

RESOLUTION R-2018-26

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH ALLSCAPE INCORPORATED FOR LAWN CARE AND MAINTENANCE

WHEREAS, The City of Wheaton, DuPage County, Illinois finds it reasonable and appropriate to enter into an agreement for Lawn Care and Maintenance; and

WHEREAS, the City conducted an Invitation to Bid process and received and reviewed three submittals for Lawn Care and Maintenance; and

WHEREAS, it is determined by the City that the proposal received from Allscape Incorporated, meets the City's needs; and

WHEREAS, it is necessary for the City to enter into an agreement with Allscape Incorporated, for the purpose of providing Lawn Care and Maintenance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to an agreement between the City of Wheaton and Allscape Incorporated, Romeoville, Illinois, for Lawn Care and Maintenance attached hereto and incorporated herein as if fully set forth as Exhibit 1.

ADOPTED this 2nd day of April 2018.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Scalzo
Councilman Sues
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge

Nays: None
Absent: None

Motion Carried Unanimously

EXHIBIT 1

This number must appear on the
face of all invoices and
documents related to this
Agreement **No. C 37023**

CITY OF WHEATON, ILLINOIS LAWN CARE AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered this 2nd day of April 2018 by and between the **CITY OF WHEATON**, an Illinois municipal corporation (“**City**”), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and Allscape Incorporated (“**Contractor**”), located at 757 Dalhart Ave, Romeoville, IL 60446.

WHEREAS, the City has determined that it is reasonable and appropriate to engage the Contractor to provide materials, labor, equipment, supervision, tools and services required to provide lawn care and maintenance in the City of Wheaton (hereinafter, “**Lawn Care and Maintenance**”) consistent with the City’s Lawn Care and Maintenance Invitation to Bid package which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit A**; and

WHEREAS, Contractor has submitted a cost proposal to provide materials, labor, equipment, supervision, tools, materials and services required to provide lawn care and maintenance in the City of Wheaton, a copy of the proposal is attached hereto and incorporated herein as if fully set forth as **Group Exhibit B**, and Contractor represents that it has the necessary expertise and experience for providing professional lawn care and maintenance in the City of Wheaton, upon the terms and conditions set forth herein below.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the parties agree as follows:

SECTION 1. PROJECT.

1.1 Recitals. The recitals set forth above, including **Group Exhibit A** and **Group Exhibit B**, are incorporated herein as substantive terms and conditions of this Agreement and represent the intent of the parties. Any inconsistency between the services as stated by the City in **Group Exhibit A** and the services as proposed by the Contractor in **Group Exhibit B** shall be controlled by the services as stated by the City in **Group Exhibit A**, unless specifically waived in writing. Where this Agreement is inconsistent with any provision of **Group Exhibit A** or **Group Exhibit B**, this Agreement shall control.

1.2 Project Name. The name of this project is Lawn Care and Maintenance (“**Project**”).

1.3 Retention and Services. The City retains the Contractor to provide lawn care and maintenance (“**Work**”) for the completion of this Project in strict accordance with this Agreement, including the General Instructions Regarding the Solicitation of Contracted Services, General Terms and Conditions, and Special Provisions contained in Group Exhibit A and which collectively shall be referred to as the “**Contract Documents**”, and the Contractor agrees to and shall provide the Work required to complete this Project in strict accordance with the Contract Documents.

1.4 Independent Contractor Status. The Contractor shall act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners,

or joint-venturers between the City and Contractor; or (ii) to create any relationship between the City and any subcontractor of the Contractor. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of the City, or to create any implied obligation on behalf of the City, and Contractor specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

1.5 Time of Performance. Contractor shall perform the Work as indicated in the Contract Documents and in accordance with Section 6.1 of this Agreement. The Contractor shall commence work within in ten (10) calendar days after receipt from the City of a formal Notice to Proceed. The Contractor agrees that time is of the essence.

1.6 Additional Work. The Contractor shall provide only the Work specified in the Contract Documents. Additional work that is not part of the Work of the Contract Documents may be assigned subject to prior written approval or direction by the City. Payment for additional work shall be mutually agreed upon by the parties before the commencement of any additional work. Any additional work shall be subject to the terms and conditions of this Agreement.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Agreement Amount. Payment shall be made in accordance with the compensation schedule set forth in the Cost Proposal (Group Exhibit B). The total amount billed by the Contractor for the Work performed for the Project under this Services Agreement shall not exceed \$52,660, including reimbursable expenses, without the prior express written authorization of the City.

2.2. Unappropriated Funds. The obligation of the City for payment to the Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

2.3. Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of, or the incorporation into, the Work, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Contractor.

2.4. Interest Waiver. Contractor hereby waives any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) as amended or the Illinois Interest Act (815 ILCS 205/1, *et seq.*) as amended.

2.5. Records. Contractor shall permit the authorized representative of the City to inspect, audit and make copies of all data and records of the Contractor for the Work done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the termination of the Agreement.

