

**LANDSCAPE AND IRRIGATION MAINTENANCE SERVICES AGREEMENT
BY AND BETWEEN CONCORDE ESTATES COMMUNITY DEVELOPMENT
DISTRICT AND _____**

THIS AGREEMENT is made and entered into by and between:

Concorde Estates Community Development District, a local unit of special-purpose government established pursuant to chapter 190, Florida Statutes, located in Osceola County, Florida, whose address is 8529 South Park Circle, Suite 330, Orlando, Florida 32819 (the “District”), and

CONTRACTOR, whose address is _____ (the “Contractor”).

RECITALS

WHEREAS, the District was established by ordinance of the Board of County Commissioners of Osceola County, Florida, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure, including surface water management systems, roadways, landscaping, and other infrastructure; and

WHEREAS, the District has a need to retain an independent contractor to provide landscape and irrigation maintenance services for certain lands as identified on the Maintenance Map attached hereto as **Exhibit A** within and around the District; and

WHEREAS, Contractor submitted a proposal, attached hereto as **Exhibit B** and incorporated herein by reference (the “Proposal”), and represents that it is qualified to serve as a landscape and irrigation maintenance contractor and provide such services to the District.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, it is agreed that the Contractor is hereby retained, authorized, and instructed by the District to perform in accordance with the following covenants and conditions, which both the District and the Contractor have agreed upon:

1. **INCORPORATION OF RECITALS.** The recitals stated above are true and correct and by this reference are incorporated by reference as a material part of this Agreement.
2. **DESCRIPTION OF WORK AND SERVICES.**
 - A. The District desires that the Contractor provide professional landscape and irrigation maintenance services within presently accepted standards. Upon all parties executing this Agreement, the Contractor shall provide the District with the specific services identified in this Agreement.

- B. While providing the services identified in this Agreement, the Contractor shall assign such staff as may be required, and such staff shall be responsible for coordinating, expediting, and controlling all aspects to assure completion of the services.
- C. The Contractor shall provide the specific professional services as shown in Paragraph 3 of this Agreement.

3. **SCOPE OF LANDSCAPE MAINTENANCE SERVICES.** The duties, obligations, and responsibilities of the Contractor are those described in the PROJECT MANUAL FOR LANDSCAPE AND IRRIGATION MAINTENANCE SERVICES (“Project Manual”) attached hereto as **Exhibit C** and as further specified in the Proposal. Contractor shall solely be responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District. Contractor may subcontract portions of the services, but only with the prior written consent of the District (which may be withheld in the District’s sole discretion) and only after obtaining the subcontractor’s written consent to abide by the terms and conditions of this Agreement.

4. **MANNER OF CONTRACTOR’S PERFORMANCE.** The Contractor agrees, as an independent contractor, to undertake work and/or perform or have performed such services as specified in this Agreement or any addendum executed by the Parties or in any authorized written work order by the District issued in connection with this Agreement and accepted by the Contractor. All work shall be performed in a neat and professional manner reasonably acceptable to the District and shall be in accordance with industry standards and the Proposal. The performance of all services by the Contractor under this Agreement and related to this Agreement shall conform to any written instructions issued by the District.

- A. Should any work and/or services be required which are not specified in this Agreement or any addenda, but which are nevertheless necessary for the proper provision of services to the District in compliance with the Project Manual and the Proposal, such work or services shall be fully performed by the Contractor as if described and delineated in this Agreement at no additional charge to the District.
- B. The Contractor agrees that the District shall not be liable for the payment of any work or services unless the District, through an authorized representative of the District, authorizes the Contractor, in writing, to perform such work.
- C. The District shall designate in writing a person to act as the District’s representative with respect to the services to be performed under this Agreement. The District’s representative shall have complete authority to transmit instructions, receive information, interpret and define the District’s policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Contractor’s services.

- (1) The District hereby designates the District Manager, or a representative of the District Manager, to act as its representative.
- (2) The Contractor agrees to meet with the District's representative no less than one (1) time per month to walk the property to discuss conditions, schedules, and items of concern regarding this Agreement.
- (3) The Contractor also agrees to submit a written report to the office of the District Manager by the 1st day of the next month with a summary of all work performed during the previous month.

D. Contractor shall use all due care to protect the property of the District, its residents, and landowners from damage. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

E. In the event of any conflict between the terms of this Agreement, the Project Manual, and the Proposal, such conflict shall be resolved in the following order of precedence:

1. The Agreement
2. The Project Manual
3. The Proposal

5. COMPENSATION; TERM; RENEWAL OPTION.

A. As compensation for services described in this Agreement, the District agrees to pay Contractor _____ (\$_____) per year payable in equal monthly amounts, unless terminated earlier in accordance with Section 13 below.

