

# REQUEST FOR LEGISLATIVE ACTION

Completed by County Counselor's Office:

Res/Ord No.: 19776

Sponsor(s): Tony Miller

Date: March 19, 2018

|  |  |   |             |  |  |  |             |  |             |  |             |
|--|--|---|-------------|--|--|--|-------------|--|-------------|--|-------------|
| <b>SUBJECT</b>   | <p>Action Requested<br/> <input checked="" type="checkbox"/> Resolution<br/> <input type="checkbox"/> Ordinance</p> <p>Project/Title: <u>Authorizing the purchase of a Toro Utility Cart for Parks + Rec from Professional Turf Products, L.P. of Lenexa, KS under the terms and conditions of NIPA Contract No. 2017025, an existing government contract, in the amount of \$16,189.00.</u></p>   |   |             |  |  |  |             |  |             |  |             |
| <b>BUDGET INFORMATION</b><br><i>To be completed By Requesting Department and Finance</i>   | <table border="1"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td>\$16,189.00</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td></td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td>\$16,189.00</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td>\$16,189.00</td> </tr> <tr> <td>Source of funding (name of fund) and account code number:<br/>003-5103-8110<br/>Park Fund, Non-Departmental, Heavy Machinery and Equipment</td> <td>\$16,189.00</td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is: \$</p> <p><b>OTHER FINANCIAL INFORMATION:</b></p> <p><input type="checkbox"/> No budget impact (no fiscal note required)<br/> <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract:<br/> Department: Estimated Use:</p> <p>Prior Year Budget (if applicable):<br/> Prior Year Actual Amount Spent (if applicable):</p> | Amount authorized by this legislation this fiscal year: | \$16,189.00 | Amount previously authorized this fiscal year: |  | Total amount authorized after this legislative action: | \$16,189.00 | Amount budgeted for this item * (including transfers): | \$16,189.00 | Source of funding (name of fund) and account code number:<br>003-5103-8110<br>Park Fund, Non-Departmental, Heavy Machinery and Equipment | \$16,189.00 |
| Amount authorized by this legislation this fiscal year:  | \$16,189.00  |   |             |  |  |  |             |  |             |  |             |
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| Total amount authorized after this legislative action:   | \$16,189.00  |   |             |  |  |  |             |  |             |  |             |
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| <b>PRIOR LEGISLATION</b>   | <p>Prior ordinances and (date):<br/> Prior resolutions and (date): N/A</p>   |   |             |  |  |  |             |  |             |  |             |
| <b>CONTACT INFORMATION</b>   | <p>RLA drafted by (name, title, &amp; phone): Katie Bartle, Senior Buyer, 816-881-3465</p>   |   |             |  |  |  |             |  |             |  |             |
| <b>REQUEST SUMMARY</b>   | <p>Parks + Rec requires the purchase of a Toro Utility Cart to allow employees to perform inspections and repairs of Christmas in the Park displays more safely. It would allow employees to travel between displays without having to stay on the heavily trafficked paved road.</p> <p>Pursuant to Section 1030.4 of the Jackson County Code, the Department of Finance and Purchasing recommends the purchase of a Toro Utility Cart from Professional Turf Products, L.P. of Lenexa, KS under the terms and conditions of NIPA Contract No. 2017025, an existing government contract. The Department of Finance and Purchasing recommends the purchase be made under this contract due to the larger discount offered through cooperative purchasing contracts.</p>  |   |             |  |  |  |             |  |             |  |             |
| <b>CLEARANCE</b>   | <p><input type="checkbox"/> Tax Clearance Completed (Purchasing &amp; Department) N/A<br/> <input checked="" type="checkbox"/> Business License Verified (Purchasing &amp; Department)<br/> <input checked="" type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office)</p>  |   |             |  |  |  |             |  |             |  |             |
| <b>COMPLIANCE</b>  | <p><input type="checkbox"/> MBE Goals<br/> <input type="checkbox"/> WBE Goals N/A<br/> <input type="checkbox"/> VBE Goals</p>  |   |             |  |  |  |             |  |             |  |             |
| <b>ATTACHMENTS</b>   | <p>Recommendation Memo from the Using Department, quote from Professional Turf Products, and the pertinent pages of NIPA Contract No. 2017025</p>  |   |             |  |  |  |             |  |             |  |             |

|        |  |                 |
|--------|--|-----------------|
| REVIEW | Department Director:<br><i>Michael Deen</i>        | Date:<br>3-7-18 |
|        | Finance (Budget Approval):<br><i>If applicable</i> | Date:<br>3/7/18 |
|        | Division Manager:                                  | Date:           |
|        | County Counselor's Office:                         | Date:           |

Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the \_\_\_\_\_ Fund in \_\_\_\_\_.
- There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.
- Funds sufficient for this expenditure will be/were appropriated by Ordinance # \_\_\_\_\_
- Funds sufficient for this appropriation are available from the source indicated below.

| Account Number: | