

INDEPENDENT CONTRACTOR'S MOWING/LITTER AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, between JACKSON COUNTY, FLORIDA, a political subdivision of the State of Florida (referred to as the County herein), and Goodwill Industries (referred to as CONTRACTOR herein), for the purposes herein expressed.

WHEREAS, the County desires to utilize the services of an independent contractor for the purposes of providing mowing and litter pickup services; and

WHEREAS, CONTRACTOR has the licensure, training, manpower, equipment, financial resources and financial ability, experience, and qualifications necessary to provide such services;

NOW, THEREFORE, in consideration of the recitals above and mutual agreements and covenants set forth below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and CONTRACTOR agree as follows:

1. Obligations of CONTRACTOR. CONTRACTOR will follow all of the County's lawful policies regarding the administration of CONTRACTOR's services hereunder; provided, however, that the CONTRACTOR shall be the sole arbiter of the manner and means by which those services are provided. For all purposes under this Agreement and otherwise, CONTRACTOR shall be deemed an independent contractor and not an employee of the County. CONTRACTOR will be required to and shall properly perform and supply his services at the County's various locations throughout Jackson County, Florida.

2. Term. This agreement shall be effective _____, and shall for a term of three (3) calendar years.

3. Services and standards of performance. CONTRACTOR hereby agrees to provide routine mowing services for grassed or vegetated roadsides and other right-of-way areas with conventional high production style mowing equipment and the periodic mowing of other (difficult) areas (defined as narrow right-of-ways, behind guardrails, headwalls, driveway culverts, signs and mailbox posts) that require the use of specialized equipment, including hand labor or small machine mowing. Such services shall be rendered in complete accordance with the Bid Specifications for Bid Number 1718-05-REBID, all of the provisions of which are incorporated herein in full by reference. In the event of any conflict between the Bid Specifications and this instrument, the terms of this instrument shall control. CONTRACTOR shall utilize the machinery, equipment and manpower as set forth in CONTRACTOR's bid response. CONTRACTOR, upon verification of damages by the CONTRACTOR and the Road Superintendent and/or their designees, further agrees to promptly repair or pay the cost

of repair of any damage caused by the CONTRACTOR's operations or services under this agreement to any sign, culvert, mailbox, guardrail, fence, road, or other improvements owned or maintained by the County or owned by any other person, firm or corporation, without regard to the CONTRACTOR's fault.

In particular, and without limiting the foregoing, the following shall also govern the CONTRACTOR's performance hereunder:

a) A cutting cycle shall consist of 25 working days not to include weekends or holidays unless otherwise approved by the Road Superintendent. A completed cycle will include litter pickup, mowing and weed eating all roads on the designated road list. On the initial cutting cycle, mowing shall commence at either or both geographical extremities of the project and proceed continuously toward the opposite geographical end. Subsequent cycles shall follow the pattern adopted for the first cycle unless the Road and Bridge Superintendent specifically authorizes CONTRACTOR to change the pattern. In the event of any dispute over the pattern to be followed, the decision of the Superintendent regarding the pattern shall be final. Each cutting is to be completed in its entirety prior to beginning another cycle. When work by County employees, or weather conditions of an unanticipated temporary nature, prevent CONTRACTOR from performing services in any particular area, the Road and Bridge Superintendent may require CONTRACTOR to cut these areas as part of the cycle without penalty for exceeding the time allowed. Grassed areas that are normally mowed which are saturated with standing water to the point where, in the opinion of the Road And Bridge Superintendent, equipment may not be used without excessive damage to the turf, shall not be mowed until such conditions have abated. These areas shall be mowed at subsequent cycles when conditions allow and as directed by the Road And Bridge Superintendent. No deduction will be made from the pay quantities for any one area not so cut, unless it exceeds one (1) mile in length (in which event deduction shall be made in *pro rata* fashion by the Superintendent, whose opinion shall be final).

b) CONTRACTOR shall exercise the necessary care to preclude any source of litter by his operation. CONTRACTOR shall be responsible for the pickup, removal and disposal from the right-of-way of any obstacle such as wood, tires, cans, and other litter or objects that cannot be traversed by the mowing equipment. It shall also be CONTRACTOR's responsibility to remove and legally dispose of any item (such as bags of trash, newspapers, magazines, large boxes, and other litter or objects) that would be torn, ripped, scattered or further distributed or dispersed by any mower or other equipment that would result in an objectionable appearance (as determined by the Superintendent).

c) Trash and litter removal will occur as part of each mowing cycle. Weed eating activities will consist of six (6) cycles, so as to coincide with the mowing cycles. The mowing cycles will consist of six (6) cycles (25 working days each, not including weekends or holidays) during the year. The first mowing cycle will commence on the first Monday in March. The last cycle is to be completed by mid-November. Litter pickup

will also be performed on the same list of roads through the remainder of the year; eleven (11) cycles.

d) CONTRACTOR shall consult with the Road and Bridge Superintendent for inspection and tentative approval of work quality being accomplished on a monthly basis or at the request of the Road and Bridge Superintendent. In the event of CONTRACTOR's work which is unsatisfactory in the reasonable discretion of the Superintendent, CONTRACTOR shall re-mow, re-trim, or remove litter, without additional compensation, those areas so that the total cutting cycle may be completed in a satisfactory manner within the specified time.

4. CONTRACTOR shall further procure and maintain in full force and effect, at no expense to the County, during the term of this contract, a performance bond from a surety acceptable to the County, as required by the Bid Specifications.

5. No Taxes and Benefits. For all purposes under this Agreement and otherwise, CONTRACTOR and CONTRACTOR's employees shall be deemed an independent contractor and not an employee of the County. The County will not withhold or pay any state or federal income tax (either any employer's or employee's portion), social security tax, Medicare/Medicaid tax or assessment, group or individual medical, dental and life insurance coverage, sick pay, vacation pay, personal leave, unemployment compensation (or insurance for such), or workers compensation (or insurance for such) for CONTRACTOR or for any of CONTRACTOR's employees. CONTRACTOR and CONTRACTOR's employees waive absolutely any right of recovery against the County or its officers, shareholders, directors, or insurers for any of the above-mentioned benefits or for any other matter, other than compensation due to CONTRACTOR as set forth in this agreement.

6. Compensation of CONTRACTOR. As compensation for the services to be performed pursuant to this Agreement, the County shall pay CONTRACTOR total compensation in the amount of _____ per year, to be paid as follows:

Contractor will be paid 90% of the Contract amount during the mowing cycles (divided into six (6) equal installments) and 10% of the Contract amount to be equally divided over the five (5) additional litter cycles, as defined above.

The parties acknowledge and anticipate that the County may complete the paving of additional county roads during the term of this agreement, which roads may, in the sole discretion of the County be added to the areas to be covered by CONTRACTOR's work under this contract (for any part of or all of the services to be provided by CONTRACTOR hereunder). In the event The County subsequently includes additional areas not designated in the Bid Specifications, the County shall pay for the additional areas at the rate of \$_____ per mile or as pro rated by fraction thereof.

7. Misrepresentations. Any misrepresentation or failure by CONTRACTOR to disclose a material fact, including (but not limited to) CONTRACTOR's licensure, equipment, manpower, and financial resources and financial ability status, whether before or after the date of this Agreement, shall, at the County's option, be grounds for the immediate termination of this Agreement.

8. CONTRACTOR's ability to perform. CONTRACTOR hereby represents that to the best of his knowledge, there are no physical, chemical dependency, financial, legal, mental or emotional conditions which would interfere with his ability to fully perform all of his obligations under this Agreement for the Full Term of this Agreement.

9. Termination of Agreement With Cause. The County may terminate this Agreement immediately and without prior notice to CONTRACTOR, upon the occurrence of any of the following events: a) Any conduct of CONTRACTOR which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the County's business; b) the conviction or adjudication of CONTRACTOR of any crime punishable as a felony involving moral turpitude or immoral conduct; c) the death of CONTRACTOR or the occurrence of illness or injury of CONTRACTOR or any of CONTRACTOR's key employees which affects CONTRACTOR's ability to perform services under this Agreement for a period in excess of thirty (30) days; d) any misrepresentation by CONTRACTOR related to this agreement or the contracted services in any way, either before or after the signing of this agreement; or e) any breach of this agreement by CONTRACTOR.

10. No assignment. The CONTRACTOR shall not be entitled to and shall not assign or subcontract any of the CONTRACTOR's duties or obligations hereunder, and any such assignment or subcontract shall be void as against the County. Any attempted assignment or subcontracting in violation of this provision shall give the County the right to terminate this Agreement immediately, upon written notice to CONTRACTOR. All of CONTRACTOR's services hereunder shall be performed only by full-time employees of CONTRACTOR.

11. Notices. Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified or registered mail, postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to CONTRACTOR, to the address stated above; and

If to the County, to Chairman, Board of County Commissioners, 2864 Madison Street, Marianna, FL, 32448; with a copy to Michelle Blankenship Jordan, Esq., 1512 Highway 90, Chipley, Florida 32428.

12. No Implied Waiver. Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

13. Severability. The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

14. Amendments. Except as provided above for Superintendent directives or additional work, any amendment to this Agreement will be effective only if in writing and signed by the County and CONTRACTOR.

15. Interpretation. The defined terms and paragraph titles used herein are for convenience only and do not limit the contents of this Agreement. When applicable, the use of the singular form of any word shall mean or apply to the plural, and the masculine or neuter gender as the case may be.

16. To the extent allowed by law, CONTRACTOR agrees to indemnify the County (and the County's commissioners, officers, employees, and attorneys) and hold all of them harmless from and against and pay the cost of defense of any and all of them against any and all damages, claims, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, repair work, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees, paralegal charges and expenses), arising out of or related to, directly or indirectly, CONTRACTOR's performance of or failure to perform his services under this agreement. This indemnification shall apply whether the claim or occurrence happened or began prior to, during, or after any services by CONTRACTOR. The scope of this indemnification shall include, but not be limited to, any and all claims of CONTRACTOR (except those arising out of a breach of this agreement by the County), of any utility companies or providers, or of any other person, firm or corporation.

17. Entire Agreement. This is entire agreement of the parties with respect to the subject matter hereof. There are no promises, representations or warranties, other than those set forth expressly herein. This agreement is not intended to and shall not be construed to effect any waiver of any immunity accruing under law to the County, or to create any rights or benefits in favor of any other person, firm or corporation or any other third party beneficiary. No duty or obligation imposed hereunder shall be deemed to run in favor or for the benefit of any person, firm or corporation, other than the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

WITNESSES:

*, CONTRACTOR

Hon. Kenneth Stephens, Chairman,

Board Of County Commissioners,
Jackson County, Florida