B. The initial term of this Agreement shall begin _____, and shall continue through _____ ("Initial Term"). At the end of the Initial Term, the Board of Supervisors', at their sole discretion, may exercise an option for a one (1) year renewal of this Agreement ("First Annual Renewal"). At the end of the First Annual Renewal term, the Board of Supervisors', at their sole discretion, may exercise an option for a second one (1) year renewal of this Agreement ("Second Annual Renewal"). Compensation during the First Annual Renewal term shall be the same as set forth in paragraph 5(A), above, unless terminated earlier in accordance with Section 13 below. During the Second Annual Renewal term, compensation shall be _____ (\$_____) per year payable in equal monthly amounts, unless terminated earlier in accordance

with Section 13 below. Following expiration of the Second Annual Renewal, this Contract may be extended annually by written agreement of the Parties.

- C. If the District should desire additional work or services, or to add additional lands to be maintained, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the Parties shall agree in writing to an addendum, addenda, or change order(s) to this Agreement. The Contractor shall be compensated for such agreed additional work or services based upon a payment amount acceptable to the Parties and agreed to in writing. No additional services shall be provided by the Contractor unless done at the written direction of the District.
- D. The District may require, as a condition precedent to making any payment to the Contractor, that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.
- E. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render monthly invoices to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. These monthly invoices are due and payable within forty-five (45) days upon receipt of the invoice by the District or as otherwise provided for under the Local Government Prompt Payment Act, sections 218.70 et seq., Fla. Stat. Each monthly invoice will include such supporting information as the District may reasonably require the Contractor to provide.

6. **INSURANCE.**

- A. The Contractor or any subcontractor performing the work described in this Agreement shall maintain throughout the term of this Agreement the following insurance:

- (1) Worker's Compensation Insurance in accordance with the laws of the State of Florida.
 - (2) Commercial General Liability Insurance covering the Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, and covering at least the following hazards:
 - (i) Independent Contractors Coverage for bodily injury and property damage in connection with subcontractors' operation.
 - (3) Employer's Liability Coverage with limits of at least \$1,000,000 (one million dollars) per accident or disease.
 - (4) Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Contractor of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.
- B.** The District, its staff, consultants, agents and supervisors shall be named as an additional insured. The Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida, and such carrier shall have a Best's Insurance Reports rating of at least A-VII.
- C.** If the Contractor fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

7. INDEMNIFICATION.

- A.** Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses,

attorney fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.

- B. Contractor agrees to indemnify, defend and hold harmless the District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or harm of any nature, arising out of, or in connection with, the work to be performed by Contractor, including litigation or any appellate proceedings with respect thereto. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 768.28, Florida Statutes, or other statute or law. In any dispute regarding the release of any hazardous material, including but not limited to chemicals or fuels, the Contractor shall have the burden of proof to demonstrate that the Contractor did not cause the release.
- C. The provisions of this Section 7 shall survive any termination of this Agreement.

8. **ENVIRONMENTAL ACTIVITIES.** The Contractor agrees to use best management practices, consistent with industry standards, with respect to the storage, handling and use of chemicals (e.g., fertilizers, pesticides, etc.) and fuels. The Contractor shall keep all equipment clean (e.g., chemical sprayers) and properly dispose of waste. Further, the Contractor shall immediately notify the District of any chemical or fuel spills. The Contractor shall be responsible for any environmental cleanup, replacement of any turf or plants harmed from chemical burns, and correcting any other harm resulting from the work to be performed by Contractor.

9. **ACCEPTANCE OF THE SITE.** By executing this Agreement, the Contractor agrees that the Contractor was able to inspect the site prior to the time of submission of the Proposal, and that the Contractor agrees to be responsible for the care, health, maintenance, and replacement, if necessary, of the existing landscaping, in its current condition, and on an "as is" basis. No changes to the compensation set forth in Section 5 of this Agreement shall be made based on any claim that the existing landscaping was not in good condition or otherwise differs materially from conditions ordinarily encountered.

10. **TAX EXEMPT DIRECT PURCHASES.** The parties agree that the District, in its discretion, shall be entitled to undertake a direct purchase of any or all materials used for the landscaping services, including but not limited to the direct purchase of fertilizer. In such event, the following conditions shall apply:

- (a) The District may elect to purchase any or all materials directly from the supplier.

(b) Contractor may select the suppliers from whom materials will be purchased for purposes of making up their bids and will submit to District a list of supplies and suppliers with their bids.

(c) Contractor shall furnish detailed Purchase Order Requisition Forms (“Requisitions”) for all materials to be directly purchased by the District.

(d) Upon receipt of a Requisition, the District shall review the Requisition and, if approved, issue its own purchase order directly to the supplier, with delivery to be made to the District on an F.O.B. job site basis.

(e) The purchase order issued by the District shall include the District’s consumer certificate of exemption number issued for Florida sales and use tax purposes.

(f) Contractor will have contractual obligations to inspect, accept delivery of, and store the materials pending use of the materials as part of the landscaping services. The contractor’s possession of the materials will constitute a bailment. The contractor, as bailee, will have the duty to safeguard, store and protect the materials while in its possession until returned to the District through use of the materials.

(g) After verifying that delivery is in accordance with the purchase order, Contractor will submit a list indicating acceptance of goods from suppliers and concurrence with the District’s issuance of payment to the supplier. District will process the invoices and issue payment directly to the supplier.

(h) The District may purchase and maintain insurance sufficient to cover materials purchased directly by the District.

(i) All payments for direct purchase materials made by the District, together with any state or local tax savings, shall be deducted via a “change order” executed by the parties against the compensation provided for in Section 5 of this Agreement.

11. **COMPLIANCE WITH GOVERNMENTAL REGULATION.** The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. Further, the Contractor shall notify the District in writing within five (5) days of the receipt of any notice, order, citation, or report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services.

12. **LIENS AND CLAIMS.** The Contractor shall promptly and properly pay for all labor employed, materials purchased, and equipment hired by it to perform under this Agreement. The Contractor shall keep the District's property free from any materialmen's or mechanic's liens and claims or notices in respect to such liens and claims, which arise by reason of the Contractor's performance under this Agreement, and the Contractor shall immediately discharge any such claim or lien.

13. **DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE.** A default by either Party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of damages, injunctive relief, and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

14. **CUSTOM AND USAGE.** It is hereby agreed, any law, custom, or usage to the contrary notwithstanding, that the District shall have the right at all times to enforce the conditions and agreements contained in this Agreement in strict accordance with the terms of this Agreement, notwithstanding any conduct or custom on the part of the District in refraining from so doing; and further, that the failure of the District at any time or times to strictly enforce its rights under this Agreement shall not be construed as having created a custom in any way or manner contrary to the specific conditions and agreements of this Agreement, or as having in any way modified or waived the same.

15. **SUCCESSORS.** This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties to this Agreement, except as expressly limited in this Agreement.

16. **TERMINATION.** The District agrees that the Contractor may terminate this Agreement with or without cause by providing sixty (60) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately with cause by providing written notice of termination to the Contractor. The District may terminate the Contractor without cause upon thirty (30) days written notice. Any termination without cause shall not result in liability for the party electing to terminate the Agreement. However, upon any termination of this Agreement, the Contractor shall be entitled to payment for all work and/or services rendered up until the effective termination of this Agreement, subject to whatever claims or off-sets the District may have against the Contractor.

17. **PERMITS AND LICENSES.** All permits and licenses required by any governmental agency directly for the District shall be obtained and paid for by the District. All other permits or licenses necessary for the contractor to perform under this Agreement shall be obtained and paid for by the Contractor.

18. **ASSIGNMENT.** Neither the District nor the Contractor may assign this Agreement without the prior written approval of the other. Any purported assignment without such prior written approval shall be void.

19. **INDEPENDENT CONTRACTOR STATUS.** In all matters relating to this Agreement, the Contractor shall be acting as an independent contractor. Neither the Contractor nor employees of the Contractor, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Contractor agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Contractor, if there are any, in the performance of this Agreement. The Contractor shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Contractor shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

20. **HEADINGS FOR CONVENIENCE ONLY.** The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

21. **ENFORCEMENT OF AGREEMENT.** In the event that either the District or the Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

22. **AGREEMENT.** This instrument shall constitute the final and complete expression of this Agreement between the District and the Contractor relating to the subject matter of this Agreement.

23. **AMENDMENTS.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

24. **AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

25. **NOTICES.** All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to the District: Concorde Estates Community Development District
8529 South Park Circle, Suite 330
Orlando, Florida 32819
Attn: District Manager

With a copy to:

Garganese, Weiss, D'Agresta & Salzman, P.A.
111 North Orange Ave., Suite 2000
Orlando, Florida 32802
Attn: Usher L. Brown, District Counsel

B. If to the Contractor:

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

26. **THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

27. **CONTROLLING LAW.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

28. **PUBLIC RECORDS.** The Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and shall be treated as such in accordance with Florida law.

29. **SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

30. **ARM'S LENGTH TRANSACTION.** This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are each deemed to

have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.

31. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument.

[SIGNATURES FOLLOW]

SAMPLE

IN WITNESS WHEREOF, the parties execute this Agreement as set forth below:

ATTEST:

**CONCORDE ESTATES COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

Date

By: _____

By: _____

Its: _____

Date

- Exhibit A: Maintenance Map**
- Exhibit B: Proposal for Landscape and Irrigation Maintenance**
- Exhibit C: Project Manual for Landscape and Irrigation Maintenance Services**

SAMPLE

Exhibit A
Maintenance Map

SAMPLE

Exhibit B
Proposal for Landscape and Irrigation Maintenance

SAMPLE

Exhibit C
Scope of Services

SAMPLE