

AGREEMENT

THIS IS AN AGREEMENT ("Agreement"), dated JULY 10, 2012, between the City of Dania Beach, Florida, a municipal corporation ("City"), having an address at 100 West Dania Beach Boulevard, Dania, Florida 33004, and Lawn Wizard, Inc., a Florida corporation ("Contractor"), having an address at 8362 Pines Boulevard, Suite 164, Pembroke Pines, Florida 33024.

In consideration of the mutual terms, conditions, promises, covenants and payments set forth in this Agreement, the sufficiency and receipt of which are acknowledged, City and Contractor agree as follows:

ARTICLE 1
PREAMBLE

In order to establish the background, context and frame of reference for this Agreement, and to generally express the objectives and intentions of the parties, the following statements, representations and explanations are the 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 The Contractor, for the consideration fully set out below, shall furnish all the materials, equipment and labor to perform all work necessary to complete the landscaping maintenance located throughout the City of Dania Beach, Florida (see attached Exhibit "A" "Scope of Services", which Exhibit is made a part of and is incorporated into this Agreement by this reference).

1.2 The City authorized the proper City officials to enter into this Agreement with Contractor to maintain the landscaping throughout the City.

ARTICLE 2
SERVICES AND RESPONSIBILITIES

2.1 Contractor agrees to do everything required by this Agreement and to comply with any and all other provisions in the Invitation to Bid documents, which are made a part of and are incorporated into this Agreement by this reference. Contractor also agrees to perform all clean-up and bear the expense of any off-site disposal, which is or may be necessitated by its work on and around the landscaping maintenance sites.

2.2 Contractor agrees that all work performed under this Agreement shall be done in a professional manner and that Contractor's efforts will produce a quality result.

2.3 Contractor represents to City, with full knowledge that City is relying upon these representations when entering into this Agreement with Contractor, that Contractor has the expertise, experience and work force sufficient to timely perform the services to be provided by Contractor, pursuant to the terms of this Agreement.

2.4 Contractor represents to City that Contractor is properly licensed by all applicable federal, state and local agencies to provide the services specified under this Agreement. If any of the Contractor's licenses are revoked, suspended or terminated for any reason by any governmental agency, Contractor shall notify the City immediately.

2.5 Contractor agrees to conduct all work and services under this Agreement in accordance with all applicable federal, state and local laws and regulations. Contractor will identify all governmental authorities and agencies having jurisdiction to approve work involved in the landscaping maintenance and Contractor agrees to obtain all permits and approvals from any and all such governmental authorities which have jurisdiction. If permitted by the permitting agency, and if City can realize a cost savings by such action, City may authorize the Contractor to seek required permits on behalf of and in the name of City as its Contractor; provided, however, that Contractor agrees to fully indemnify and hold harmless the City in all respects as a result of the obtaining of any and all such permits and approvals.

2.6 The City's Parks and Landscape Supervisor, Leah Connolly, or her designated representative, Michael Rodriguez, Equipment Operator, will be the persons through whom the Contractor must communicate all information pertaining to the landscaping maintenance.

2.7 Contractor shall guarantee the entire landscape maintenance work against poor workmanship and faulty materials for a period of one (1) year after final payment and shall immediately correct any defects which may appear during this period upon written notification by the City's Parks and Landscape Supervisor, Leah Connolly, or her designated representative, Michael Rodriguez, Equipment Operator. Contractor waives any and all rights to claim any statute of limitations defense as to any condition that may arise under this guarantee.

ARTICLE 3 **TERMS AND CONDITIONS**

3.1 This Agreement may be terminated by City if Contractor fails to perform the work to City's sole and reasonable approval, after City sends written notice of any deficiency to Contractor and Contractor does not cure such deficiency within seven (7) days from the date of such notice. In such event, the Contractor shall be paid compensation for improvements made toward completion of the Project, if such improvements meet City's sole and reasonable approval, which approval will not be unreasonably withheld. In the event that the Contractor abandons the work specified in this Agreement or causes it to be terminated, Contractor shall indemnify the City against any loss pertaining to its abandonment up to a maximum of the amount to be paid under this Agreement. All finished or unfinished materials, documents and reports prepared by Contractor shall become the property of City and shall be delivered by Contractor to City before payment, if any, is made to Contractor by City.

ARTICLE 4 **COMPENSATION AND METHOD OF PAYMENT**

4.1 This Agreement is for an amount not to exceed Two Hundred Twenty Two Thousand, Seven Hundred Forty and no/100 Dollars (\$222,740.00). The term of this Agreement will be for a two (2) year period from date of execution of it, with the option of the City to renew

the Agreement for two (2) additional two (2) year periods, with prices firm for the first four (4) years by mutual consent, in writing, by both parties. For a second renewal, prices may not be adjusted beyond the applicable Consumer Price Index. The successful bidder shall supply a Performance Bond for 110% of the awarded bid amount made payable to the City of Dania Beach within ten (10) days of notification of award of Contract.

4.2 Subject to the provisions of this Agreement, the amount of each progress payment shall be computed as follows:

a) Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%) until fifty percent (50%) completion and after fifty percent (50%) completion, reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment.

b) Add that portion of the Contract Sum properly allocable to materials and equipment delivered and installed, less the applicable retainage. No sums shall be due for materials stored on or off site not yet installed.

c) Subtract the aggregate of previous payments made by the City; and

d) Subtract amounts, if any, which the Consultant has withheld or nullified.

4.3 The total compensation above may not be exceeded without a written amendment to this Agreement executed by the authorized agents of both parties.

4.4 Payment will be made to Contractor at:

Lawn Wizard, Inc.
8362 Pines Boulevard, Suite 164
Pembroke Pines, Florida 33024

4.5 The making and acceptance of the work shall constitute a waiver of all claims by the City, except for any or all claims arising from the guarantee set forth above, unsettled liens, lawsuits, deficiencies or faulty work appearing within one (1) year after final payment, or from any variations from the requirements of the specifications for the landscaping maintenance. The acceptance of payment shall constitute a waiver of all claims against City by the Contractor.

4.6 Contractor shall, before final payment is made by City, provide City with copies of releases of all liens from any and all subcontractors, materials' providers and the like, who or which supplied or furnished any labor, services or materials that were used in the Project. Contractor shall then furnish the City a "No Lien Affidavit". Final payment shall be made upon submission by the Contractor of evidence satisfactory to the City that all payrolls, material bills and other costs incurred by the Contractor in connection with the work have been paid in full, and after all guarantees and specifications for products, and materials incorporated into the project that appear in this Agreement and as otherwise set forth in the specifications have been furnished to and found acceptable by the City.

ARTICLE 5
CHANGES IN SCOPE OF WORK

5.1 City or Contractor may request changes that increase, decrease or otherwise modify the Project, as described in this Agreement. These changes may affect the compensation specified above and, if so, they must be described in a written amendment, executed by the authorized agents of both parties, prior to any deviation from the terms of this Agreement. In no event will Contractor deviate or permit deviation from the work described in this Agreement or the Specifications without City's advance written consent.

ARTICLE 6
PROTECTION OF CITY'S PROPERTY

6.1 At all times during the performance of this Agreement, the Contractor shall protect the City's property from all damage whatsoever on account of Contractor's performance of work toward completion of the Project described by this Agreement.

ARTICLE 7
INDEMNIFICATION

7.1 The selected Contractor shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

- (a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting from, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work;
- (b) any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent rights by Contractor in the performance of the work;
- (c) liens, claims, actions made by the Contractor or other party performing the work;

- (d) claims of whatsoever nature related to collection practices or any actions of a contradictory nature pursuant to Contract or in an attempt to collect monies due or claimed to be due to the City.

ARTICLE 8 INSURANCE

8.1 The Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required by the City, as specified below and coverages and insurance have been approved by the Risk Manager of the City. The Contractor shall not allow any subcontractor to commence work on any subcontract until the subcontractor, as provided in Section 9, below, and all coverages required of any subcontractor, have been approved by City. In addition, Contractor shall be responsible for any policy deductibles and self-insured retentions.

8.2 Contractor shall provide Certificates of Insurance with the City, reflecting evidence of the coverages immediately upon the execution of this Agreement. These Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for coverages shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than "A" in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

8.3 Coverages shall be in force until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by the formal acceptance by the City. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverages for the balance of the period of the Agreement and any extension of it are in effect. **THE CONTRACTOR SHALL NOT PERFORM OR CONTINUE TO WORK PURSUANT TO THIS AGREEMENT UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT, SUCH DELAY BEING SUBJECT TO ANY APPLICABLE PROVISIONS DESCRIBED IN THIS AGREEMENT.**

ARTICLE 9 REQUIRED INSURANCE COVERAGE

9.1 The following insurance must be provided:

9.1.1 General Liability Insurance, which includes coverage for death, bodily injury and property damage, products and completed operations and contractual liability with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The City shall be named as an "additional insured" under the general liability policy including product liability. The "additional insured" clause shall be a rider or endorsement issued by the insurance home office, not by a local agent.

