		GENERAL LIABILITY				Each Occurrence		
		<input type="checkbox"/> Commercial General Liability				Damage to rented premises (EA occurrence)		
		<input type="checkbox"/> Claims Made <input type="checkbox"/> Occur				Med Exp		
						Personal Adv Injury		
						General Aggregate		
		General aggregate limit applies per:				Products - Comp/Op Agg		
<input type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> LOC								
		AUTOMOBILE LIABILITY				Combined Single Limit (EA Accident)		
		<input type="checkbox"/> Any Auto				Bodily Injury (Per Person)		
		<input type="checkbox"/> All Owned Autos				Bodily Injury (Per Accident)		
		<input type="checkbox"/> Scheduled Autos				Property Damage (Per Accident)		
		<input type="checkbox"/> Hired Autos						
		<input type="checkbox"/> Non-Owned Autos						
		EXCESS/UMBRELLA LIABILITY				Each Occurrence		
		<input type="checkbox"/> Occur <input type="checkbox"/> Claims Made				Aggregate		
		<input type="checkbox"/> Deductible						
A		Workers Compensation and Employers' Liability	WC 71949	01/01/2020	01/01/2021	<input checked="" type="checkbox"/> WC Statutory Limits	<input type="checkbox"/> OTH-ER	
		Any proprietor/partner/executive officer/member excluded? NO				E.L. Each Accident \$1,000,000		
		If Yes, describe under special provisions below.				E.L. Disease - Ea Employee \$1,000,000		
						E.L. Disease - Policy Limits \$1,000,000		
Other			Lion Insurance Company is A.M. Best Company rated A (Excellent). AMB # 12616					
Descriptions of Operations/Locations/Vehicles/Exclusions added by Endorsement/Special Provisions: <div style="float: right;">Client ID: 98-66-661</div> Coverage only applies to active employee(s) of South East Personnel Leasing, Inc. & Subsidiaries that are leased to the following "Client Company": <div style="text-align: center;">Elan Lawn and Landscape Services, Inc</div> Coverage only applies to injuries incurred by South East Personnel Leasing, Inc. & Subsidiaries active employee(s), while working in: FL. Coverage does not apply to statutory employee(s) or independent contractor(s) of the Client Company or any other entity. A list of the active employee(s) leased to the Client Company can be obtained by faxing a request to (727) 937-2138 or email certificates@lioninsurancecompany.com Project Name: ISSUE 07-10-20 (CF)								
Begin Date: 7/9/2020								
CERTIFICATE HOLDER				CANCELLATION				
CITY OF PEMBROKE PINES 601 CITY CENTER WAY PEMBROKE PINES, FL 33025				Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.				
								

Torres, Barbara

From: Rotstein, Daniel
Sent: Tuesday, December 22, 2020 4:39 PM
To: Torres, Barbara
Subject: FW: Elan Lawn and Landscape Inc.
Attachments: Elan Lawn - COI - Pollu. City Of Pembroke Pines.pdf; Pre-Payroll COI PP.pdf; Elan Contract 2020.docx

Approved COI

From: Torres, Barbara
Sent: Monday, December 21, 2020 5:04 PM
To: Rotstein, Daniel <drotstein@ppines.com>
Subject: Elan Lawn and Landscape Inc.

Good afternoon:

Please review the attached referenced agreement and provide any comments and/or approval of the certificate of insurance.

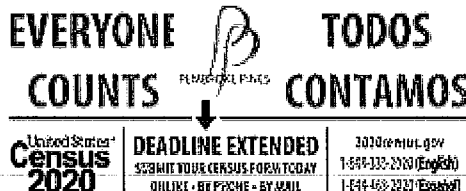
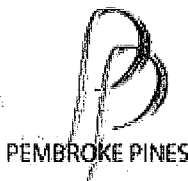
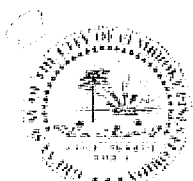
Thank you.

Barbara Torres
City Cler's Office
954-450-1050 ext. 51048

From: Graham, Marlene
Sent: Wednesday, December 09, 2020 5:20 PM
To: Buckland, Steven <sbuckland@ppines.com>
Cc: Rotstein, Daniel <drotstein@ppines.com>; Torres, Barbara <btorres@ppines.com>
Subject: FW: COI's Elan.

Thank you, Steve.

Marlene D. Graham, CMC, City Clerk
CITY OF PEMBROKE PINES
601 City Center Way
Pembroke Pines, FL 33025
Phone: 954-450-1050
Fax: 954-517-8402
Website: www.ppines.com
Email: mgraham@ppines.com
Public Records Request Email: publicrecordsrequests@ppines.com



From: Buckland, Steven
Sent: Wednesday, December 09, 2020 4:08 PM
To: Rotstein, Daniel <drotstein@ppines.com>
Cc: Graham, Marlene <mgraham@ppines.com>
Subject: FW: COI's Elan.

Dan,
Please review the attached COI for Elan and let me know if this is acceptable by Risk.

Marlene,
I am transmitting this to you via email since you already have the signed contract.

Steven Buckland
Public Services
City of Pembroke Pines
Phone: 954-518-9107

From: Michael Garcia [mailto:mgarcia@mgmresults.com]
Sent: Wednesday, December 09, 2020 3:49 PM
To: Buckland, Steven <sbuckland@ppines.com>
Subject: COI's Elan.

Warning! This message was sent from outside your organization and we are unable to verify the sender.

[Allow sender](#) | [Block sender](#)

Hello Steve,

Attached please find our COI's as requested.

Please let me know if you have any question.

Thank you,

Michael.