

**AGREEMENT BETWEEN THE
CITY OF PORT ST. LUCIE, FLORIDA
AND
THE TORO COMPANY
FOR
GROUNDS MAINTENANCE EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES,
RELATED SERVICES & EQUIPMENT
COOPERATIVE AGREEMENT**

THIS AGREEMENT is made and entered into as of the date last entered below by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation, whose mailing address is 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34896 (“City”) and **THE TORO COMPANY**, a Foreign Profit Corporation, whose mailing address is 8111 Lyndale Ave South, Bloomington, MN, 55420 (“Contractor”). City and Contractor may be referred to herein individually as a “party” or collectively as the “parties.”

WITNESSETH

WHEREAS, the City requires goods and services of Contractor pursuant to Contract #2023261 for Grounds Maintenance Equipment, Parts, Accessories, Supplies, Related Services and Equipment, dated October 3, 2023, between the City of Mesa, AZ and Contractor for Grounds Maintenance Equipment, Parts, Accessories, Supplies, Related Services and Equipment, including its amendments, assignments, renewals and addenda (collectively referred to as “Contract Documents” or the “Contract”); and

WHEREAS, the parties wish to incorporate the terms and conditions of the Contract Documents between the Contractor, its predecessors and/or assignors, and the City of Mesa, AZ, including any and all contract renewals, amendments and change orders, substituting the “City of Port St. Lucie” for “City of Mesa, AZ” in all places; and

WHEREAS, the City has the authority to enter into this Agreement with Contractor per Contract #2023261, Exhibit A, Paragraph 1, which was agreed upon by both the City of Mesa, AZ and the Contractor, its predecessors and/or assignors; and

WHEREAS, the City has determined that the original procurement was lawful, the Contractor, its predecessors and/or assignors, acted at all times in accordance with Florida law when bidding and the competitive procurement method used by City of Mesa, AZ is consistent with the purchasing policies and requirements of the City.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree to modify and supplement the Contract Documents with the following terms and conditions:

Section 1. Whereas. The “whereas” clauses are hereby incorporated herein as forming the intent, purpose, and scope of this Agreement.

Section 2. Terms. The parties agree that pursuant to the Contract #2023261, Exhibit A, Paragraph 1, between the Contractor and the City of Mesa, AZ, the City is authorized to utilize the Contract via cooperative agreement, as follows:

- A. Incorporation of the Contract. Except as otherwise set forth in this Agreement, the parties hereby incorporate into this Agreement the terms and conditions of the Contract between the Contractor, its predecessors, successors and/or assignees, and the City of Mesa, AZ, including any contract renewals, amendments and change orders.
- B. Substitution. Except where the context requires otherwise, such as, but not limited to, compliance with City ordinances and regulations, City shall be deemed substituted for the City of Mesa, AZ, Buyer, and/or Customer, regarding any and all provisions of the Contract, including by example, but not limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default, and ownership of documents. All recitals, covenants, representations, and warranties of Contractor made in the Contract are restated as if set forth fully herein, made for the benefit of the City, and incorporated herein.
- C. Term. This Agreement shall be effective from the date upon which all parties have executed it through March 31, 2029. Consistent with the Contract terms, this Amendment may be renewed up to a maximum of two (2) years, through March 31, 2031.
- D. Purchase Orders. In accordance with the Contract, the City may issue a purchase order for product purchases. If there is a conflict between the terms on any purchase order and this Agreement, the terms of this Agreement control.
- E. Product and Pricing. In accordance with the Contract, City may purchase products and services under this Contract at the prices stated in the Contractor’s Pricing Proposal, attached hereto as Exhibit A.