9.1.2 Workers' Compensation insurance shall be maintained by Contractor and any Subcontractor during the life of this Agreement and provide coverage with statutory limits Part. A, and Five Hundred Thousand Dollars (\$500,000.00) Part B, Employer's Liability.

9.1.3 Comprehensive Auto Liability insurance shall be provided with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit to include coverage for death, bodily injury and property damage for owned, hired, and non-owned vehicles. The City shall be named as an "additional insured" under this policy.

9.1.4 For any architect, engineer or both, professional liability coverage, including errors & omissions coverage, shall be provided with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. The City shall be named as an "additional insured" under this policy with respect to this project.

The Contractor shall hold the City, its agents and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete the Project. The City reserves the right to require Contractor to provide and pay for any other insurance coverages that the City deems necessary, depending upon the possible exposure to liability.

ARTICLE 10

INDEPENDENT CONTRACTOR

10.1 This Agreement does not create an employee/employer relationship between the parties. Contractor agrees that it is not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wages' laws and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Florida Workers' Compensation Act, and the Florida unemployment insurance law. The Contractor shall retain sole and absolute discretion and exercise its judgment as to the manner and means of carrying out Contractor's activities and responsibilities toward completion of the Project. Administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, H.U.D., or United States policies, rules or regulations relating to the use of Contractor's funds provided for in this Agreement. 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, overtime premiums or both.

ARTICLE 11
DEFAULT OF AGREEMENT AND REMEDIES

11.1 Liquidated Damages. It is mutually agreed between the parties that time is of the essence of this Agreement, and in the event the Project is not completed within the time and in the manner specified in this Agreement, it is agreed that from the compensation otherwise to be paid to the Contractor, the City may retain the sum of Two Hundred Fifty Dollars (\$250.00) per day for each day thereafter, Sundays and holidays included, that the work remains uncompleted and the City is denied full benefit of completion of the Project, which sum City and Contractor agree represents the damages the City will have sustained per day for the failure of the Contractor to complete the Project within the time stipulated. The parties agree that this sum is not a penalty.

11.2 Remedies in Default. In case of any default by Contractor, the City, through City's Parks and Landscaping Supervisor, or her designated representative, shall notify the Contractor, in writing, of such default and direct Contractor to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Bond, or the lending institution named in the Irrevocable Letter of Credit (the "Bank"), whichever is applicable. If Contractor does not cure such default within seven (7) days of the date after notice was sent by City, City may declare a default of this Agreement and will notify the Contractor and the Surety or Bank of such declaration of default in writing and terminate the Agreement.

11.2.1 Within ten (10) days of such declaration of default, the Surety on the Bond shall, at its own cost and expense, rectify or cause to be rectified the default and also contract with a replacement contractor to be approved by City. Surety's replacement Contractor will assume the work of Contractor and complete performance of the work of the Project under the Agreement within thirty (30) days of City's approval of Surety's replacement Contractor. The Surety shall receive payment equal to what would have been paid the Contractor had the Contractor continued to perform the work under the Agreement, less any compensation paid to Contractor by City and less all sums due the City for any damages suffered or any expenses incurred, or both, by reason of Contractor's default. Alternatively, if applicable, City shall notify Bank that the Irrevocable Letter of Credit is required to be honored and payment immediately made to City.

11.2.2 If such Surety or Bank fails to perform any of its obligations as described above, the City may complete the Project, or any part of it, either by day labor or re-letting a contract ("Default Contract") for the same, and procure the equipment and the facilities necessary for the completion of the Default Contract, and charge the cost of same to the Contractor, the Surety, or both, together with the costs incident to such default.

11.2.3 In the event the City completes the Default Contract at a lesser cost than would have been payable to the Contractor under this Agreement, if the same had been fulfilled by Contractor, City shall retain such difference. Should such cost to the City be greater, then the Contractor, the Surety, or both shall pay the amount of such excess to the City.

ARTICLE 12
BANKRUPTCY

12.1 It is agreed that if the 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 and Contractor will automatically be in default of this Agreement and the provisions of Article 11 will be enforced at City's discretion.

ARTICLE 13
DISPUTE RESOLUTION

13.1 Venue; Fees. All claims, counterclaims, disputes and other matters in question between City and Contractor arising out of, relating to or pertaining to this Agreement, the breach of it, the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation. If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. In any litigation, the parties agree to each waive any trial by jury of any and all issues. In the event of any litigation which arises out of, pertains to, or relates to this Agreement, the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, subject to the limits of this paragraph. Where the prevailing party is awarded compensatory damages from the non-prevailing party, the amount of attorneys' fees shall not exceed the amount of compensatory damages. If no compensatory damages are awarded, the prevailing party is entitled to reasonable attorneys' fees, which entitlement and award shall not exceed the total amount payable as Contractor's compensation under this Agreement.

13.2 Operations During Dispute.

13.2.1 In the event that a dispute, if any, arises between the City and the Contractor relating to this Agreement, or its performance or compensation, the Contractor agrees to continue to render service in full compliance with all terms and conditions of this Agreement as required by the City.

13.2.2 Notwithstanding any other provisions in this Agreement, whenever any service provided by the Contractor fails to meet City's reasonable approval, the City will have the right to terminate the Agreement seven (7) days after the date when the written notice was sent by City of the deficiency, if Contractor has not cured such deficiency within that time.

ARTICLE 14
MISCELLANEOUS

14.1 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 to this Agreement due to the joint contributions of both parties.

14.2 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 may attempt to claim reimbursement. 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 three (3) 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.

14.3 Assignments, Subcontracts and Amendments. This Agreement, and any interests in it, shall not in whole or in part be assigned, subcontracted, transferred in any way 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 or controlling interest in Contractor shall constitute an assignment which requires City approval. Violation of the terms of this paragraph shall constitute a breach of this Agreement by Contractor and City may, in its discretion, cancel this Agreement and all rights of Contractor under this Agreement will terminate.

It is further agreed that no modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the authorized agents of the parties.

14.4 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 the 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, the City shall have the right to terminate the Agreement without liability and, in its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

14.5 Notice. Whenever any party desires to give notice to the 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. The places for giving of notice shall remain as set forth below until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the City designate the following as the respective persons and places for giving of notice:

City: Parks and Landscaping Supervisor
Attn: Leah Connolly
City of Dania Beach
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

Copy to: Thomas J. Ansbro, Esq., City Attorney
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

Contractor: Lawn Wizard, Inc.
8362 Pines Boulevard, Suite 164
Pembroke Pines, Florida 33024

14.6 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 is authorized to bind and obligate such party with respect to all provisions contained in this Agreement.

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

14.8 Exhibits. Each Exhibit referred to in the Invitation to Bid documents are an essential part of this Agreement. The exhibits, if not physically attached, are treated as parts of this Agreement and are made a part of and are incorporated into this Agreement by this reference.

14.9 Severability. If any provision of this Agreement or application of it 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, and shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

14.10 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

14.11 Extent of Agreement. This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

14.12 Waiver. Failure of the City to insist upon strict performance of any provision or condition of this Agreement, or to enforce any right contained in it, 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.

14.13 Conflict. In the event there is a conflict between any of the terms in any of the documents contained in the Invitation to Bid documents or in any Exhibit as part of this Agreement and any terms of this Agreement, the terms of this Agreement shall prevail.

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

ATTEST:

Louise Stilson
Louise Stilson, CMC
City Clerk

APPROVED FOR FORM
AND CORRECTNESS:

Thomas J. Ansbro
Thomas J. Ansbro
City Attorney



CITY:
CITY OF DANIA BEACH, FLORIDA
a municipal corporation

Pat Flury
Patricia Flury
Mayor

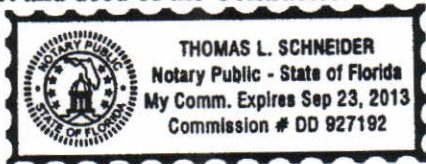
Robert Baldwin
Robert Baldwin
City Manager

CONTRACTOR:
LAWN WIZARD, INC.,
a Florida corporation

Maria P. Longo
Signature
MARIA ISABEL LONGO
PRINT Name
PRESIDENT
Title

STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Maria Longo, as President, of Lawn Wizard, Inc., a Florida corporation, on behalf of the corporation, and acknowledged execution of the foregoing Agreement for the use and purposes mentioned in it and that the instrument is the act and deed of the Contractor.



Thomas L. Schneider
Notary Public
THOMAS L. SCHNEIDER
PRINT Name of Notary

My Commission Expires: 9-23-13