PRODUCT AND RELATED SERVICES CONTRACT
Between
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT (District) and

Contractor name: Whitfield's Lawn and Garden

Contract No.: RFP7157 Mowing & Trimming Service- **Second Extension**

Contractor Information

Contractor attests that it is an independent contractor solely responsible for the work performed under this Contract. Contractor, its subcontractors, employees, and agents shall not be deemed to be employees of the District. Contractor shall be responsible for all federal, state and local taxed and all fees applicable to payments for services under this Contract.

Contractor Name

Address: 3132 4th Street

City, State, Zip: Des Moines, IA 50313

Telephone: (515) 710-1812

Facsimile:

Email: whitfieldslgs@yahoo.com

Terms & Conditions

1. **Term and Termination**

   This Contract becomes effective on 7/1/2017 unless earlier terminated as provided below, this Contract shall continue through 6/30/18. District is exercising its right to renew this contract for the upcoming period.

2. **Detailed Description of Services / Statement of Work**

   As described in RFP7157 Mowing & Trimming Service. See Exhibit A.

3. **Payment Method**

   The District will process payments at the conclusion of each mowing cycle upon receipt of an invoice detailing the service provided. In order for an invoice to be processed the service provided must be accepted by the Director of Custodial Services, once approved by the Director the invoice will be sent to the District's Business & Finance department for processing. It will be the Director's responsibility to notify the contractor no later than five (5) business days after receipt of an invoice if there are any problems regarding the provided service being invoiced. Both parties agree to must mutually agree upon the corrective action required to satisfy the service deficiency.

3. Payment Method

The maximum total payment under this contract is $ for the contract period as per the attached RFP Proposal and any further written amendments to the RFP for products and services provided by the Contractor. This is a not- to-exceed amount, and the District will not pay more than this amount unless specifically agreed to in an amendment executed by both parties. The District reserves the right to pay invoices using a virtual or procurement card or pay through direct funds transfer.

4. Contract Documents

This Contract consists of these Terms and Conditions and the documents ("Exhibits") attached hereto and incorporated herein, listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents:

Exhibit A RFP7157 (sent under separate mail)

Exhibit B General Terms & Conditions Located @http://www.dmschools.org/wp-content/uploads/2014/11/General-Terms-n-Conditions-New.pdf

Exhibit C Acknowledgement Form

Exhibit D Form of Proposal- 2nd Extension

5. Payment Issues

a) Method of Payment: Unless otherwise specified in Section 3 above "Payment Method", the District shall pay Contractor no later than net 45 days upon invoice approval and acceptance of provided service.

b) Payment on Early Termination: Upon termination pursuant to Section 13 Early Termination, District shall pay Contractor as follows:

   i. If the District terminates this Contract for its convenience under Section 13 (a) or (b), then the District must pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract. District shall not be liable for any direct, indirect, consequential, or other damages or penalties. Termination by District shall not constitute a waiver of any claim District may have against Contractor.

   ii. If Contractor terminates this Contract under Section 13 (c) due to District's breach, then the District shall pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract.

   iii. If District terminates this Contract under Section 13 (c) or 13 (d) due to Contractor's breach, the District must pay Contractor for work performed before the termination date less any setoff to which District is entitled and if and only if Contractor performed such work in accordance with this Contract.

6. Cost Adjustments

Both parties agree that contacted prices shall be fixed for the contract period stated in Section 1 above, with the understanding the contract may be extended for up to four additional one year periods if mutually agreed upon by both parties and deemed in the best interest of the District.

7. Independent Contractor Status

Both parties understand and agree that this Contract is not intended and shall not be construed to create an employment relationship between District and Contractor, its officers, employees, or agents. At all times under this Contract, Contractor and District are acting and performing as independent contractors. Neither party has the authority to create any obligations for the other, or to bind the other to any representation, statement or document.

8. Subcontract, Assignment

Contractor may not subcontract, assign, or otherwise transfer any of its interest, rights, or duties under this Contract without the prior written consent of District. District may withhold such consent for any or no reason. If District consents to an assignment or subcontract, then in addition to any other provisions of this Contract, the Contractor shall require any permitted assign or subcontractor to agree in writing to be bound by all the terms and conditions of this Contract that would otherwise bind Contractor. The parties agree that any such subcontracts shall be construed as matters solely between the Contractor and its subcontractor and shall have no binding effect on District, and the Contractor shall remain ultimately responsible to the District for the proper performance of this Contract.

8. Successors in Interest

This Contract shall bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any.

9. No Third Party Beneficiaries

District and Contractor are the only parties to this Contract and are the only parties to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third persons unless they are individually named in this Contract and expressly described as intended beneficiaries of this Contract.

10. Other Contractors

District reserves the right to enter into other agreements for work additional or related to the service provided under this Contract, and Contractor agrees to cooperate fully with these other contractors and with the District. When requested by District, Contractor shall coordinate its performance under this Contract with such additional or related work. Contractor must not interfere with the work performance of any other contractor or District employees.

12. Nonperformance

As used in the Contract "failure to perform" means failure, for whatever reason, to deliver goods and/ or perform work as specified and scheduled in this Contract. If Contractor fails to perform under this Contract, then District, after giving ten (working) days written notice and opportunity to cure to the Contractor, has the right to complete the work itself, secure the contracted goods and services from other contractors, and or a combination thereof, as necessary to complete the work. Both parties agree that Contractor shall bear any reasonable cost difference, as measured against any unpaid balance due Contractor, for these substitute goods and services.

13. Early Termination

This Contract may be terminated as follows unless otherwise specified herein:

a) Mutual: District and Contractor may terminate this Contract at any time by written agreement.
b) District's Sole Discretion: District in its sole discretion may terminate this Contract for any reason on at least 30 days written notice to Contractor.
c) Breach: Either party may terminate this Contract in the event of breach of Contract by the other party. To be effective, the party seeking termination must give the other party written notice of the breach, and its intent to terminate. If the breaching party does not entirely cure the breach within 15 days of the date of receipt of the notice, the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination.

13. Early Termination

d) Contractor Licensing: Notwithstanding Section 13(c), District may terminate this Contract immediately by written notice upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.
e) Furlough: District reserves the right to terminate or otherwise suspend this Contract if the District's School Board determines that funding is insufficient to remain fully open and calls for a District-wide furlough or similar temporary District reduction in operations. Any temporary closure shall not affect amounts due Contractor under this Contract, subject to a pro-rated adjustment for the reduction in services or need for goods during the furlough. In addition, if funds anticipated for the products or services provided by Contractor become unavailable for any reason, the District shall have the right to terminate this Contract.

14. Remedies

In case of Contractor breach and in addition to the provisions of this Contract, District shall be entitled to any other available legal and equitable remedies. In case of District breach, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled under this Contract.

15. Limitation of Liability and Exclusion of Certain Damages

Exclusion of Certain Damages: Except with respect to the security obligations under Section 24 and the indemnification obligations under Section 28, neither party will be liable to the other party for any indirect, incidental, consequential, special or punitive damages arising out of or in connection with this Contract, regardless of the form or cause of action or the alleged basis of the claim, even if a party has been advised of the possibility of such damages.

16. Hours of Labor

Contractor will abide by all applicable laws concerning employment pay and overtime.

17. Errors

Contractor must perform any and all additional work necessary to correct errors in the work required under this Contract, and the Contractor must do so without undue delays and without additional cost to District.

18. Access to Records; Contractor Financial Records

Contractor agrees that District and its authorized representatives are entitled to review all Contractor books, documents, papers, plans, and records, electronic or otherwise ("Records"), directly pertinent only to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain all Records, fiscal and otherwise, directly relating to this Contract in accordance with generally accepted accounting principles so as to document clearly Contractor's performance.

Following final payment and termination of this Contract, Contractor shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

19. Work Performed on District Property

Contractor shall comply with the following:

a) Identification: When performing work on District property, Contractor shall be in full uniform at all times. Uniforms must include shirt with attached Contractor company identification. All such persons must also carry photo identification and must present it to any District personnel upon request. If Contractor cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Contractor, costs to be borne by Contractor. If Contractor does not have a specific uniform for its employees, then Contractor shall provide identification tags as described above and/or any other mechanism the District in its sole discretion determines is required to easily and appropriately identify Contractors.

b) Sign-in: If required by schools and other District locations, each day Contractor's employees are present on District property; those employees must sign into the location's main office to receive an in-school identification/visitors tag. Contractor's employees must display this tag on their person at all times while on District property.

c) No Smoking: All District properties are tobacco-free zones; Contractor is prohibited from using any tobacco product on District property.

d) No Drugs: All District properties are drug-free zones as enforced by the DMPD.

e) No Alcohol: No employee of the Contractor shall be permitted to possess, use, or be under the influence of alcohol when performing work on District property or otherwise providing services to the District.

f) No Weapons or Firearms: Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones; Contractor is prohibited from possessing on its persons or in its vehicles any weapons or firearms while on District property.

20. Unsupervised Contact with Students

"Unsupervised contact" with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Contractor shall ensure that Contractor, any subcontractors, and their officers, employees, and agents will have no unsupervised contact with students while on District property or while performing services for the District. Contractor will work with District to ensure compliance with this requirement. The Contractor shall comply with all restrictions under Iowa law regarding persons on the sex offender registry, and shall certify that no person who has been convicted of a sex offense against a minor will be present on school property or perform any work for the District under the Contract. Contractor authorizes District (at its discretion) to obtain information about Contractor and its history and to conduct a criminal background check, including fingerprinting, and sexual registry, child abuse, and dependent adult abuse background checks of any Contractor officers, employees, or agents who will be present on District property or perform any work for the District. Contractor shall cause its employees and/or subcontractors, if any, to authorize District to conduct these background checks. Contractor shall not permit any individuals who do not meet the District's standards for background checks to be present on school property or perform any work for the District. Contractor shall be responsible all fees assessed by District in processing the background check. District may deduct the cost of such fees from a progress or final payment to Contractor under this Contract, unless Contractor elects to pay such fees directly. The Contractor will be asked to sign an affidavit declaring that all employees of the Contractor or sub-contractor have never committed a felony involving a minor. The Contractor will be held responsible for the subcontractors employees in the same manner as if they were employed by the Contractor.

21. Confidentiality

a) If District discloses any data to Contractor, Contractor shall return all such data to District either upon District request at any time, or at the termination of this Contract.
b) Contractor shall have no title or ownership in the District's, students', or employee' data used within the Product or Work Product or otherwise under the Contract.
c) Upon District request, Contractor shall provide any District data used in the Product or Work Product in a flat-file format (format to be specified by District) free of charge, except for the costs of media, shipping, and related costs.
d) If Contractor ceases operations, dissolves (whether or not under bankruptcy or court order), is acquired, assigns this Contract in whole or in part, or otherwise ceases to be the responsible party for executing its obligations under this Contract, then Contractor shall immediately notify District of the change in writing, in addition to fulfilling its other obligations stated elsewhere in this Contract.
e) Unless District provides written authorization to transfer custody of District's data to another party or otherwise dispose of District's data, Contractor shall provide to District the data used within the Product or Work Product in a flat-file format and immediately and permanently delete such data from its servers, databases, or storage devices.
f) All information and data provided by District to Contractor shall be considered confidential. Contractor shall only use such information and data for the intended purpose and shall not disclose any such information and data to any third party except as may be required by law or permitted by this Contract.

22. Prohibits the re-disclosure of confidential student information

Except in very specific circumstances as described herein, Contractor shall not disclose to any other party without prior consent of the parent/guardian any information or records regarding students or their families that Contractor may learn or obtain in the course and scope of its performance of this Contract. Any re-disclosure of confidential student information must be in compliance with federal, state, and local laws, including but not limited to the Family Educational Rights and Privacy Act. Contractor is not to re-disclose information without prior written notification to and written permission of District. If District grants permission, Contractor is solely responsible for compliance with the re-disclosure under law. Consistent with requirements, personally identifiable information obtained by Contractor in the performance of this Contract must be used only for the purposes identified in this Contract. Student information is also subject to the requirements in Section 22.

23. Security

Any disclosure or removal of any District matter or property by Contractor shall be cause for immediate termination of this Contract. Contractor shall bear sole responsibility for any liability including, but not limited to attorneys' fees, resulting from any action or suit brought against District as a result of Contractor's willful or negligent release of information, documents, or property contained in or on District property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential.

24. Employee Removal

At District's request, Contractor will immediately remove any Contractor employee or subcontractor from all District properties or from performing any services for the District in cases where the District determines, in its sole discretion that removal of that employee is in the District's best interests.

25. Compliance with Applicable Law

Contractor shall comply with all federal, state, and local laws applicable to public contracts, to the work done under this Contract, and with all regulations and administrative rules established pursuant to those laws.

26. Non-discrimination Clause

Both parties agree that no person shall be subject to unlawful discrimination based on race; color; creed; gender; age; religion; national origin; U.S. military veteran status; marital status; sexual orientation; gender identity; disability; source of income; or political affiliation in programs, activities, services, benefits, or employment in connection with this Contract. The parties further agree not to discriminate in their employment or personnel policies.