All pricing shall be firm for the Agreement Term and all extensions or renewals of the Agreement except where otherwise provided in this Agreement, or changed in the ‘Contract Documents’ with the City of Mesa, and all costs of the Contractor providing the materials/service including freight, setup, delivery, insurance, and warranty costs shall be in accordance with what is outlined in the ‘Contract Documents’ for Participating Public Agencies. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

City acknowledges that products and services subject to this Agreement, are provided by Contractor's dealers and/or distributors, which are independent businesses and set their own prices. Contractor has no authority to set prices for its dealers, who do not participate in any offerings not subject to this Agreement.

Supplier agrees to make the terms of this Agreement known to applicable dealers and/or distributors and to use reasonable efforts to encourage them to provide goods and services subject to the terms of this Agreement.

- F. Delivery Time and Location. In accordance with the Contract, equipment shall be delivered to various City of Port St Lucie locations. All deliveries shall be made Monday through Thursday from 8:00 a.m. to 1:00 p.m., Eastern Standard Time. The Contractor shall be required to give the City a minimum of twenty-four (24) hour notice prior to delivery with the anticipated time of delivery and quantity of units to be delivered.

The following documents are due upon delivery to the City:

1. M.S.O. (Manufacturer Statement of Origin)
2. Warranty document
3. Required manuals
4. Title

- G. Government Appropriation. The parties acknowledge and agree that, if any purchases are made beyond City's current fiscal year (on or after October 1st), such purchases made under this Agreement are contingent upon an annual budget appropriation by the City Council.
- H. Tax Exemption. The City may be tax exempt and will share its tax-exempt certificate upon request.
- I. Conflict. In the event of conflict between the Contract and this Agreement, the terms and conditions in this Agreement shall supersede and take precedence over the Contract.
- J. Sovereign Immunity. Nothing in this Agreement, nor in the Contract, shall be deemed or otherwise interpreted as waiving City's sovereign immunity protections existing under the laws of the State of Florida, or extending or increasing the limits of liability as set forth in section 768.28 Florida Statutes.

Section 3. Notice. Notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the City Manager at the address listed above.

Section 4. Public Records. Contractor understands that City is a public entity whose records are available and open to the public for review and inspection. Contractor agrees to comply with public records laws, specifically:

- A. Keep and maintain public records required by the City to perform the service.
 1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GSI-SL for State and Local Government Agencies. (See <http://dos.myflorida.com/library-archives/records-management/general-records-schedules>).
 2. During the term of the Agreement, the Contractor shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports shall be subject to the approval of the City.
 3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Agreement include but are not limited to, supplier/sub engineer invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Agreement.
 4. The Contractor agrees to make available to the City, during normal business hours, all books of account, reports and records relating to this Agreement.
 5. A Contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.
- B. Upon request from the City's custodian of public records, provide the City 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 for by law. If Contractor does not comply with the City's request for records, City shall enforce the provisions in accordance with this Agreement.
- C. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of

the Contract term and following completion of the Contract if the Contractor does not transfer the records to City.

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

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 AT:

**CITY CLERK
121 SW PORT ST. LUCIE BLVD.
PORT ST. LUCIE, FL 34984
(772) 871-5157
PRR@CITYOFPSL.COM**

Section 5. Scrutinized Vendors List. By entering into this Agreement with the City, Contractor certifies that it and those related entities of Contractor, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The City may terminate this Agreement if Contractor or any of those related entities of Contractor, as defined by Florida law, are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the City reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services

of any amount, should the City determine that the conditions set forth in section 287.135(4), Florida Statutes, are met.

Section 6. Law, Venue, and Waiver of Jury Trial. This Agreement is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Agreement, arising from this Agreement, or related to this Agreement, shall be in St. Lucie County, Florida.

The parties to this Agreement hereby freely, voluntarily, and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

Section 7. Insurance. The Contractor shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Agreement.

The parties agree and recognize that it is not the intent of the City that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to section 768.28, Florida Statutes, and as may be amended from time to time, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with section 440, Florida Statutes, and as may be amended from time to time. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by contractor qualify its employee(s) for benefits under Federal Workers' Compensation Statute (for example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

Commercial General Liability Insurance: The Contractor shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000

Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additionally insured and shall include Agreement #20240058 for Grounds Maintenance Equipment, Parts, Accessories, Supplies, Related Services and Equipment."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

Business Automobile Liability Insurance: The Contractor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned, and hired automobiles. In the event the Contractor does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Waiver of Subrogation: By entering into this Agreement, Contractor agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss contract to waive subrogation without an endorsement, then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation

requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Contractor enter into such a contract on a pre-loss basis.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the City reserves the right, but is not obligated, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and subcontractors comply with the same insurance requirements referenced herein. It shall be the responsibility of the Contractor to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured without the language, "when required by written contract." If Contractor, any independent contractors, or any subcontractors maintain higher limits than the minimums listed above, the City requires and shall be entitled to coverage for the higher limits maintained by Contractor/independent contractor/subcontractor.

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the Contractor to punctually deliver the required insurance certificates and other documentation shall be cause for termination of this Agreement.

Section 8. Audits. The Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify the Contractor's assets, expenses, costs of goods, and use of funds throughout the term of this Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Contractor shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access

and examine, audit, excerpt, and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Contractor's office or place of business. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Contractor. Evidence of criminal conduct will be turned over to the proper authorities.

The Contractor shall ensure the City has these rights under this Section 8 with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

Section 9. E-Verify. In accordance with section 448.095, Florida Statutes, the Contractor agrees to comply with the following:

1. Contractor must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor. Contractor must provide City with sufficient proof of compliance with this provision before beginning work under this Agreement.
2. If Contractor enters into a contract with a subcontractor, Contractor must require each and every subcontractor to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of each and every such affidavit(s) for the duration of this Agreement and any renewals thereafter.
3. The City shall terminate this Agreement if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. Contractor shall immediately terminate any contract with any subcontractor if Contractor has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.
5. The City shall terminate this Agreement for violation of any provision in this section. If the Agreement is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Agreement under this section, the Contractor may not be awarded a public contract for at least one (1) year after the date on

which the Agreement was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.

6. The City, Contractor, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Agreement was terminated. The parties agree that such a cause of action must be filed in accordance with the Venue provision, as provided herein.

Section 10. Construction. The title of the section and paragraph headings in this Agreement are for reference only and shall not govern, suggest, or affect the interpretation of any of the terms or provisions within each section or this Agreement as a whole. The use of the term “including” in this Agreement shall be construed as “including, without limitation.” Where specific examples are given to clarify a general statement, the specific language shall not be construed as limiting, modifying, restricting, or otherwise affecting the general statement. All singular words and terms shall also include the plural, and vice versa. Any gendered words or terms used shall include all genders. Where a rule, law, statute, or ordinance is referenced, it indicates the rule, law, statute, or ordinance in place at the time the Agreement is executed, as well as may be amended from time to time, where application of the amended version is permitted by law.

The parties have participated jointly in the negotiation and drafting of this Agreement and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Agreement. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and there shall be no presumption or burden of proof or persuasion based on which party drafted a provision of the Agreement.

Section 11. Discriminatory, Convicted, and Antitrust Violator Vendor Lists. Contractor certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Section 12. Cooperation with Inspector General. Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Contractor understands and will comply with this statute.

Section 13. Non-Exclusivity. Contractor acknowledges and agrees that this Agreement is non-exclusive.

Section 14. Merger. This Agreement and the Contract sets forth the entire agreement between Contractor and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

IN WITNESS WHEREOF, the parties are duly authorized to bind their respective entities hereto and have accepted, made, and executed this Agreement upon the terms and conditions above stated on the day and year entered below.


SIGNATURE PAGE FOLLOWS

CITY OF PORT ST. LUCIE,
A Florida municipal corporation

Caroline Sturgis
Director, Office of Management & Budget

Date: _____

CONTRACTOR
The Toro Company
A Foreign Profit Corporation



Edric Funk
Group VP, Golf, Grounds and Irrigation

Date: 4/19/2024