

Contract 24-07
Between
TOWN OF ELSMERE
AND

Guardian Environmental Services

THIS AGREEMENT is made this 2nd day of April 2025, by and between the Town of Elsmere (hereinafter referred as "Town"), a State Delaware Municipal Corporation, and Guardian Environmental Services, (hereinafter referred to as "Contractor"), doing business at 70 Albe Drive, Newark, De. 19702.

WHEREAS the Town issued a Request for Proposal for the TOWN OF ELSMERE TAYLOR TRACT AT SILVERBROOK DRIVE DRAINAGE IMPROVEMENT RFP 24-07; and

WHEREAS the Town and the Contractor desire to enter into a written agreement for the provision of such services for Taylor Tract at Silverbrook Drive Drainage Improvement located at the intersection of Old Dupont Road and Taylor Road within the Town of Elsmere, New Castle, Delaware as referenced in RFP 24-07 (Attachment A.)

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by the parties as follows:

1. **WORK.** The Contractor agrees to perform all work in accordance with this Contract and the Price submitted for ELSMERE TOWN OF ELSMERE TAYLOR TRACT AT SILVERBROOK DRIVE DRAINAGE IMPROVEMENT RFP 24-07 and the Scope of work in accordance with Construction Plans for Taylor Tract at Silverbrook Drive Patty Blevins Walking Path At Tamarack Avenue (Attachment B).
2. **NOTICE TO PROCEED / COMPLETION TIME.** The contractor agrees to begin the work set forth in this Contract the week of June 3rd, 2025, and further agrees to carryon such work regularly and uninterrupted thereafter with completion within 90 days of the start date or other mutually agreed upon delivery window.
3. **Payment.** Payment for the work as described in the Contract shall not exceed Four Hundred Thirty Thousand Dollars (\$ 430,000.00), excluding approved change orders signed by the Town and the Contractor. If during the course of the Contractor's performance, the work rendered does not meet the requirements set forth as specified in Attachments B, the Contractor shall correct or modify the work to comply with the requirements of the Contract within 30 days. The Town shall have the right to withhold payment for such work until it meets the requirements of the Contract. The Contractor shall submit AIA draw request based on work in place, signed off by the Town for each milestone.
4. **General Administration.** The Contract Administrator shall be Steven Martin the Town Manager, and he shall have primary responsibility for the TOWN under this Contract and shall oversee and approve all work to be performed, coordinate communications, and review and approve all invoices under this Contract.

5. Liquidated Damages. Time is of the essence of this Agreement. Unless a delay is caused by the TOWN, if the Contractor shall neglect, fail, or refuse to complete the Patty Blevins Walking Path at Tamarack Avenue Drainage Improvement within the time specified in section (2), above, then the Contractor shall be in breach of contract and the Town has right to immediately terminate the contract and pay only for work completed and, as to materials, at the Town's option and discretion, only such materials on hand and/or ordered or enroute as the Town determines.

6. WORKING CONDITONS. Contractor will allow delays for weather conditions based on the concurrence of Contractor and Owner or Engineer for two circumstances:

- a. Isolated inclement weather wherein the project site is determined to be unworkable for days of precipitation.
- b. Sustained inclement weather, wherein the project site is determined to be unworkable due to weather.

7. Ownership of Documents/Materials.

A As each progress payment is made by the Contractor, all finished or unfinished materials, items or equipment installed by the Contractor shall become the property of the TOWN.

B. All records, reports, information, drawings, designs, data or other documents or materials given to or prepared or assembled by the Contractor under this agreement are the property of the Town and will be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the TOWN or by court order.

8. Indemnity / Hold Harmless. The Contractor shall indemnify, defend, and hold the TOWN, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the negligent or other tortious acts, errors or omissions of the Contractor in connection with the performance of the Agreement.

10. Subletting or Assigning of Contracts. Neither the TOWN nor the Contractor shall assign, transfer, or encumber any rights, duties or interests accruing from this Contract without the express prior written consent of the other.

11. Independent Contractor. All Contractor employees are employees of Contractor only.

12. Relationship of Parties. The parties intend that an independent contractor client - relationship will be created by this Contract. As Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the TOWN hereunder, no agent, employee, representative or subcontractor of Contractor shall be or shall be deemed to be the employee, agent, representative or subcontractor of the TOWN. None of the benefits provided by the TOWN to its employees, including, but not limited to, compensation, insurance, and unemployment insurance, are available from the TOWN to the Contractor or his employees, agents, representatives, or subcontractors. Contractor will be solely and entirely responsible for his acts and for the acts of Contractor's agents, employees, representatives, and subcontractors during the performance of this Agreement. The TOWN may, during the term of this Contract, engage other independent contractors to perform the same or similar work that Contractor performs hereunder.

13. Warranty. Contractor shall be liable for any costs, losses, expenses, or damages including consequential damage suffered by the TOWN resulting from defects in the Contractor's work including, but not limited to, cost of materials and labor expended by the TOWN in making

emergency repairs. Contractor shall hold the TOWN harmless from any and all claims which may be made against the TOWN as a result of any defective work and the Contractor shall defend any claims at its own expense. Where materials or procedures are not specified in the Contract, the TOWN will rely on the professional judgment of the Contractor to make the appropriate selections. The Contractor warrants to the Town that all materials and equipment furnished under this contract shall be new and work shall be of good quality, free from improper workmanship and defective materials and in conformance with the contract. The contractor agrees to agree to correct all work performed under this contract which proves to be defective in design, material, or workmanship within one year of completion. Contractor or its subcontractors will provide a 7-year warranty on the Rubber Flooring and warranty the Playground equipment as spelled out in Attachment A.

14. Correction of Defects. The contractor shall be responsible for correcting all defects in workmanship and/or materials discovered after the acceptance of this work. When corrections of defects are made, Contractor shall be responsible for correcting all defects in workmanship and/or materials in the corrected work for one year after the acceptance of the corrections of the TOWN. The Contractor shall start work to remedy such defects within thirty (30) days of mailing notice of discovery thereof by TOWN and shall complete such work within 45 days.

15. Claims. Any claim against the TOWN for damages, expenses, costs, or extras arising out of the performance of this Contract must be made in writing to the TOWN within thirty (30) days after the discovery of such damage, expense, or loss, and in no event later than the time of for final payment by the Town according to Attachment C. Contractor, upon making application for the final payment, shall be deemed to have waived its right to claim for any other damages or amounts for which application has not been made, unless such claim for final payment includes notice of additional claim and fully describes such claim.

16. Contractor's Risk of Loss. The contractor shall procure the good and install the goods as described. Contractors bear all responsibility for market price increases of supply and delays.

17. Insurance. The Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors.

A. Minimum Scope of insurance. The contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non- owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (150) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy should be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on 150 occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement 150 form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial Liability insurance for liability arising from explosion, collapse, or underground property damage. The TOWN shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the TOWN using 150 additional endorsement CG 20 10 10 01 and CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Delaware.

B. Minimum Amounts of Insurance. The contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits of no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect to the TOWN. Any insurance, self- insurance, or insurance pool coverage maintained by the TOWN shall be an excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor shall provide the TOWN and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

E. Verification of Coverage. The contractor shall furnish the TOWN with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work.

F. Subcontractors. The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the same insurance requirements as stated herein for the Contractor.

18. Compliance with Laws. The Contractor shall comply with all federal, state, and Town of Elsmere laws and ordinances applicable to the work done under this Contract. Any violation of the provisions of these applicable laws and regulations shall be considered a violation of a material provision of this Contract and shall be grounds for cancellation, termination, or suspension of the Contract by the TOWN, in whole or in part, and may result in ineligibility for further work for the TOWN.

19. Job Safety. Contractor shall take all necessary precaution for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local regulations, ordinances, and codes. Contractors shall erect and properly maintain, at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known and unusual hazards.

20. Employment. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the TOWN. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees, while so engaged, and all claims made by a third party as consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the work or services provided or rendered herein, shall not be the obligation of the TOWN.

21. Nondiscrimination. Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of race, creed,

color, national origin, marital status, sex, sexual orientation, age or disability, or other circumstances as may be defined by federal, state, or local law or ordinance.

22. **Termination.** Further to paragraph six, which shall be without notice, if the Contractor defaults or neglects to perform in accordance with the Contract or fails to perform any provision of the Contract, the TOWN may, after ten days' written notice to the Contractor and without prejudice to any other remedy the TOWN may have, correct any defaults or failure of any provision of the Contract and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at TOWN option, may terminate Contractor's work under the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Owner may deem expedient, and the Town will pay only for work completed and, as to materials, at the Town's option and discretion, only such materials on hand and/or ordered or enroute as the Town determines..

23. **Extent of Contract / Modification.** This agreement, together with Attachments A, B, B2 and C, represents the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended, modified, or added to only by written change order properly signed by both parties.

24. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the Town Manager, whose decision shall be final. In the event of any litigation arising out of this agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This agreement shall be governed by and construed in accordance with the laws of the State of Delaware and the jurisdiction of any dispute under this agreement shall be Superior New Castle County, Delaware. The Parties exclusively and irrevocably consent to the jurisdiction of the Delaware courts for any disputes arising out of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

TOWN OF ELSMERE

By: 
Steven Martin, TOWN OF ELSMERE

TOWN CONTACT
Town of Elsmere
11 Poplar Ave
Elsmere, DE 19802
Phone: 302 998-2215

CONTRACTOR

By: 
Title: President

Taxpayer ID#: 20-5112070

CONTRACTOR CONTACT
Guardian Environmental Services
70 Albe Drive
Newark, DE.19702
Phone 302 918-3070