27. Indemnification

a) Contractor shall defend, indemnify, and hold harmless ("Indemnification") the District, its officers, directors, employees, and agents from and against all liabilities, damages, losses, expenses, claims, actions, or judgments (including attorney fees) recovered or made against District for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of Contractor, its officers, employees, agents, or subcontractors related to Contractor's performance under this Contract. Contractor's Indemnification extends to conditions created by this Contract or based upon violation of any statute, ordinance, or regulation. This provision is in addition to any common law or statutory liability and indemnification rights available to District. Contractor's Indemnification of District shall not apply to damage, injury, or death to the extent caused by the negligent actions of District, its officers, directors, employees, or agents. District must promptly notify Contractor in writing of any such claim or demand to indemnify and shall cooperate with Contractor in a reasonable manner to defend such claim.

b) Contractor shall defend, indemnify and hold harmless District, its officers, directors, agents, and employees from and against all claims, liabilities, damages, losses, expenses, actions, or judgments (including attorneys' fees) in connection with the allegation that the Products or Work Product or that the District's use of the Products or Work Product infringe or misappropriate the intellectual property rights of any third party. This provision requires among other things that Contractor defend the District in any such action.

c) Subject to the limitations of the Iowa Law, District shall indemnify Contractor and its officers, directors, employees, and agents from and against all liabilities, losses, expenses, claims, actions, or judgments (including reasonable attorney fees) recovered or made against Contractor for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of District, its officers, employees, or agents related to District's performance under this Contract. This provision is in addition to any common law or statutory liability and indemnification rights available to Contractor. District's indemnification of Contractor shall not apply to damage, injury, or death caused by the negligent actions of Contractor, its officers, directors, employees, agents, or subcontractors. Contractor must promptly notify District in writing of any such claim or demand to indemnify and shall cooperate with District in a reasonable manner to defend such claim.

27. Indemnification

d) In the event that it shall become necessary for either party to institute legal proceedings against the other party for recovery of any amounts due and owning under the Contract, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs related to such collection, including reasonable attorney fees and all expert witness fees incurred during pre-suit collection attempts, suit, and post judgment, appeal, or settlement collection. The obligations in this Section shall survive termination of this Contract.

28. Contractor Warranties

a) Contractor expressly warrants that Contractor and any approved subcontractors have all of the rights, licenses, permits, qualifications, and consents necessary to
    i. Perform Contractor's obligations hereunder,
    ii. Assign the service under Section 19. Contractor expressly warrants that the service or any intelligential property invoked does not infringe or misappropriate the property rights of any third party.

b) Contractor expressly warrants that the work performed by it under this Contract will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained, and qualified personnel, the service will be in accordance with the requirements as specified in RFP- Statement of Services.

29. Insurance

At all times while providing services under this Contract, Contractor shall maintain in force at Contractor's expense insurance coverage at least equal to the value of this Contract and the insurance coverage(s), as specified by the Request for Proposal Exhibit A: All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Iowa, and acceptable to the District, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the District. The certificates of insurance shall list the Des Moines Independent Community School District as the additional insured for the specified project as outlined in this Contract.

30. Waiver; Severability

Waiver of any default or breach under this Contract by District does not constitute a waiver of any subsequent default or a modification of any other provisions of this Contract. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

31. Controlling Law; Venue.

Any dispute under this Contract or related to this Contract shall be governed by Iowa law, and any litigation arising out of the Contract shall be conducted in courts located in Polk County, Iowa.

33. Amendments; Renewal

Any amendments, consents to or waivers of the terms of this Contract shall be in writing and signed by both parties. The parties may renew this Contract, as specified for additional term(s) by their signed, written instrument.

34. Force Majeure

Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Contract, Force Majeure shall mean a cause or event that is not reasonably foreseeable or not otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage, terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of Contractor or its suppliers, that prevent Contractor from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Contract.

35. Counterparts

The parties may execute this Contract in counterparts, each of which constitutes an original and all of which comprise one and the same Contract. Counterparts may be delivered by electronic means.

36. Entire Agreement

When signed by both parties, this Contract (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Contract supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

37. Notices

All notices or demands of any kind required or desired to be given by District or Contractor must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at the addresses herein.

PRODUCT AND RELATED SERVICES CONTRACT
Between
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT (District) and

Contractor name: Whitfield's Lawn and Garden

Contract No.: RFP7157 Mowing & Trimming Service Second Extension

I HAVE READ THIS CONTRACT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS CONTRACT ON BEHALF OF THE PARTY I REPRESENT AND AGREE TO BE BOUND BY ITS TERMS.

CONTRACTOR	DISTRICT
By: _____	By: _____
Signature	Signature
Randy Whitfield owner	Thomas Harper, CFO
Contractor Printed Name and Title	District Printed Name and Title
4-17-2017	4/24/17
Date	Date

PLEASE ATTACH CURRENT INSURANCE CERTIFICATE.
MAIL CORRESPONDENCE TO:

Mark Mattiussi / Purchasing Agent
Des Moines Public Schools
1915 Prospect Road
Suite 1200
Des Moines, Iowa 50310