

# **FLOW WAY COMMUNITY DEVELOPMENT DISTRICT**

PRESERVE MAINTENANCE

BID SPECIFICATIONS

February 2024

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**FLOW WAY COMMUNITY DEVELOPMENT DISTRICT  
NOTICE TO BIDDERS**

**EXOTIC AND NUISANCE VEGETATION MAINTENANCE WITHIN CDD MAINTAINED PRESERVES**

NOTICE IS HEREBY GIVEN that sealed bids will be received by the FLOW WAY COMMUNITY DEVELOPMENT DISTRICT (the "DISTRICT"), COLLIER COUNTY, FLORIDA, until 11:00 a.m., local time, on, March 8, 2024 at the **Flow Way Golf Clubhouse, 8912 Torre Vista Drive, Naples, FL 34119**. and commencing at 11:00 AM, such bids as received will be opened and read aloud at the **Flow Way Golf Clubhouse, 8912 Torre Vista Drive, Naples, FL 34119**.

The work for which proposals are to be submitted consists of providing labor, materials and equipment for the annual maintenance of preserve areas set aside as part of the SFWMD and USACE permitting requirements. The work includes the elimination of exotic vegetation from the preserves and promotion of appropriate native vegetation as required, pursuant to the terms and conditions of the specifications and contract documents pertaining thereto which may be examined at the District Office. One copy of the documents, including blank bid forms to be executed and submitted with a proposal, may also be obtained at the offices of the District Manager, JP Ward and Associates, LLC, 2900 2301 Northeast 37<sup>th</sup> Street, Fort Lauderdale, Florida 33308 or by phone at 954-658-4900, or on the District's web site at [www.flowwaycdd.org](http://www.flowwaycdd.org).

A non-mandatory on-site pre-bid conference will be held on March 1, 2024 beginning at 10:30 a.m. local time at the following location: **Flow Way Golf Clubhouse, 8912 Torre Vista Drive, Naples, FL 34119**. A discussion of the preserves and requirements will be conducted at this time and access to the preserve areas will be available.

The Bidder shall submit a sealed and clearly marked envelope that includes the six (6) printed proposals along with an electronic version of the entire proposal in a pdf format to be marked as follows: "Flow Way Community Development District - Preserve Maintenance Proposal" to Calvin, Giordano & Associates, Inc., 9990 Coconut Road, Suite 340, Estero, FL 34135.

Proposals shall be prepared, addressed, and submitted in compliance with detailed instructions as set forth in these bid specifications.

The District reserves the right to accept or reject any or all bids, to waive irregularities, technical errors, and formalities, and to award the contract as it deems will best serve the interest of the District.

Flow Way Community Development District  
JAMES P. WARD, DISTRICT MANAGER

**SECTION 1  
INSTRUCTION TO BIDDERS**

- 1.1 SEALED PROPOSALS-** Sealed proposals will be received at the time and place designated herein for furnishing all transportation, labor, materials, tools, supplies, plant, equipment and machinery necessary, and performing all operations required for the completion of the work herein specified and as shown.
- 1.2 DEFINITION OF TERMS-** Where the following terms or their pronoun occur herein, the intent and meaning shall be as follows:
- 1.3 District:** Flow Way Community Development District
- 1.4 Bidder:** Any Person, firm or corporation submitting a proposal for the work covered by these specifications or his duly authorized representative.
- 1.5 Contractor:** The person, firm or corporation with whom the District has executed a contract for the work herein specified.
- 1.6 Manufacturer or Supplier:** Any person, firm or corporation other than the contractor, supplying labor, material or equipment for the work herein specified.
- 1.7 DELIVERY OF PROPOSALS-** The proposer shall submit a sealed and clearly marked envelope that includes the six (6) printed proposals, an electronic version in pdf format to be marked as follows: "Flow Way Community Development District - Preserve Maintenance Proposals" to Calvin, Giordano & Associates, Inc., 9990 Coconut Road, Suite 340, Estero, FL 34135. on or before 11:00 AM on March 8, 2024.
- 1.8 PROPOSAL FORMS-** The Bidder shall submit their proposal on the forms, or an exact copy of the forms furnished herein. The blank spaces shall be filled in completely and correctly for each item and for every item for which a bid is tendered. The Bidder shall state the price, typewritten or in ink, for which the Bidder proposes to do each item of work called for.
- 1.9 SIGNATURE ON PROPOSAL-** The Bidder shall sign its proposal correctly. If the proposal is made by an individual, its name and post office address shall be shown. If made by a firm or partnership, the name and post office address of each member of the firm or partnership shall be shown. If made by a corporation, the person signing the proposal shall show the name of the state under the laws of which the corporation is chartered, also the names and business addresses of its president, secretary, and treasurer. The proposal shall bear the seal of the corporation attested by the secretary. Anyone signing the proposal as agent shall file with the proposal legal evidence of its authority to do so.
- 1.10 FAMILIARITY WITH LAWS-** The Bidder is assumed to be familiar with all Federal, State, and Local laws, ordinances, rules, and regulations that may in any manner affect the work. The failure of the Bidder to familiarize itself with applicable laws will in no way relieve the Bidder from responsibility. By execution of the proposal, Bidder represents the Bidder has familiarized itself with all such laws, ordinances, rules and regulations.
- 1.11 EXAMINATION OF SPECIFICATIONS AND SITE OF WORK-** The Bidder is required, before submitting its proposal, to visit the site of the proposed work and familiarize itself with the nature and extent of the work and any local conditions that may in any manner affect the work to be done and the equipment, materials and labor required. The Bidder is also required to examine carefully the specifications, form of agreement, and to inform itself thoroughly regarding any and all conditions and

requirements that may in any manner affect the work to be performed under this contract.

- 1.12 QUALIFICATION OF BIDDERS-** It is required that all Bidders enclose with their sealed bids the following information:
- A.** A detailed description of the firm including address, telephone number, number of employees, number of employees assigned to this project, I.D. numbers for IRS, Collier County Occupational License w/number and date of expiration, Restricted Pesticide License status, proof of suitable financial status, and current availability to handle projected workload.
  - B.** Briefly describe the educational background and professional experience of the firm owners, supervisors or key employees assigned to this project.
  - C.** List similar contracts for preserve maintenance now held by your firm and other similar contracts, if any formerly held. List at least one person for each such contract who may be contacted by us who is knowledgeable about your work. List telephone numbers for these individuals.
  - D.** The contractor agrees only fully trained personnel will be assigned to this contract, except that trainees working under direct and continuous supervision will be acceptable for brief periods not in excess of one month or until certified as completed training.
  - E.** The contract will be awarded only to responsible contractors qualified by experience to do the work specified herein. The Bidder shall submit, with its bid, satisfactory evidence of its experience in like work and that the Bidder is fully prepared with the necessary organization, capital, equipment, and machinery to complete the work to the satisfaction of the District within the time stated in the proposal.
- 1.13 DISQUALIFICATION OF BIDDER-** More than one bid from an individual, firm, partnership, corporation or association under the same or different name will not be considered. Reasonable grounds for believing that the Bidder is financially interested in more than one proposal for the same work may cause the rejection of all proposals in which such Bidders are believed to be interested. Any or all proposals will be rejected if there is reason to believe that collusion exists among Bidders and no participants in such collusion will be considered in future proposals for the same work. Proposals in which prices are obviously unbalanced in the sole and absolute discretion of the District will be rejected.
- 1.14 Cone of Silence-** The Cone of Silence shall be in effect for all vendors at the time the bid specifications are received from the District until the Board deliberates on the making of an award, there is a prohibition on communications with any District Board Members. The cone of silence does not apply to oral communications at the pre-bid/proposal meeting, oral presentations before selection committees, contract negotiations, and public communications in writing. All communications prior to proposal will be through Mr. James Messick at [JMessick@cgasolutions.com](mailto:JMessick@cgasolutions.com) or by phone at 954-766-2789.
- 1.15 RIGHT TO REJECT PROPOSALS-** The District reserves the right to reject any and all bids, with or without cause, and to waive technical errors and informalities. Bidders not receiving a contract award shall not be entitled to recover from the District any costs of bid or proposal preparation or submittal. Rejections of bids shall be provided in writing to all Bidders by facsimile, e-mail, United States Mail or by hand delivery.
- 1.16 AWARD OF CONTRACT-** The award of the contract portions thereof as set forth hereafter, if it is awarded, will be to the lowest responsive\* and responsible\*\* high quality Bidder whose qualifications indicate the award will be in the best interest of the District

and whose proposal shall comply with the requirements of these specifications. In no case will the award be made until all necessary investigations have been made into the responsibility of the low Bidders and the District is satisfied that the Bidders are qualified to do the work and have the necessary organization, capital and equipment to carry out the provisions of the contract to the satisfaction of the District within the time specified.

- 1.17 EXECUTION OF CONTRACT-** Immediately following the award of the contract to the Bidder by the District, the District Counsel will prepare a formal contract to be executed by the parties, which contract will be in substance the same as the form of contract which is attached to the various papers which were delivered by the District or its representative to the Bidder in the first instance. The Bidder shall within five (5) days of the award of the contract deliver to the District the fully executed contract, all applicable certificates of insurance from a company licensed to do business in the State of Florida.
- 1.18 TERM AND AWARD-** the District reserves the right to hold all bids for a period not to exceed ninety (90) days after the date of bid opening as stated in the Notice to Contractors. Term of contract will be for one year with automatic annual renewal per Article 5 within Preserve Maintenance Agreement.
- 1.19 BID MODIFICATIONS-** No modifications shall be submitted by Bidder or accepted by the District.
- 1.20 \*Responsive Bidder:** Any person, firm or corporation submitting a bid for the work contemplated whose bid form is complete and regular, free from excisions or special conditions and has no alternative bids for any items unless requested in the specifications.
- 1.21 \*\* Responsible Bidder:** Any person, firm, or corporation submitting a bid for the work contemplated who maintains a permanent place of business, has adequate plant equipment to do the work properly and within the time limit that is established, and has adequate financial status to meet his obligations contingent to the work.
- 1.22 Public Records-** Contractor awarded this bid will be subject to Florida Statutes, Section 119.0701, enacted by the State of Florida, which relates to any public record requests involving this contract. If the contractor has questions regarding Chapter 119 of the Florida Statutes, to their duty to provide – the contractor public records relating to the contract, please contact the District Manager, Mr. James Ward, via e-mail at [JimWard@jpwardassociates.com](mailto:JimWard@jpwardassociates.com).

## PRESERVE MAINTENANCE AGREEMENT

**THIS PRESERVE MAINTENANCE AGREEMENT** (this “Agreement”) is made and entered into this 21th day of March, 2024, by and between **FLOW WAY COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, being situated in the Collier County, Florida (the “District”) and, a Florida Corporation (the “Contractor”).

### WITNESSETH:

**WHEREAS**, the District was established by ordinance of the Board of County Commissioners of Collier County, Florida, for the purpose of planning, financing, constructing, operating and/or maintaining certain public infrastructure improvements, including surface water management systems, landscaping, and other infrastructure within the Flow Way community; and

**WHEREAS**, included within the maintenance responsibilities of the District is the responsibility to maintain certain preserve areas within its boundaries; and

**WHEREAS**, the District desires to employ the Contractor to provide preserve maintenance services within the District; and

**WHEREAS**, the Contractor, through its proposal and has represented that it can provide such services as required by the District; and

**WHEREAS**, the District desires to employ the Contractor as an independent contractor to provide the services described herein for the compensation and upon the terms, conditions and provisions hereinafter set forth.

**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, including the mutual benefits provided to each party by this Agreement, receipt of which is hereby acknowledged by the parties hereto, it is mutually agreed by and between the parties hereto as follows:

1. **RECITALS.** That the above recitals are true and correct and are incorporated herein.

2. **DESCRIPTION OF WORK AND SERVICES.**

A. The District desires that the Contractor provide professional exotic vegetation control and preserve maintenance services of the very highest quality. Following the execution of this Agreement by both parties, the Contractor shall provide the District with the specific services identified in this Agreement commencing as of March 21, 2024 (“Commencement Date”).

B. While providing the services identified in this Agreement, the Contractor shall assign such staff as may be required, and such shall be responsible for coordinating, expediting, and controlling all aspects to assure completion of the services. All work to be performed within the scope of these specifications contained herein shall be strictly managed, executed, and performed by the Contractor using experienced personnel.

C. The Contractor shall provide the specific professional services as shown in Paragraph 3 of this Agreement.

3. **SCOPE OF PRESERVE MAINTENANCE SERVICES.** The monthly duties, obligations, and responsibilities of the Contractor are those described in the Scope of Services attached hereto as Exhibit “A” attached hereto and made a part hereof (the “Work”) and those other obligations set

forth herein. Contractor shall solely be responsible for the means, manner and methods by which its duties, obligations and responsibilities under this Agreement are met to the satisfaction of the District.

**4. MANNER OF CONTRACTOR'S PERFORMANCE.** The Contractor agrees, as an independent contractor, to undertake the Work and/or perform such services as specified in this Agreement (including any addendum or amendment subsequently executed by the parties or in any authorized written work order from 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 in Collier County, Florida. 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 or reasonably inferred for the proper provision of the Work to the District, such work or services shall be fully performed by the Contractor as if described and delineated in this Agreement.

B. The Contractor agrees that the District shall not be liable for the payment of any other 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 four (4) time(s) per year, and at the request of the District, to walk the property to discuss conditions, schedules, and items of concern regarding this Agreement. At that time, the District will compile a list of preserve related items that should be performed before the next periodic walk through. The District will be responsible for scheduling the inspections. The District must have no less than seven (7) days' notice if there is a need to reschedule. Notwithstanding, the walkthroughs with the District contemplated by this subsection, Contractor remains responsible for making appropriate weekly inspections of the entire property subject to the Work.

D. The Contractor shall use all due care to protect the property of the District, its residents, and landowners from damage. The Contractor, at the Contractor's sole cost and expense, agrees to repair any damage resulting from the Contractor's activities and work within twenty-four (24) hours of the damage occurring or receiving written notice, whichever is earlier.

E. A monthly written report shall be prepared and submitted by Contractor to the District representative on an agreed upon form provided by the contractor. A representative of Contractor shall be available to attend regular meetings of the District's Board of Supervisors, if requested by the District's Board of Supervisors.

F. It is the responsibility of the Contractor to make a reasonable effort to notify the District of any conditions beyond the control of the Contractor or scope of Work that may result in the damage and/or loss of plant material. This responsibility includes but is not limited to the following vandalism and/or other abuse of property.

**5. COMPENSATION; TERM.**

A. The term of this Agreement shall be for three (3) years from the Commencement Date through March 21, 2027 (the "Term"), unless terminated prior to that time pursuant to the provisions set forth herein. Thereafter, this Agreement will be automatically extended for additional one (1) year periods pursuant to the terms and price hereof (hereinafter, "Annual Renewal Term") unless otherwise terminated or either party provides written notice of non-renewal to the other no later than ninety (90) days prior to the expiration of the Term or Annual Renewal Term, as applicable. Each Annual Renewal Term shall be on the same terms and conditions as the immediately preceding Term or Annual Renewal Term, as applicable, unless agreed upon in writing by the parties.

As compensation for the Work described in this Agreement, the District agrees to pay Contractor as follows: Contractor shall be paid by the District on a percentage completion basis (Number of acres completed in each management area) at the agreed upon price for each management area as outlined in the "Schedule of Values".

B. The District will require, as a condition precedent to making any payment to the Contractor, that all subcontractors, materialmen, 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, Workers' Compensation, Unemployment compensation contributions, and similar payroll deductions from the wages of employees.

C. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render monthly invoices to the District, electronically to James Messick, Calvin, Giordano & Associates, Inc., JMessick@cgasolutions.com, which shall be emailed 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 of receipt by the District. Each monthly invoice will include such supporting information as the District may reasonably require the Contractor to provide.

**6. WARRANTIES.** The Contractor warrants that Work performed and all goods delivered under this Agreement, shall be free from any defects in workmanship and material, and shall conform strictly to these specifications. The Contractor further warrants that all the Work shall be performed using Contractor's best efforts and shall be in conformance with industry standards for workmanship. By executing this Agreement, the Contractor represents that it has examined carefully all of the contract documents, acquainted itself with the site, and all conditions relevant to the Work, and has made all evaluations and investigations necessary to a full understanding of any difficulties which may be encountered in performing the Work pursuant to the Agreement. The Contractor acknowledges that the Agreement documents are sufficient for the proper and complete execution of the Work.

**7. SAFETY.** The Contractor shall maintain an adequate safety program to ensure the safety of employees and any other individuals working under this Agreement. The Contractor shall comply with all applicable standards, rules, or regulations of the Occupational Safety and Health Administration (hereinafter "OSHA") and all applicable laws, statutes, rules, regulations and orders. The Contractor shall take precautions at all times to protect any persons and property affected by the Contractor's work under this Agreement, utilizing safety equipment such as bright vests, traffic cones, etc.

## **8. 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) Workers' Compensation coverage, in full compliance with Florida statutory requirements, for all employees of the Contractor who are to provide a service under this Contract, as required under applicable Florida Statutes AND Employer's Liability with limits of not less than \$1,000,000.00 per employee per accident, \$500,000.00 disease aggregate, and \$100,000.00 per employee per disease.

(2) Commercial General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit bodily injury and property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$100,000 fire legal liability.

(3) 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. Said insurance shall also include insured/underinsured motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.

B. The District, its staff, consultants, agents and supervisors shall be named as an additional insured on all policies required (excluding worker's compensation). 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 acceptable to the District, who 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.

**9. INDEMNIFICATION/HOLD HARMLESS.** The Contractor assumes liability for and shall indemnify, defend and save harmless the District as well as its supervisors, members, employees, officers, managers, agents, successors and assigns from any and all expenses, costs, claims, actions, damages, losses and liabilities of every kind (including, but not limited to, reasonable attorneys' fees of their attorneys) irrespective of the theory upon which based (including, but not limited to, negligence and strict liability) arising out of the Contractor's presence within Flow Way for any purpose (including, but not limited to, performing work under this Agreement) and arising out of the Work area and the condition, operation ownership, selection, transportation, loading, unloading, security, leasing or return of any equipment or individuals with respect to the above services regardless of where, how and by whom used or operated and including, without limitation, injury to property or person (including death). This Agreement also obligates the Contractor to indemnify and save harmless the District for any and all expenses, costs, claims, actions, damages, losses, and liabilities of every kind arising out of any of the Contractor's or their subcontractors at the site. The Contractor understands and agrees that it is obligated and shall indemnify the District for damages and injury to persons and property caused in whole or in part by any act, omission, negligence or fault of the Contractor and its subcontractor, agents, employees, officers, directors, successors and assigns. The Contractor's obligation to indemnify and defend the District is absolute, including

instances where the District are found potentially liable, responsible or at fault and in those instances where the District's own negligence or actions caused said damage or injury in part. Notwithstanding the above, the Contractor shall not be required to indemnify and defend the District for damages found by a Court to have been caused solely by the District gross negligence or the willful, wanton or intentional misconduct of the District or their employees, officers, directors, successors and assigns.

The Contractor hereby acknowledges that the first \$10.00, paid under this contract as sufficient and valuable consideration from the District to the Contractor as specific consideration for this indemnification. It is understood and agreed that this Agreement is not a construction contract as that term is referenced in Section 725.06, Florida Statutes (and as later amended) and that said statutory provision does not govern, restrict or control this Agreement.

**10. COMPLIANCE WITH GOVERNMENTAL REGULATION.** The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a 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, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

**11. 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 construction, 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. In the event that the Contractor does not pay or satisfy such claim or lien within three (3) business days after the filing of notice thereof, the District, in addition to any and all other remedies available under this Agreement, may terminate this Agreement to be effective immediately upon the giving of notice of termination.

**12. 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.

**13. 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.

**14. 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.

**15. TERMINATION.** The District agrees that the Contractor may terminate this Agreement with or without cause by providing ninety (90) days written notice of termination to the District; provided,

however, that the District shall be provided a reasonable opportunity to cure any breach under this Agreement by the District. Owner may, in its sole and absolute discretion, whether or not reasonable, on thirty (30) days' written notice to Contractor, terminate this contract at its convenience, with or without cause, and without prejudice to any other remedy it may have. 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.

**16. PERMITS AND LICENSES.** All permits or licenses necessary for the Contractor to perform under this Agreement shall be obtained and paid for by the Contractor.

**17. ASSIGNMENT.** The Contractor may not assign this Agreement without the prior written approval of the District.

**18. INDEPENDENT CONTRACTOR STATUS.** In all matters relating to this Agreement, the Contractor shall be acting as an independent contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Contractor is an independent contractor under this Agreement and not the District's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of the Contractor, which policies of the Contractor shall not conflict with the District, or other government policies, rules or regulations relating to the use of the Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the District, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the District and the District will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums. The Contractor shall not incur expenses on behalf of the District, enter into any contract on behalf of the District, either written or oral, or in any other way attempt to obligate or bind the District except upon the express prior written approval of the District.

**19. PUBLIC RECORDS.** CONTRACTOR understands and agrees that all documents of any kind provided to the DISTRICT in connection with this Agreement may be public records, and, accordingly, CONTRACTOR agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. CONTRACTOR acknowledges that the designated public records custodian for the DISTRICT is Sandra Demarco ("**Public Records Custodian**"). Among other requirements and to the extent applicable by law, the CONTRACTOR shall 1) keep and maintain public records required by the DISTRICT to perform the Services; 2) upon request by the Public Records Custodian, provide the DISTRICT with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the CONTRACTOR does not transfer the records to the Public Records Custodian of the DISTRICT; and 4) upon completion of the Agreement, transfer to the DISTRICT, at no cost, all public records in CONTRACTOR's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the CONTRACTOR, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the DISTRICT in a format that is compatible with Microsoft Word or Adobe PDF formats. Failure of CONTRACTOR to comply with

Section 119.0701, Florida Statutes may subject CONTRACTOR to penalties under Section 119.10, Florida Statutes. Further, in the event CONTRACTOR fails to comply with this Section or Section 119.0701, Florida Statutes, DISTRICT shall be entitled to any and all remedies at law or in equity. The following statement is required to be included in this Agreement pursuant to Section 119.0701(2), Florida Statutes:

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (JAMES P. WARD C/O JPWARD & ASSOCIATES, LLC) AT (954) 658-4900, [JIMWARD@JPWARDASSOCIATES.COM](mailto:JIMWARD@JPWARDASSOCIATES.COM).**

**20. SEVERABILITY.** In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given the nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

**21. EXHIBITS.** All of the exhibits attached to this Agreement, if any, are incorporated in, and made a part of, this Agreement.

**22. COMPLETE AGREEMENT.** This Agreement (and any exhibits or proposals expressly incorporated herein) constitutes the entire and complete agreement between the parties hereto and supersedes all prior correspondence, discussions, agreements and understandings between the parties hereto relating to the matters herein contained.

**23. MODIFICATIONS.** This Agreement may not be amended or modified in any manner other than by an Agreement in writing signed by all of the parties hereto.

**24. WAIVER.** No waiver of any of the terms of this Agreement shall be valid, unless such is in writing and signed by the party against whom such waiver is asserted. In any event, no waiver shall operate or be constructed as a waiver of any future required action or of any subsequent breach.

**25. CONSTRUCTION OF THIS AGREEMENT.**

A. **TITLES.** The titles of paragraphs and sub-paragraphs are for reference purposes only, and shall not in any way limit the contents, application or effect thereof.

B. **ORDER OF PARAGRAPHS.** This Agreement shall be construed as a whole with no importance being placed upon the order of the paragraphs as they appear herein.

C. **PRONOUNS.** Pronouns used herein shall refer to every other and all genders and any word used herein shall refer to the singular or plural as required or appropriate to the context.

D. **FLORIDA LAWS.** This Agreement shall be construed, governed and interpreted in accordance with the laws of the State of Florida.

E. **NEGOTIATION OF AGREEMENT.** The parties hereto have participated fully in the negotiation and preparation hereof and accordingly, this Agreement shall not be more strictly construed against one or the other.

F. **INTERPRET TO BIND AND TO DO JUSTICE.** This Agreement shall be interpreted in a manner to uphold and enforce the binding effect of all provisions hereof and, at the same time, to do justice to all parties in the event of doubt or ambiguity as to any term, expression or meaning.

G. **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.

26. **NOTICES.** All notices, demands, requests or other communications made pursuant to, under or by virtue of this Agreement must be in writing and either emailed, hand-delivered, delivered by next business day commercial courier (such as FedEx or UPS), or mailed through the United States Postal Service, to the party to which the notice, demand, request or communication is made, as follows:

**IF TO DISTRICT:**

Flow Way Community Development District  
c/o JPWard & Associates, LLC  
Attention: James P. Ward, District Manager  
2301 Northeast 37<sup>th</sup> Street  
Fort Lauderdale, Florida 33308  
[JimWard@jowardassociates.com](mailto:JimWard@jowardassociates.com)

**WITH A COPY TO:**

Flow Way Community Development District  
c/o Billing, Cochran, Lyles, Mauro & Ramsey, P.A.  
Attention: Michael Pawelczyk, District Council  
515 East Las Olas Boulevard, Suite 600  
Fort Lauderdale, Florida 33301  
[MPawelczyk@bclmr.com](mailto:MPawelczyk@bclmr.com)

**IF TO CONTRACTOR:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such addresses may be changed by written notice given to the address noted above. Any notice, demand, request or other communication shall be deemed to be given upon actual receipt in the case of email, hand-delivery or delivery by overnight courier, or two (2) business days after depositing the same in a letter box or by other means placed within the possession of the United States Postal Service, properly addressed to the party in accordance with the foregoing and with the proper amount of postage affixed thereto, if applicable. Legal counsel may deliver any notice on behalf of the party such counsel represents.

27. **COUNTERPARTS.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed to be original, but all of which together shall constitute one and the same instrument.

28. **VENUE, PREVAILING PARTY ATTORNEY'S FEES AND COSTS.** In the event of litigation arising out of either party's obligations under this Agreement, venue shall lie in Lee County,

Florida and the prevailing party shall be entitled to recover its attorney's fees and costs from the non-prevailing party, including but not limited to trial level fees, bankruptcy fees and appellate fees.

(Remainder of Page Intentionally Left Blank - Signatures Begin on Next Page)

**IN WITNESS WHEREOF**, the parties execute this Agreement and further agree that it shall take effect as of the date first written above.

**DISTRICT:**

**FLOW WAY COMMUNITY  
DEVELOPMENT DISTRICT**

Attest:

\_\_\_\_\_  
James P. Ward, Secretary

By: \_\_\_\_\_  
Zack Stamp, Chairman

Dated: \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_,  
a Florida \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**PRESERVE MAINTENANCE  
EXHIBIT "A"  
SCOPE OF SERVICES**

## **Exhibit A**

### **Scope of Services**

1. **SCOPE OF WORK** – The contractor shall furnish all labor, materials, supervision, equipment, supplies, tools, service, and all other necessary incidentals required to perform complete maintenance of water management area(s) as detailed below.

Each bidder shall submit one bid encompassing all proposal areas included in Exhibit “B” Bid schedule.

Exhibit “C” are maps showing the locations to be maintained by this contract.

2. **DETAILED SPECIFICATIONS** - The project work shall include exotic plant treatment, removal and management for the areas described below. A minimum of 2 rounds of treatment per area or as many rounds as needed in order to kill and control the exotics in each area will be required.

**Wading Bird Foraging Areas (8.7 Acres)** – These are the two areas in the south western portion of the preserve that were scraped down and planted in conjunction with the initial site improvement activities (PURPLE on attached map).

Maintenance – Problem vegetation has been cattails, paragrass, and torpedo grass. All Category I and Category II exotics, as defined by the Florida Pest Plant Council, should be included in the treatment program.

Work needed – Inspection for these and any other species that are established in the preserve should be done at a minimum in April thru June with immediate treatment (herbicide spraying).

**Internal Preserves (37.7 Acres)** – The Internal Preserves are composed of 5 smaller isolated areas within the development footprint (YELLOW on attached map).

Maintenance – Problem vegetation has been melaleuca and earleaf acacia in the 3 internal preserves (1, 2, & 3), grasses (para and torpedo) in the eastern boundary preserve (4), and Brazilian pepper in the Dillilo preserve (5). All Category I and Category II exotics, as defined by the Florida Pest Plant Council, are included in the treatment program.

Work Needed – Vegetative coverage and exotic density are both compliant with the permit conditions in four of the five of these areas. The exception is the long linear preserve which runs along the eastern boundary parallel to Broken Back Road north of the construction entrance. Paragrass and earleaf acacia are present in this preserve, so additional treatment should be concentrated in that area.

Internal Preserves 1, 2, 3, & 5 – annual examination maintenance treatment in April thru June.

Internal Preserve 4 - Inspection and treatment of paragrass, torpedo grass and earleaf acacia that establish in this preserve should be done immediately with treatment (herbicide spraying) of any growth discovered.

**Western Preserve (189.8 Acres)** – This preserve area runs along the western edge of the development between the Foraging Areas and the Northern Preserves (GREEN on attached map). It is generally in good shape in terms of vegetative coverage, but still has a lot of melaleuca

seedling growth that is approaching sapling sizes.

Maintenance – Problem vegetation has been melaleuca and earleaf acacia. Inspection and treatment of woody exotics (melaleuca, etc.) should be done once a year between March and April. Inspection and treatment of exotic grasses (paragrass, etc.), herbaceous vegetation, and vines should be done. All Category I and Category II exotics, as defined by the Florida Pest Plant Council, should be included in this treatment program.

Work Needed – Maintenance treatments in April thru June.

**Northern Preserves (888.4 Acres)** – This is the main preserve of the project located north of the development area (PINK and RED on attached map). Both areas have received a follow-up treatment between March and May 2018. Torpedo grass is prevalent throughout the preserve and patches of paragrass and cogon grass have also been noted.

Maintenance – The 550-acre area that was initially treated in 2015 has undergone a maintenance re-treatment through 2022. All Category I and Category II exotics, as defined by the Florida Pest Plant Council, should be included in the treatment program.

Work Needed – At a minimum, bi-annual examination and maintenance treatments in April thru June. Special attention will be given to getting grasses, Caesar weed, and vines under control.

**Access Lanes / Fire Management Zones** – Hurricane Ian knocked over many trees which have impeded access to portions of the site. Contractor will be responsible for re-opening access lanes that are still blocked across the site. Trees periodically fall across the lanes and ongoing maintenance of the lanes through removal of the downed material is also included in the annual scope. Access to the preserves will be from Immokalee Road up Broken Back road, and from Bonita Beach Road down the Logan Blvd ROW to the northwest corner of the site.

If you have any questions, please do not hesitate to contact James Messick, PE, Calvin, Giordano & Associates, Inc. (JMessick@cgasolutions.com) or Hugh D. Dinkler, PWS, Ecological Services Associates, LLC (hdinkler@ecologicalsa.com).

### **3. MISCELLANEOUS REQUIREMENTS**

- The Contractor shall use only approved chemicals and methods. In the event a chemical or method is banned by a governing agency in the State of Florida, or the Federal Government during the term of the contract, the Contractor shall continue work using other approved chemicals or methods.
- The area to be treated includes all preserve areas.
- The Contractor shall use due care to avoid damage to adjacent lands and property. The rate of application of chemicals shall be limited to avoid fish killing, and unnecessary impact to non-weedy or desirable wetland and upland vegetation.
- The Contractor will make sure that nuisance and exotic vegetation debris is removed from all equipment prior to entry into preserves to preclude introduction of additional problem plants into the preserves.

**4. REPORTS** - The Contractor shall email to the District Representative after each treatment a report indicating the preserve areas treated, chemicals used, condition of preserves, number of men on the job site, and a summary of all agency required activities within mitigation areas. Contractor

will provide District rep. with a list of chemicals to be applied within the project prior to commencement.

**5. PAYMENT** - The Contractor will be paid per Section 5 of the agreement for monthly work accomplished scheduled during the previous month's schedule. Payment will be a pro-ration of the annual price for maintenance work outlined in the Bid Proposal section of this contract.

**6. SELECTION OF BID ITEMS** - In the event the bid prices exceed the funds available, the District reserves the right to delete certain items from the Schedule of Bid items before making the award of the contract.

**7. TOOLS, PLANTS, AND EQUIPMENT** - If at any time before the commencement or during the progress of the work the equipment appears to the District Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the District may order the Contractor to increase their efficiency to improve the character to augment their number or substitute new equipment as the case may be, and the Contractor shall conform to such order; the failure of the District to demand such increase of efficiency shall not relieve the Contractor of his obligation to secure the quality of work, and the rate of progress necessary to complete the work within the time required by the contract, and to the satisfaction of the District.

**8. INSPECTION** - The work will be conducted under the direction of the District and is subject to inspection by its appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization by the District Rep., nor shall the presence or absence of an inspector relieve the contractor from any requirements of the contract. Contractor "Manager", not applicator, shall attend and required site meetings at a time and date to be mutually determined. A ride-through of the maintenance areas will be performed at that time to check progress and correct any possible problematic areas.

**9. ACCEPTANCE OF FINISHED WORK** - The District Rep. will make inspections of the work covered by this contract on a monthly basis for quality control.

**10. CONTRACT DRAWINGS AND SPECIFICATIONS** - One (1) set of the drawings and specifications will be furnished to the Contractor without charge. Additional sets will be furnished upon request at the cost of reproduction.

**11. QUALIFICATIONS** - The Contractor shall be insured, licensed, and certified by the State of Florida to apply aquatic and industrial herbicides. The Contractor assumes full responsibility for obtaining all permits required in the performance of this work. All contractor employees applying chemicals on the project shall have in their possession, at all times, an appropriate and current chemical applicator's license.

**12. DOCUMENTATION** - Contractor shall include a company equipment list, employees with current spray application licenses, and staffing capacity.

Separate Sheets

Exhibit "B" – Bid Schedule

Exhibit "C" – Preserve Areas – maps



**PRESERVE MAINTENANCE  
EXHIBIT "B"  
BID SCHEDULE**

**EXHIBIT "B"**

**Flow Way CDD Preserve Areas Maintenance Bid Schedule (Typ. For 3 years)**

<b>Preserve I.D.</b>	<b>Yearly Bid Price</b>
Wading Bird Foraging Area	\$_____
Internal Preserves	\$_____
Western Preserve	\$_____
Northern Preserve Area 1	\$_____
Northern Preserve Area 2	\$_____
Yearly Sub-total (Sum of all Preserve ID areas)	\$_____
<b>Bid Total (Yearly Sub-total X 3 years)</b>	<b>\$_____</b>

Company Signature \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_(print)

EXHIBIT "C"  
PRESERVE AREA BOUNDARIES  
MAPS