2.6 Invoices and Payment. For the Work performed by Contractor, the City shall pay Contractor as follows:

- a) Authorization of payment requires the following: receipt by the City of invoices from the Contractor containing sufficient detail of the Work performed to enable the City to properly evaluate the payout request which shall include, at a minimum, the date of Work performed, location of Work performed, and details of the type of Work performed; acceptance by the City of the Work, including materials and/or equipment; and receipt of other paperwork required by this Agreement, including the Contract Documents which have been incorporated herein.
- b) The City shall pay Contractor in accordance with the Illinois Local Government Prompt Payment Act.
- c) Payment will be made to the Contractor either through the City's Purchasing Card Program, MasterCard, in which payment will occur at the time of Work delivery, or through a Contractor generated invoice. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Work is completed, will not be paid. Under no circumstances will a third party be reimbursed for Work performed under this Agreement.

SECTION 3. REPRESENTATIONS OF CONTRACTOR.

3.1 Standard of Care. The Contractor represents, certifies and warrants that it shall perform and complete the Work in a manner consistent with the level of care, skill, and diligence exercised by other recognized Contractors in the Wheaton area, under similar circumstances at the time the Work is performed. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

3.2 Solvency. The Contractor represents that it is financially solvent and has the necessary financial resources to perform the Work with the standard of care required under this Agreement.

3.3 Key Project Personnel. The Contractor shall provide the City with the name(s) and telephone number(s) of the individual(s) serving as its Key Project Personnel who shall be primarily responsible for carrying out and overseeing the Work covered under this Agreement on behalf of the Contractor. The City shall be provided with written notice of any change in Key Project Personnel during the term of this Agreement within seven (7) days of such change.

SECTION 4. INDEMNIFICATION; INSURANCE; LIABILITY

4.1 Indemnification. The Contractor shall, without regard to the availability or unavailability of any insurance, either of the City or of the Contractor, indemnify, save harmless, and defend the City, and its officials, directors, officers, employees, agents, and attorneys, in whole or in part from and against any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses, including, but not limited to reasonable expert witness and attorneys' fees, as well as costs of litigation, that arise, or may be alleged to have arisen, out of or in connection with Contractor's performance or failure to perform the Work or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Contractor, except to the extent caused by the sole negligence of the City.

The obligation on the part of the Contractor to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed

as prohibiting the City, its officials, directors, officers, employees, agents or attorneys from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of the performance of this Agreement.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Contractor and the City, the parties agree that any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

4.2 Insurance. Contemporaneous with the Contractor's execution of this Agreement, the Contractor shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the **Agreement Addendum 1** included in **Group Exhibit A** to this Agreement.

4.3 No Personal Liability. No elected or appointed official, director, officer, agent or employee of the City shall be personally liable, in law or in contract, to the Contractor as the result of the execution, approval or attempted execution of this Agreement.

4.4 No Liability to Any Third Party. The City shall have no liability to any third party in contract, tort or otherwise for incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits, regardless of whether the City shall be advised, shall have reason to know or in fact shall know of the possibility.

4.5 Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

4.6 Patents. The Contractor agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material, process, good or device utilized or supplied in connection with the performance of the Work required or provided pursuant to the terms of this Agreement.

SECTION 5. CONFIDENTIAL INFORMATION.

5.1 Confidential Information. The term "**Confidential Information**" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Contractor from a source other than the City prior to the time of disclosure of said information to the Contractor under this Agreement ("**Time of Disclosure**"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Contractor or the City; or (iv) to have been supplied to the Contractor after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

5.2 No Disclosure of Confidential Information by the Contractor. The Contractor acknowledges that it in the event that it shall, in performing the Work for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information, that Contractor shall hold confidential all Confidential Information and shall not disclose or use such

Confidential Information without express prior written consent of the City. The Contractor shall use reasonable measures at least as strict as those the Contractor uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Contractor to execute a non-disclosure agreement before obtaining access to Confidential Information.

5.3 Breach of Confidentiality. In the event of breach of the confidentiality provisions of Section 5 of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

SECTION 6. TERM, TERMINATION and DEFAULT.

6.1 Term. This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Contractor and shall terminate on November 30, 2019. This Agreement may be extended up to one additional one-year period under the same terms, conditions, and pricing structure upon the mutual agreement between the Contractor and the City.

6.2 Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Contractor. In the event that this Agreement is so terminated, the City shall pay Contractor for the Work performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Contractor's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Contractor shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Work under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to the City showing in detail the Work performed under this Agreement up to the termination date. Contractor's receipt of payment for Work rendered upon City's termination of this Agreement, is Contractor's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR WORK PERFORMED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

6.3 Default. If it should appear at any time that the Contractor has failed or refused to perform, or has delayed in the performance of, the Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Work requirements or any other requirement of this Agreement ("Event of Default"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Contractor.** The City may require the Contractor, within a reasonable time, to complete or correct all or any part of the Work that is the subject of the Event of Default; and to take any or all action necessary to bring the Contractor and the Work into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement as to any or all Work yet to be performed, effective at a time specified by the City, and shall pay Contractor for the Work performed or reimbursable expenses actually incurred as of the effective date of termination.

3. **Withholding of Payment by City.** The City may withhold from any payment, whether or not previously approved, or may recover from the Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Contractor or as a result of actions taken by the City in response to any Event of Default by the Contractor.

SECTION 7. WARRANTIES and REPRESENTATIONS.

7.1 With respect to any materials and equipment furnished under this Agreement, Contractor warrants: (i) that all items are free of defects in title, design, material, and workmanship; (ii) that each item meets or exceeds the requirements of this Agreement, and all Exhibits incorporated herein; (iii) that each replacement item is new, in accordance with original material or equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new); and (iv) that no item or its use infringes any patent, copyright, or proprietary right.

7.2 Work, materials, or equipment not conforming to the requirements of this Section shall be considered defective. If required by the City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Liability or refusal of a subcontractor, material supplier, or equipment supplier responsible for the defective work or materials, to correct or replace the same, shall not excuse the Contractor from performing under this warranty.

7.3 Any defective material, or workmanship, or any unfaithful or imperfect Work, which may be discovered before the final acceptance of the Work and/or within one (1) year thereafter, shall be corrected immediately on the requirements of the City Project Manager, without extra charge, notwithstanding that it may have been overlooked in the previous inspections and estimates. Failure to review construction or Work shall not relieve the Contractor from any obligation to perform sound and reliable Work as required by this Agreement.

7.4 The warranty rights and remedies provided in this Section 7 are in addition to and do not limit any rights afforded to the City by any other provision or term in this Agreement or by law.

SECTION 8. COMPLIANCE WITH LAWS AND GRANTS.

8.1 **Freedom of Information Act.** The Contractor shall, within four (4) business days of the City's request, provide any documents in the Contractor's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("FOIA"). This provision is a material covenant of this Agreement. Contractor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Contractor request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Contractor agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to

defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Contractor agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Contractor's request to utilize a lawful exemption to the City.

8.2 Generally: Permits/Codes/Business Laws/Safety Standards/Grants. Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and will comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Contractor shall comply with all conditions of any federal, state, or local grant received by Owner or Contractor with respect to this Agreement or the Services. Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

8.3 No Delinquent Taxes. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Contractor is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

8.4 No Collusion. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. The Contractor represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Contractor has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Contractor shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

8.5 Sexual Harassment Policy. The Contractor shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

8.6 Patriot Act (USA Freedom Act) Compliance. The Contractor represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. The Contractor further represents and warrants to the City that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially

Designated National and Blocked Person. The Contractor hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

8.7 Anti-Discrimination Laws. Contractor shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in Group Exhibit A.

8.8 Americans with Disabilities Act. Contractor shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

8.9 Drug Free Workplace Act. Contractor shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

8.10 CDL Driver Controlled Substances and Alcohol Use and Testing. To the extent that the Contractor and any employees, agents, or subcontractors thereof, will operate any commercial vehicles requiring the necessity for a state issued Commercial Driver's License, Contractor shall comply with Federal Highway Authority Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and shall notify the City of any employee, agent subcontractor driver participating in a drug and alcohol testing program pursuant to the aforementioned rules during the term of this Agreement.

8.11 Public Works Employment Discrimination Act. Contractor shall comply with all conditions and requirements of the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.

8.12 Execution of Certifications. Contractor shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit C.**

SECTION 9. GENERAL PROVISIONS.

9.1 Work Products. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, studies, logbooks, instructions, manuals, models, recommendations, printed and electronic files, and any other data or information, in any form, prepared, collected, or received by the Contractor in connection with any or all of the Work to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Contractor shall cause the Documents to be promptly delivered to the City.

9.2 News Releases. The Contractor shall not issue any news releases or other public statements regarding the Work without prior approval from the City Manager.

9.3 Integration. The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

9.4 **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

9.5 **Assignment.** This Agreement, or any part, rights or interests hereof, may not be assigned by the City or by the Contractor to any other person, firm or corporation without the prior written consent of the other party.

9.6 **Limitation of Liability.** CITY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

9.7 **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

9.8 **Waiver.** Any failure of either the City or the Contractor to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

9.9 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

9.10 **Governing Laws/Jurisdiction.** This Agreement shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

9.11 **Force Majeure.** No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

9.12 **Headings.** The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

9.13 **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

9.14 **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9.15 Notice. Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered to as follows:

If to the Contractor:
Allscape Incorporated
Attn: James Dillon
757 Dalhart Avenue
Romeoville, IL 60446
E-Mail: jim@allscapecontractors.com
Fax #: 815-886-2738

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-727
E-Mail: cityclerk@wheaton.il.us
Fax #: 630-260-2017

9.16 Contract Numbering. The faces of all invoices and documents shall contain the following contract number C 37023 for reference purposes.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 2nd day of April 2018.

CITY OF WHEATON, an Illinois municipal corp.

By:  Date: 4/2/18

ATTEST:

BY: 
Sharon Barrett-Hagen, City Clerk

ALLSCAPE INCORPORATED

BY:  Date: 4/13/18
Signature

Its: JAMES DILLON

ATTEST:

