

**AGREEMENT FOR
PURCHASE AND SUPPLY OF MULCH - ANNUAL**

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Express Mulch Inc., a Florida corporation, whose address is 1342 Plumosa Drive, Fort Myers, FL 33901, and whose federal tax identification number is 45-4922396, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase various types of mulch, pine straw, decorative shell, etc., for different types of landscaping, throughout the County, on an "as needed" basis from the Vendor in connection with "Purchase and Supply of Mulch - Annual" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B200323BJB on August 25, 2020 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Intended Decision on February 10, 2021; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in the Detailed Specifications and Special Conditions Sections of B200323BJB, a photo copy of said sections being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. B200323BJB, as modified by its addendum, copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.

II. TERM AND DELIVERY

- A. This Agreement shall commence immediately upon the effective date and shall continue through the delivery of the Purchase and the associated warranty period as further described in this Agreement on an as needed basis for one (1), three (3) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of the renewal shall be at the sole discretion of the County as deemed in its best interest. The effective date shall be the date of the Lee County board of County Commissioners awarded the Solicitation to the Vendor.
- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, fee schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.

B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C, Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and 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 County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-

contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Vendor shall refund to the County any money which has been paid for same.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
- I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:		County's Representatives:		
Name:	<u>Evan Gorny</u>	Names:	<u>Roger Desjarlais</u>	<u>Mary Tucker</u>
Title:	<u>President</u>	Titles:	<u>County Manager</u>	<u>Director of Procurement Management</u>
Address:	<u>3270 Cargo St. Fort Myers, FL 33916</u>	Address:	<u>P.O. Box 398 Fort Myers, FL 33902</u>	
Telephone:	<u>239-633-2951</u>	Telephone:	<u>239-533-2221</u>	<u>239-533-8881</u>
Facsimile:	<u>N/A</u>	Facsimile:	<u>239-485-2262</u>	<u>239-485-8383</u>
E-mail:	<u>info@expressmulchblowing.com</u>	E-Mail:	<u>rdesjarlais@leegov.com</u>	<u>mtucker@leegov.com</u>

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
1. Agreement
 2. County's Purchase Order
 3. Solicitation
 4. Vendor's Submittal in Response to the Solicitation

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

EXPRESS MULCH INC.

Signed By: *Lyndsey Scribner*
Print Name: Lyndsey Scribner

Signed By: *[Signature]*
Print Name: Evan Gorky
Title: President
Date: 03/02/2021



LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *[Signature]*
FOR CHAIR
DATE: 4-15-21

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *[Signature]*
DEPUTY CLERK

Commissioner Cecil L Pendergrass
Lee County Board of County Commissioners
District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *[Signature]*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

VER 4-16-2020

SCOPE OF WORK AND SPECIFICATIONS

1. GENERAL SCOPE OF WORK

- 1.1 The Lee County Board of County Commissioners seeks to contract with a qualified Vendor to purchase various types of mulch, pine straw, decorative shell, etc. for different types of landscaping, throughout the County, on an "as-needed" basis.
- 1.2 The County shall be eligible for any additional discounts, specials, and/or promotions offered by the Vendor during the term of the contract should those discounts, specials, and/or promotions offer a lower cost to the County.
- 1.3 Vendor shall provide for bags, bulk, blown in, both delivered and picked up by County personnel, for the items specified on the Bid Proposal form included in this solicitation.
- 1.4 Pricing shall include delivery (F.O.B.) to any and all locations within the County as directed.
- 1.5 The Vendor shall provide various types of mulch listed below by way of bag, bulk, or blown in.
 - Blown in service shall consist of the Vendor installing the mulch utilizing a hose attached to a blower truck.

2. GENERAL MULCH SPECIFICATIONS

- 2.1 All mulch shall be fairly uniform in its size, quality and overall appearance.
- 2.2 All mulch shall be free of material injurious to plant growth.
- 2.3 All mulch shall be free of weeds, invasive plant parts or seeds, and other organic or inorganic material.
- 2.4 Sawdust, grass clippings, excessive green leaves, thorny plant parts, rocks, soil, dirt, food scraps, glass, plastic, metal, other garbage or debris mixed in the mulch is not acceptable.

3. FLORI MULCH

- 3.1 Flori Mulch shall comply with the following specifications:
 - 3.1.1 Flori Mulch shall be made entirely from the above ground portion wood and bark of the Melaleuca Quinquenervia tree.
 - 3.1.2 Flori Mulch shall not contain more than 10% (by volume) bark and shall not contain roots or root pieces.
 - 3.1.3 Flori Mulch shreds and chips shall not be larger than 3/4" diameter and 1-1/2" in length.
 - 3.1.4 Flori Mulch, prior to delivery, shall have been inspected and certified by the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, as free of Burrowing Nematodes.
 - 3.1.5 Flori Mulch, at the time of delivery, shall have proof of an inspection and a certification bearing the official State of Florida stamp.

4. VITA MULCH

4.1 Vita Mulch shall comply with the following specifications:

4.1.1 Vita Mulch shall be provided from horticultural land clearing consisting of wood fiber, soil, sand, humus, and organic minerals in order to enhance base soil conditions.

4.1.2 Vita Mulch shall be completely free of any Cypress mulch.

- Note: Lee County Administrative Code 11-11 Roadway Landscaping Policy (item 15) prohibits the use of Cypress Mulch.

5. SPECIALTY RED AND GOLD MULCH

5.1 Red Mulch and Gold Mulch shall comply with the following specifications:

5.1.1 Red and Gold Mulch shall be made entirely from 100% pure pine log.

5.1.2 Red and Gold Mulch shall be color enhanced with a nontoxic, biodegradable pigment. Its ionized colorant shall adhere to the wood fiber, resisting bleeding, staining and then locking together to stay in place and act as a natural weed barrier.

5.1.3 Red and Gold Mulch shall be fade resistant for long lasting appeal.

6. PRO EUC MULCH

6.1 Pro EUC Mulch shall comply with the following specifications:

6.1.1 Pro EUC Mulch shall be made from premium shredded natural wood fibers, including pine, oak and melaleuca.

6.1.2 Pro EUC Mulch shall not come from commercial logging and harvesting and must be derived exclusively from recycling, such as land clearing.

6.1.3 Pro EUC Mulch shall be color enhanced with a nontoxic, biodegradable pigment.

6.1.4 Pro EUC Mulch shall be fade resistant for long lasting appeal.

7. BROWN MULCH

7.1 Brown Mulch shall comply with the following specifications:

7.1.1 Brown Mulch shall be a premium mulch, manufactured exclusively from a natural wood fiber.

7.1.2 Brown Mulch shall not contain reconstituted dimensional or pressure treated lumber.

7.1.3 Brown Mulch shall be a minus 3-1/2" shredded wood and free from any contamination.

7.1.4 Brown Mulch shall be harvested from local South Florida sources.

7.1.5 Brown Mulch shall be manufactured through a "cures" process and prohibits seed germination of weeds and invasive plant species.

7.1.6 Brown Mulch shall be a minimum of four pounds of pure environmentally safe pigment (dry weight) and is incorporated into each cubic yard of mulch.

7.1.7 Brown Mulch shall have an ionized colorant of "Cocoa Brown".

8. ENGINEERED WOOD FIBER

8.1 Engineered Wood Fiber (EWF) is designed for playground areas to provide proper impact attenuation and wheelchair accessible surfacing. The Vendor shall adhere to the following American Standard Test Method (ASTM) International Standards and shall provide laboratory testing and a Certificate of Authenticity and/or compliance letters to County staff upon request:

- 8.1.1 ASTM F1292-18 / Standard Specification for Impact Attenuation of Surfacing Materials within the Use Zone of Playground Equipment - This specification specifies impact attenuation performance requirements for playground surfaces and surfacing materials and provides a means of determining impact attenuation performance using a test method that simulates the impact of a child's head with the surface.
- 8.1.2 ASTM F1951-14 / Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment - This specification establishes minimum characteristics for those factors that determine accessibility. This specification applies to all types of materials that can be used under and around playground equipment.
- 8.1.3 ASTM F2075-15 / Standard Specification for Engineered Wood Fiber for Use as a Playground Safety Surface Under and Around Playground Equipment - This specification covers engineered wood fiber for use as a playground safety surface under and around playground equipment. This specification establishes minimum requirements for the factors that determine particle size, consistency, purity, ability to drain, and heavy metal concentrations considered hazardous to children.

9. RUSTIC PINE BARK NUGGETS

9.1 Rustic Pine Bark Nuggets shall comply with the following specifications:

- 9.1.1 Rustic Pine Bark Nuggets shall be considered medium in size and between 1-1/2" to 2" in size with less than 10% fines.
- 9.1.2 Rustic Pine Bark shall be free from debris, noxious weeds, seeds and spores.

10. PINE STRAW

10.1 Pine Straw shall comply with the following specifications:

- 10.1.1 Pine Straw bale size shall be uniform, minimum of 30"L x 16"W x 16"D, 4 cubic feet volume and cover a 25 square feet area.
- 10.1.2 Pine Straw shall have less than 10% volume debris such as pine stick and weeds.
- 10.1.3 Pine Straw shall be free of noxious weeds, seeds and spores such as Sour Apple and Lygodium Japonicum.

11. WASHED SHELL

11.1 Washed Shell shall comply with the following specifications:

- 11.1.1 Washed Shell shall be natural in its form and consist of local oyster shell.
- 11.1.2 Washed Shell shall be made available in two sizes:
 - 1/2" size; and
 - 1" to 1 1/2" size

12. CRUSHED SHELL

12.1 Crushed Shell shall comply with the following specifications:

- 12.1.1 Crushed Shell shall be natural in its form and consist of local oyster shell
- 12.1.2 Crushed Shell shall be available in less than 1/4" in size.

13. BROWN RIVER ROCK

13.1 Brown River Rock (A.K.A. – Egg Rock) shall comply with the following specifications:

13.1.1 Brown River Rock shall be naturally round or oval stone with a smooth surface.

13.1.2 Brown River Rock shall be made available in two sizes:

- ½” to 1” size; and
- 1 ½” to 2” size

14. DELIVERY REQUIREMENTS

14.1 All products shall be delivered between the hours of 8:00 a.m. and 4:00 p.m. (eastern time), Monday through Friday or as requested by the County, within three (3) calendar days after verbal, electronic, or fax receipt of an order placed by an authorized member of the County.

14.2 The County reserves the right to determine, by adding or deleting, actual delivery sites at its discretion at any time throughout the term of the Agreement.

14.3 The County reserves the right to refuse delivery if:

- The delivery is not within the proper timeframe;
- The Vendor has improper equipment to offload the delivery;
- The Vendor is taking improper safety precautions; and
- The Vendor has malfunctioning equipment.

14.4 The Vendor’s delivery driver shall present a photo I.D. upon delivery. The I.D. shall show that the driver is an employee of either the Vendor or delivering company. All personnel making deliveries shall wear the appropriate personal protective equipment (PPE) required to perform their duties. All deliveries are subject to inspection prior to acceptance by an authorized member of the County.

15. MINIMUM DELIVERY AMOUNTS

15.1 Minimum delivery amounts are established in the table below. Surcharges for orders (found in the optional pricing section of the Bid Schedule Form) shall be in place, but only for orders placed by the County that are less than the minimum delivery order amounts identified below.

15.2 A partial load shall be defined as any order placed by the County for an amount less than the minimum delivery of products as outlined in the table below.

Minimum Delivery of Products	
Mulch Bags (2 cubic feet/bag)	18 pallets or 1,260 bags
Mulch Loose Bulk	80 cubic yards
Blow In Mulch	30 cubic yards
Engineered Wood Fiber (EWF)	20 cubic yards
Rustic Pine Bark Nugget	100 cubic yards
Pine Straw	150 Bales
Washed Shell	20 cubic yards
Crushed Shell	20 cubic yards
Brown River Rock	20 cubic yards

16. ADDITIONAL PRODUCTS

16.1 The County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement and in the manner that is in the best interest of the County.

End of Scope of Work and Specifications Section

SPECIAL CONDITIONS

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

1. TERM

1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. BASIS OF AWARD

2.1 The basis of award shall be determined by the *Grand Total* per section of the most responsive, responsible, and qualified Vendor meeting all bid specifications. The County intends to award to a primary and secondary Vendor for each section. Although it is the intent of the County to award to a primary and secondary Vendor, the County reserves the right to award as deemed in its best interest, at its sole discretion.

Vendors are required to bid on all line items and all requested unit prices associated with the line item within a section to be eligible for award. Failure to bid all line items within a section will deem your company as non-responsive. Vendors are not required to bid all sections. Should a Vendor decide not to bid a section such should be indicated with "No Bid" or N/A placed in the Bid Form for that section.

Optional pricing for partial load surcharge, although not part of the basis of award, shall be bid by all Vendors and shall become part of contract pricing.

End of Special Conditions Section

**EXHIBIT B
FEE SCHEDULE**

ANNUAL PURCHASE OF MULCH					
SECTION B: BLOW IN MULCH					
Item	Description	Flora Mulch Price Per Cubic Yard	Vita Mulch Price Per Cubic Yard	Pro EUC Mulch Price Per Cubic	Medium Rustic Pine Bark Nuggets Price
6	Blow In Mulch	\$ 34.75	\$ 34.00	N/A	\$ 43.00
SUB-TOTAL:		\$ 34.75	\$ 34.00	\$ -	\$ 43.00

EXHIBIT C
INSURANCE REQUIREMENTS

INSURANCE GUIDE



Lee County Insurance Requirements

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL); or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

**The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

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Verification of Coverage:

- a. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
- b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”* will be named as an **“Additional Insured”** on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate **“Indemnification”** clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.

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End of Insurance Guide Section

EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 03/02/2021 Signature: [Signature]
STATE OF Florida COUNTY OF Lee Name/Title: Evan Gotky President

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 2nd day of March, 2021, by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification:

[Stamp/seal required] Signature, Notary Public: [Signature]
Brandon Scribner
Comm. #HH006362
Expires: June 3, 2024
Bonded Thru Aaron Notary