

AGREEMENT FOR 2020 HERBICIDE SPRAYING SERVICES

This Agreement for 2020 Herbicide Spraying Services (the "Agreement") is made as of the 16th day of September, 2020 by and between the Wheaton Park District, an Illinois unit of local government (the "Park District"), with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois, and Eternally Green Lawn Care, Inc. (the "Contractor"), with its principal place of business at 57 Eisenhower Lane South, Lombard, IL 60148, which hereinafter may be referred to together as the "Parties" or individually as a "Party".

WITNESSETH

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

- 1. Labor and Materials.** The Contractor shall provide all labor, equipment and materials required to complete the following work: herbicide spraying services for various Park District locations (the "Work") as indicated in the Bid Documents for 2020 Spraying Services, dated September 3, 2020, attached to and incorporated as part of this Agreement by reference (the "Bid Documents").
- 2. Contract Documents.** The Contract Documents consist of this Agreement between the Park District and the Contractor, the Bid Documents, Contractor's Proposal, attached to and incorporated as part of this Agreement as **Exhibit A**, Contractor's Certification, attached to and incorporated as part of this Agreement as **Exhibit B**, Contractor's Performance, Payment and Maintenance Bonds, attached to and incorporated as part of this Agreement as **Exhibit C**, and any modifications issued after the execution of this Agreement. Modifications to this Agreement may only be made in writing and endorsed by the Parties. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein. In the event of conflict between the Contract Documents, this Agreement shall control.
- 3. Term.** Unless terminated earlier as provided in Section 14 of this Agreement, the term of this Agreement shall commence on October 1, 2020 and expire on October 31, 2022 (the "Term").
- 4. Performance of Work.** Contractor agrees to perform all Work in a good and workmanlike manner. Contractor is required to give District 24-48 hours' notice before work begins. Contractor, on receipt of this Agreement executed by District, shall immediately place orders for materials not to exceed the supply needed for the first year of Work and otherwise immediately commence performance of this Agreement.
- 5. Contract Sum.** The District agrees to pay Contractor for the proper and timely performance of the Services in strict accordance with the Agreement the following prices: (collectively, hereinafter referred to as the "Contract Sum").

BASE BID PROPOSAL (Alternate #1 : Spray Herbicide "INCLUDES" Crabgrass Control)

Parks for Spraying	Approx. Acres for Spraying	2020	2021	2022	Three Year Total
Atten Park	23.2	\$ 1,380.00	\$ 1,380.00	\$ 1,380.00	\$ 4,140.00
Briar Knoll Park	5.4	\$ 330.00	\$ 330.00	\$ 330.00	\$ 990.00
Briar Patch Park	18.6	\$ 1,110.00	\$ 1,110.00	\$ 1,110.00	\$ 3,330.00
Brighton Park	4.3	\$ 240.00	\$ 240.00	\$ 240.00	\$ 720.00
CAC Central Athletic Complex & Rotary Park	15.4	\$ 930.00	\$ 930.00	\$ 930.00	\$ 2,790.00
Clocktower Commons	0.6	\$ 30.00	\$ 30.00	\$ 30.00	\$ 90.00
Cosley Zoo	1.2	\$ 60.00	\$ 60.00	\$ 60.00	\$ 180.00
Community Center / Rice Pool	2.4	\$ 150.00	\$ 150.00	\$ 150.00	\$ 450.00
Danada South/Sensory Garden	13.0	\$ 780.00	\$ 780.00	\$ 780.00	\$ 2,340.00
Dorset Park	5.4	\$ 330.00	\$ 330.00	\$ 330.00	\$ 990.00
Graf Park	17.2	\$ 1,020.00	\$ 1,020.00	\$ 1,020.00	\$ 3,060.00
Hurley Gardens	1.7	\$ 90.00	\$ 90.00	\$ 90.00	\$ 270.00
Kelly Park	10.8	\$ 630.00	\$ 630.00	\$ 630.00	\$ 1,890.00
Memorial Park	1.3	\$ 62.00	\$ 62.00	\$ 62.00	\$ 186.00
Northside Park	19.3	\$ 1,140.00	\$ 1,140.00	\$ 1,140.00	\$ 3,420.00
Rathje Park	4.2	\$ 240.00	\$ 240.00	\$ 240.00	\$ 720.00
Scottdale Park	7.3	\$ 420.00	\$ 420.00	\$ 420.00	\$ 1,260.00
Seven Gables Park	54.8	\$ 3,300.00	\$ 3,300.00	\$ 3,300.00	\$ 9,900.00
Triangle Park	0.6	\$ 30.00	\$ 30.00	\$ 30.00	\$ 90.00
	Approx. 206.7 Acres Total	2020 Total Amount	2021 Total Amount	2022 Total Amount	Three Year Grand Total Amount
		\$ 12,272.00	\$ 12,272.00	\$ 12,272.00	\$ 36,816.00

Total Bid Amount for Alternate #1 /Three Year Grand Total: \$36,816.00

BASE BID PROPOSAL (Alternate #2 : Spray Herbicide "WITHOUT" Crabgrass Control)

Parks for Spraying	Approx. Acres for Spraying	2020	2021	2022	Three Year Total
Atten Park	23.2	\$ 1,161.50	\$ 1,161.50	\$ 1,161.50	\$ 3,484.50
Briar Knoll Park	5.4	\$ 277.75	\$ 277.75	\$ 277.75	\$ 883.25
Briar Patch Park	18.6	\$ 934.25	\$ 934.25	\$ 934.25	\$ 2,802.75
Brighton Park	4.3	\$ 202.00	\$ 202.00	\$ 202.00	\$ 606.00
CAC Central Athletic Complex & Rotary Park	15.4	\$ 782.75	\$ 782.75	\$ 782.75	\$ 2,348.25
Clocktower Commons	0.6	\$ 25.25	\$ 25.25	\$ 25.25	\$ 75.75
Cosley Zoo	1.2	\$ 50.50	\$ 50.50	\$ 50.50	\$ 151.50
Community Center / Rice Pool	2.4	\$ 126.25	\$ 126.25	\$ 126.25	\$ 378.75
Danada South/Sensory Garden	13.0	\$ 656.50	\$ 656.50	\$ 656.50	\$ 1,969.50
Dorset Park	5.4	\$ 277.75	\$ 277.75	\$ 277.75	\$ 833.25
Graf Park	17.2	\$ 858.50	\$ 858.50	\$ 858.50	\$ 2,575.50
Hurley Gardens	1.7	\$ 75.75	\$ 75.75	\$ 75.75	\$ 227.25
Kelly Park	10.8	\$ 530.25	\$ 530.25	\$ 530.25	\$ 1,590.75
Memorial Park	1.3	\$ 52.50	\$ 52.50	\$ 52.50	\$ 157.50
Northside Park	19.3	\$ 984.75	\$ 984.75	\$ 984.75	\$ 2,954.25
Rathje Park	4.2	\$ 202.00	\$ 202.00	\$ 202.00	\$ 606.00
Scottdale Park	7.3	\$ 353.50	\$ 353.50	\$ 353.50	\$ 1,060.50
Seven Gables Park	54.8	\$ 2,777.50	\$ 2,777.50	\$ 2,777.50	\$ 8,332.50
Triangle Park	0.6	\$ 25.25	\$ 25.25	\$ 25.25	\$ 75.75
	Approx. 206.7 Acres Total	2020 Total Amount	2021 Total Amount	2022 Total Amount	Three Year Grand Total Amount
		\$ 10,354.50	\$ 10,354.50	\$ 10,354.50	\$ 31,063.50

Total Bid Amount for Alternate #2 /Three Year Grand Total: \$31,063.50

6. Payment. The Contractor shall submit to the Park District's an invoice itemizing the Work properly performed as determined by the Park District, and delivery of lien waivers and sworn statements, for the period covered by the invoice. Payments shall be paid in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment.

7. Waiver of Liens. Contractor for itself and for all its sub-suppliers and subcontractors, agrees that no mechanic's lien or other claim shall be filed or maintained by Contractor or by any sub-supplier, subcontractor, laborer or any other person, whatsoever, against the Park District's funds for or on account of any Work furnished under this Agreement. Prior to the payment of the Work, Contractor shall provide: a) for any payment other than final payment for the Work, a partial waiver of lien from Contractor and each sub-supplier and subcontractor reflecting any partial payouts, and for final payment, a final waiver of lien from Contractor and each sub-supplier and sub-contractor for the full amount of each subcontract for the Work, showing all materials and labor have been paid in full; and b) sworn affidavit, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/23), showing in detail the sources of all labor and materials used in the Work, including the names and addresses of sub-suppliers and subcontractors and showing amounts paid for each. The Park District may withhold payment to Contractor in the event Contractor fails to provide waiver of liens and sworn affidavits in accordance with this Section 7 or if Contractor fails to make payments to any sub-supplier or sub-contractor for material or labor.

Final payment shall not become due until the Contractor has fully performed the Work, including but not limited to delivery of all manufacturer's and supplier's warranties, and has delivered to the Park District a complete release of all liens arising out of this Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Park District to indemnify the Park District against such lien. If a lien remains unsatisfied after payments are made, the Contractor shall refund to the Park District all money that the Park District may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

8. Correction of Deficiencies. If Contractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) day period after receipt of written notice from the Park District to commence and continue correction of such default or neglect with diligence and promptness, the Park District may, without prejudice to other remedies the Park District may have, correct such deficiencies using its own forces or by hiring other contractors. In such case, the Park District shall deduct from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Park District.

The rights and remedies of the Park District stated in this Agreement shall be in addition to and not in limitation of, any other rights of the Park District granted at law or in equity.

9. Warranties. Contractor warrants to the Park District that materials and equipment furnished under the Agreement will be of the best quality and new, that the Work will be free from defects and deficiencies, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by District's abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by Contractor. All warranties shall be addressed to the Park District and delivered to the Park District. Except as otherwise provided in this Agreement, all warranties shall become effective on the completion of the Work, and shall run for a twelve (12) month period, unless a longer period is provided for by law. Where warranties overlap, the more stringent requirement shall govern. Contractor shall repair and replace, as determined by the Park District, any defects or deficiencies at no charge to the Park District during any warranty period.

10. Cleaning Up. The Contractor shall keep the project sites and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of each site visit, the Contractor shall remove from and about the site waste materials, rubbish, the Contractor's tools, equipment, machinery and surplus materials. If the Contractor fails to clean up as provided herein, the District may do so and the cost thereof shall be charged to the Contractor.

11. Safety of Persons and Property.

- a. The Contractor shall determine the means and methods of carrying out the work, shall have control of the equipment, tools and materials necessary to complete the work and shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - (i). employees engaged in the Work, Park District employees and patrons and other persons who may be affected thereby; and
 - (ii). the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors.
- b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

- c. The Contractor shall promptly remedy damage and loss to Park District property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Park District or anyone directly or indirectly employed by Park District, or by anyone for whose acts Park District may be liable, and not attributable to the fault or negligence of the Contractor.

12. Insurance and Bonds.

- a. The Contractor shall acquire and keep in force at all times during the Term of this Agreement, the following insurance coverage:

- (i). Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 01 04 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, smoke and fire, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Park District, its elected and appointed officials, employees, volunteers and agents, and their successors and assigns, shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of the Contractor's insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from smoke, fire, pollution, explosion, collapse, or underground property damage.

- (ii). Business Auto and Umbrella Liability Insurance

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

(iii). Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Contractor shall provide a waiver of subrogation on its workers compensation policy in favor of Owner and shall waive any limitation of its or its subcontractors' liability notwithstanding the limitation set forth in *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991).

If the Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor shall waive subrogation and all other rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

(iv). General Insurance Provisions

a). Evidence of Insurance

Prior to beginning Work, Contractor shall furnish to the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested.

Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Park District shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Park District

Failure to maintain the required insurance may result in termination of this Contract at the Park District's option.

Contractor shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

b). Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.

c). Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

d). Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

e). Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Park District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

b. Contractor shall furnish a Performance Bond, and Labor and Materials/Payment Bond in the amount of 110% of the Contract Sum, using a form similar to the AIA-A312-2010 form, or its current equivalent, or one acceptable to the Park District, cosigned by a surety company licensed to conduct business in the State of Illinois and with at least an "A" rating and a financial rating of at least "X" in the latest edition of the Best Insurance Guide. The Contractor shall maintain in force throughout the Term, the Performance Bond and Labor and Materials/Payment Bond. Said bond shall guarantee the faithful performance of the Work in accordance with the Contract Documents, the payment of all indebtedness incurred for labor and materials, and guarantee correction of Work. The Contractor and all subcontractors shall name the Park District as an obligee on all bonds.

13. Indemnification and Hold Harmless. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of Contractor's performance of the Work, provided that any such claim, damage, loss or expense (i) arises out of bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) arises from in whole or in part any act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify, defend and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of this Agreement. Contractor's obligations under this Section shall survive the termination or expiration of this Agreement.

14. Termination.

a. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take

actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed Work completed prior to the effective date of termination. Contractor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.

b. The Park District may terminate the Agreement, in whole or in part, for cause as follows:

(i) If Contractor fails to provide the Work as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Contract and does not remedy such failure, breach or default within seven (7) days after demand from the Park District to take corrective action, or in the event of repeated or multiple failures or defaults by Contractor, the Park District may immediately terminate this Contract and enter into an agreement with another contractor or contractors to provide the Work. In such event: a) the Park District shall not pay Contractor for any portion of the Work not completed in accordance with the Contract Documents; b) the Park District shall deduct from payments due to the Contractor the cost of correcting any deficiencies in accordance with Section 8 of this Agreement; and c) Contractor shall be liable to the Park District for the increased cost to the Park District of obtaining services from the substitute contractor(s).

(ii) If Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for insolvency, or if any provision of the bankruptcy law is invoked by or against Contractor, then notwithstanding any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, a) immediately terminate the retention of Contractor and/or b) finish or cause to be finished the Contractor's services required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the Work, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default (collectively "Park District Expenses and Damages"), such excess shall be paid to Contractor. If the Park District Expenses and Damages exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination.

15. Compliance with Laws and Permits. Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement. Contractor's Compliance and Certification Attachment is attached to and incorporated as **Exhibit B** to this Agreement.

16. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, and the parties hereby consent to, and waive objection to, the jurisdiction and venue of said court. Contractor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District, and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

17. No Liability. The Contractor shall be solely responsible for the security and safety of its employees, equipment and materials. The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Contractor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Contractor's Work and obligations under this Agreement. The Park District is not liable for acts or omissions of Contractor or any of Contractor's employees, subcontractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

18. No Third-Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District and/or Contractor, and/or any of their respective officials, officers and/or employees.

19. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

20. Independent Contractor. Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it, as well as any persons or agents as it may employ, are not employees of the Park District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

21. Non-Assignment. This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

22. Subcontracts. Any subcontract that Contractor enters into for the Work shall be in writing and shall specifically provide that the Park District is an intended third-party beneficiary of such subcontract and that the Park District shall have the right to enforce the subcontractor's obligations thereunder after the occurrence of a default under the contract by the Contractor. By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Park District.

23. Notices. Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, or by fax or email transmission with the sending Party retaining confirmation of receipt, to the Parties at their respective addresses provided below, or as either Party may otherwise direct in writing to the other Party from time to time:

If to Park District: Wheaton Park District
 102 E. Wesley Street
 Wheaton, IL 60187
 F: 630-665-5880
 Email: mbenard@wheatonparks.org
 Attention: Executive Director

If to Contractor: Eternally Green Lawn Care, Inc.
 57 Eisenhower Lane South
 Lombard, IL 60148
 Email: jwebb@eternallygreen.com
 Attention: Jim Webb

Notices sent by certified mail shall be deemed delivered the second business day following deposit in the mail, notices hand delivered shall be deemed given on the date of delivery, and notices sent by fax or email transmission shall be deemed given on the date of transmission if between 9:00 AM and 5:00 PM on a business day, or, if later, the next business day.

24. Entire Agreement; No Amendment. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

25. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

26. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by a duly authorized official thereof effective as of date written below.

Entered into this 16th day of September, 2020, at Wheaton, Illinois.

WHEATON PARK DISTRICT

ETERNALLY GREEN LAWN CARE, INC.

By: 

By: 

Its: Executive Director

Its: President