



AMENDMENT NO.: 1

Contract Renewal

Contract No.: 21100000-15-1

Contract Name: Agriculture and Lawn Equipment

This Amendment (“Amendment”), effective as of July 1, 2017 to the Agriculture and Lawn Equipment Contract No. 21100000-15-1 (“Contract”), between the State of Florida, Department of Management Services (“Department”) and Excel dba Hustler Turf Equipment (“Contractor”) are collectively referred to herein as the “Parties.” All capitalized terms used herein shall have the meaning assigned to them in the Contract unless otherwise defined herein.

WHEREAS the Department awarded the above referenced Contract to Excel dba Hustler Turf Equipment for the provisions of Agriculture and Lawn Equipment; and

WHEREAS the Parties agreed that the Contract may be amended by mutual agreement as provided in section Q. “Renegotiation or Modification” of the Contract; and

WHEREAS the Parties agree to renew the Contract as provided in section 4.15 “Renewal” of Contract No. 21100000-15-1; and

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt, and sufficiency of which are hereby acknowledged, the Parties agree to the following:

I. Contract Amendment

Section 4.12 “Records Retention” has been renamed to “Document Management”, deleted it in its entirety and replaced with the following:

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at:<http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

Section 4.13.1 “Access to Public Records” has been renamed to “Public Records,” deleted in its entirety and replaced with the following:

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S.



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Solely for the purposes of this section the contract manager is the agency custodian of public records, unless another is designated per (e), below.

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

(a) Keep and maintain public records required by the public agency to perform the service;

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the contract if the contractor does not transfer the records to the public agency;

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency; and

(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Section 4.13.2 "Protection of Trade Secrets or Other Confidential Information" has been renamed to "Protection of Trade Secrets or Confidential Information," deleted in its entirety and replaced with the following:

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If the Contractor considers any portion of materials made or received in the course of performing the Contract (“contract-related materials”) to be trade secret under section 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as “confidential” when submitted to the Department.

If the Department receives a public records request for contract-related materials designated by the Contractor as “confidential,” the Department will provide only the portions of the contract-related materials not designated as “confidential.” If the requester asserts a right to examine contract-related materials designated as “confidential,” the Department will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated “confidential.”

If the Department is served with a request for discovery of contract-related materials designated “confidential,” the Department will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated “confidential” only if the Contractor fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as “confidential” from disclosure.

The Contractor will protect, defend, and indemnify the Department for claims, costs, fines, and attorney’s fees arising from or relating to its designation of contract-related materials as “confidential.”

Section 4.21 “Scrutinized Company List” has been renamed to “Contractor Certification,” deleted it in its entirety and replaced with the following:

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, F.S. Pursuant to section 287.135(5), F.S., Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

Section 4.27.3 “Transaction Fee Reports” has been renamed to “Transaction Fees,” deleted it in its entirety and replaced with the following:

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The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

Section 4.27.4 “Diversity Reporting” has been deleted in its entirety and replaced with the following:

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

Section 4.32 “Cooperation with Inspector General” has been added as follows:

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for five years after the expiration



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of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

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II. Contract Renewal. Pursuant to section 4.15 "Renewal," State Term Contract No. 21100000-15-1 is renewed for a period of three (3) years under the same terms and conditions, with a new contract expiration date of June 30, 2020.

III. Conflict. To the extent any of the terms of this Amendment conflict with the terms of the Contract, the terms of this Amendment shall control.

IV. Warrant of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

V. Effect. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

State of Florida:
Department of Management Services

Contractor:
Excel dba Hustler Turf Equipment

By: _____

By: _____

Name: Debra Forbess
Title: Director of Finance and Administration

Name: _____
Title: _____

Date: _____

Date: _____



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State of Florida:
Department of Management Services

Contractor:
Excel dba Hustler Turf Equipment

By: 

By: 

Name: ~~Debra Forbess~~ Erin Rock
Title: ~~Director of Finance and Administration~~ Chief of Staff
Date: 2-20-17

Name: Brian J. O'Donnell
Title: Government Sales Manager
Date: 1-31-17