

TERM CONSTRUCTION SERVICES CONTRACT
0118-2280

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation, hereinafter the "CITY" or "Owner," and The Jones Company of South Florida, a Florida profit corporation, hereinafter the "CONTRACTOR."

WITNESSETH, that CONTRACTOR and the CITY agree as follows, for the mutual valuable consideration provided herein:

ARTICLE I. SCOPE OF WORK. CONTRACTOR will provide Earthwork, Grading, and Grassing services (hereinafter, the "Work") from time to time at the direction of the CITY during the Term of this Contract, pursuant to the issuance of work authorizations as referenced below.

ARTICLE II. TERM; RENEWAL. The initial Term of this Contract is 2 years, commencing on the Effective Date. The CITY has the option to renew this Contract for up to 3 Terms of 1-year each. The CITY will exercise each such option by providing CONTRACTOR written notice at least 30 days before the end of the current Term.

ARTICLE III. WORK AUTHORIZATIONS. This Contract, in and of itself, does not require CONTRACTOR to perform any Work or provide payment for Work performed by CONTRACTOR. No Work will be performed under this Contract, and no payment obligation will arise for performance of such Work, except when specifically authorized by a work authorization issued by the CITY in accordance with this Contract and the CITY's procurement policies.

For purposes herein, a work authorization is an agreed-upon document describing the specific Project to be performed, the estimated Project Sum, Project Time, and any additional terms and conditions that the CITY may provide consistent with the terms and conditions of this Contract. A work authorization may be in the form of a mutually executed contract document, or may consist of a CITY-issued purchase order that accepts and incorporates by reference CONTRACTOR's dated, signed written quotation.

Each work authorization is subject to all of the terms and conditions of this Contract and in case of a conflict between the terms of this Contract and a work authorization, this Contract will govern.

ARTICLE IV. COMPENSATION. Subject to the terms herein, the not to exceed Project Sum will be set forth in each work authorization, and will be based on the Unit Price Schedule. In each instance the Project Sum represents CONTRACTOR's sole compensation from the CITY for performance of the Work described in the work authorization; and payment of the Project Sum will be made and is subject to retainage and other withholdings as described in the General Conditions.

ARTICLE V. PAYMENT AND PERFORMANCE BONDS. As specified in the Special Instructions, CONTRACTOR will provide payment and performance bonds, or other acceptable form of security, for any work authorization issued under this Contract where the Project Sum is estimated to equal or exceed \$100,000.

ARTICLE VI. INDEMNIFICATION.

A. CONTRACTOR hereby indemnifies and holds harmless the CITY from and against, all liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees,

arising out of or resulting from the Work provided that the liabilities, damages, losses, and costs are caused in whole or in part by any negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

B. CONTRACTOR indemnifies the CITY against any claim of supplier's or subcontractor's lien (in cases where such payment is not already guaranteed by payment bond). If any claim or lien remains unsatisfied after all payments are made, CONTRACTOR must refund to the CITY all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

C. For purposes of the obligations stated in this Article, references to the CITY include the CITY's officers, employees, and agents.

D. CONTRACTOR's obligations under this Article are made without regard to the availability of insurance of the CITY or the Engineer/Architect.

ARTICLE VII. INSURANCE

A. Required Insurance.

CONTRACTOR will purchase and maintain, at its own expense, the following types and amounts of insurance, primary and non-contributory with the CITY's own insurance, in form and companies satisfactory to the CITY:

1. **Workers' Compensation Insurance** – As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR employed at the project site or in any way connected with the Work.

The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per accident. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

2. **Liability insurance – Including Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, collapse and underground, and personal injury on an "occurrence" basis, insuring the CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the Work; and **Automobile Liability coverage** insuring claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle or mobile equipment used by CONTRACTOR at the project site or in any way connected with the Work.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. . CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by

the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

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

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

B. Subcontractors' Insurance. Each of CONTRACTOR's subcontractors will be required to provide insurance in substantially similar form to the insurance required of CONTRACTOR above.

C. Proof of Insurance. CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence Work until all required insurance has been approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard and the expiration dates.

Upon request of the Risk Manager, CONTRACTOR will also provide the CITY copies of the insurance contracts referenced by the certificates.

D. Cancellation and Replacement. CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of any required insurance occurring prior to the acceptance of the work by the CITY. If such insurance terminates without CONTRACTOR's prior knowledge, CONTRACTOR will notify the CITY immediately upon becoming aware of such termination. CONTRACTOR will send notice to the City's Risk Manager at P.O. Box 2451, Daytona Beach, Florida 32115-2451.

The CITY reserves the right to suspend the Work until such insurance has been replaced, or to obtain replacement insurance at CONTRACTOR's sole cost.

E. Termination of Insurance. CONTRACTOR will not cancel any required insurance coverage until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR is authorized to cancel the insurance and the effective date of such authorization. The Risk Manager will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

The liabilities of CONTRACTOR under this Contract will survive and not be terminated, reduced, or otherwise limited by any expiration, limitation, exclusion, or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the contractor will relieve the CONTRACTOR or its sub-contractors from responsibility to provide insurance as required by the contract.

F. Risk Manager. All references herein to the "Risk Manager" will mean the Risk Manager for the CITY or the Risk Manager's designee.

ARTICLE VIII. NOTICES

A. Where the Contract Documents authorize or require the CITY to provide notice to CONTRACTOR, notice may be provided by delivery by hand to CONTRACTOR's designated Superintendent at the Project Site, or in the absence or unavailability of the Superintendent to any other person on the Project Site who holds himself or herself out as managing the Work on behalf of CONTRACTOR, or in lieu of either of these, by written notice to the address provided below.

B. Where the Contract Documents authorize or require CONTRACTOR to provide notice to the CITY, notice may be provided only by written notice to the address provided below.

C. Written notice is valid only if sent by certified United States mail, return receipt requested, facsimile with confirmation receipt required, or by recognized courier such as Federal Express with confirmation receipt requested. All such notices will be deemed to have been duly given and provided on (i) the date of receipt, (ii) upon receipt or refusal of delivery if transmitted by registered or certified mail, return receipt requested, or (iii) the first business day after the date of deposit, if transmitted by reputable overnight courier service, whichever occurs first. Written notices will be sent to the following persons:

If to CITY:
Attn: David Waller, Deputy Public Works Director
The City of Daytona Beach
950 Bellevue Ave.
Daytona Beach, FL 32114
Fax: 386-671-8620

If to the CONTRACTOR:
Attn: Angela Jones, President
The Jones Company
951 Courtyard Lane, Unit 32
Orlando, Florida 32825
Fax: 866-700-5384

provided, however, that either Party may by written notice change the address designated for receipt of written and faxed notices.

ARTICLE IX. CONTRACT DOCUMENTS. This Contract incorporates the CITY's Invitation to Bid ("ITB") # 0118-2280; CONTRACTOR's Bid and supporting documents (the "Bid Documents"); the General Conditions; the Supplemental General Conditions, if any; Technical Provisions; any additional Specifications; any other documents attached hereto or specifically incorporated by reference in any of the documents listed above; and each work authorization (hereinafter collectively, the "Contract" or "Contract Documents").

The Contract Documents are intended to include all information necessary for CONTRACTOR's proper prosecution and timely completion of the Work for each Project authorized. CONTRACTOR will prosecute the Work as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary, and what is required by one will be as binding as if required by all.

ARTICLE X. DISPUTE RESOLUTION

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

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

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

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

ARTICLE XI. GENERAL PROVISIONS

A. This Contract will be governed by the laws of the state of Florida without regard to any choice of law principles that could result in application of the laws of any other jurisdiction. Venue for any legal action or proceeding arising out of this Contract is exclusively in the federal or state courts in and for Volusia County, Florida. The Parties hereby waive any right to stay or dismiss any action or proceeding brought under or in connection with this Contract that is brought before the above-referenced courts on the basis of forum non-conveniens.

B. In case of litigation arising out of this Contract where the meaning of one or more provisions is at issue, the CITY will not be penalized by virtue of its having drafted this Contract. CONTRACTOR has carefully reviewed and had the opportunity to seek advice of legal counsel prior to executing this Contract.

C. The CITY and CONTRACTOR agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

D. In performing the services provided for herein, CONTRACTOR is an independent contractor and not an employee of the CITY.

E. The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, does not constitute a waiver or estoppel of the right to do so.

F. All terms and conditions of this Contract which contemplate a period of time beyond completion or termination, will survive such completion or termination and not be merged therein or otherwise terminated.

G. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

H. The undersigned representative of CONTRACTOR affirms that in executing this Contract on behalf of CONTRACTOR, he or she is fully authorized to bind CONTRACTOR to the terms and conditions herein set forth.

I. No CITY officer, employee, or independent consultant who is involved in the development, evaluation, or decision-making process of the performance of any solicitation will have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of CONTRACTOR will render the Contract voidable by the CITY.


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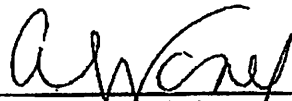
J. This Contract represents the entire and integrated agreement between the CITY and CONTRACTOR with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

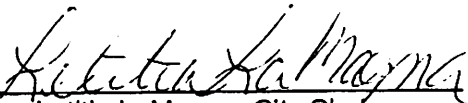
IN WITNESS WHEREOF, the Parties have executed this Contract on the dates written below.

THE CITY OF DAYTONA BEACH

THE JONES COMPANY OF SOUTH FLORIDA

By: 
Derrick L. Henry, Mayor

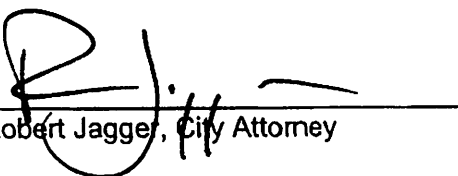
By: 
Printed Name: Angela Jones
Title: President

Attest: 
Letitia LaMagna, City Clerk

Date: 2-21-19

Date: November 1, 2018

Approved as to legal form:

By: 
Robert Jagger, City Attorney

REVISED BID ITEM SCHEDULE

Pay Item Description	No.	Unit and Limits of Amount Ordered per Work Authorization	Type	Estimated Contract Quantity	Unit of Measure	Unit Price	Extended Price
Earthwork and Grading. Furnish, place and shape soil to a safely traversable surface template to protect facilities & for placement of sod. See Specifications.	1A	Less than 50 Cubic Yards	NA	300	C.Y.	\$ 175.00	\$ 52,500.00
	1B	50 to 150 Cubic Yards	NA	150	C.Y.	\$ 165.00	\$ 24,750.00
	1C	More than 150 Cubic Yards	NA	150	C.Y.	\$ 200.00	\$ 30,000.00

Pay Item Description	No.	Unit and Limits of Amount Ordered per Work Authorization	Type	Estimated Contract Quantity	Unit of Measure	Unit Price	Extended Price
Sodding. Furnish and install sod from types listed or designated appropriate for the site location. See Specifications.	2A	Less than 1,000 Square Feet	Bahia; Argentine	1000	S.F.	\$ 1.15	\$ 1,150.00
	2B		Floritam	2500	S.F.	\$ 1.15	\$ 2,875.00
	2C		Zoysia; Empire	500	S.F.	\$ 1.15	\$ 575.00
	2D		Bermuda; 419	500	S.F.	\$ 1.15	\$ 575.00
	2E		Centipede	500	S.F.	\$ 1.15	\$ 575.00
	2F	1,000 to 3,000 Square Feet	Bahia; Argentine	600	S.F.	\$ 1.05	\$ 630.00
	2G		Floritam	1500	S.F.	\$ 1.05	\$ 1,575.00
	2H		Zoysia; Empire	300	S.F.	\$ 1.05	\$ 315.00
	2I		Bermuda; 419	300	S.F.	\$ 1.15	\$ 345.00
	2J		Centipede	300	S.F.	\$ 1.15	\$ 345.00
	2K	More than 3,000 Square Feet	Bahia; Argentine	800	S.F.	\$.95	\$ 760.00
	2L		Floritam	2000	S.F.	\$.95	\$ 1,900.00
	2M		Zoysia; Empire	400	S.F.	\$ 1.00	\$ 400.00
	2N		Bermuda; 419	400	S.F.	\$ 1.00	\$ 400.00
	2O		Centipede	400	S.F.	\$ 1.00	\$ 400.00

Pay Item Description	No.	Unit and Limits of Amount Ordered per Work Authorization	Type	Estimated Contract Quantity	Unit of Measure	Unit Price	Extended Price
Temporary Watering. Furnish and apply water to designated grading and sodding areas. See Specifications.	3A	Less than 1,500 Gallons	NA	5000	Gal.	\$ 6.80	\$ 34,000.00
	3B	1,500 to 3,000 Gallons	NA	5000	Gal.	\$ 4.25	\$ 20,400.00
	3C	More than 3,000 Gallons	NA	6000	Gal.	\$ 3.75	\$ 22,500.00
Fertilization. Fertilize designated sodding areas. See Specifications.	4A	Less than 300 Pounds	12-24-14 Starter	750	LB	\$ 5.00	\$ 3,750.00
	4B		6-2-0 Bio Solids	750	LB	\$ 6.00	\$ 4,500.00
	4C	300 to 600 Pounds	12-24-14 Starter	600	LB	\$ 5.00	\$ 3,000.00
	4D		6-2-0 Bio Solids	600	LB	\$ 6.00	\$ 3,600.00
	4E	More than 600 Pounds	12-24-14 Starter	500	LB	\$ 5.00	\$ 2,500.00
	4F		6-2-0 Bio Solids	500	LB	\$ 6.00	\$ 3,000.00
GRAND TOTAL						\$ 218,170.00	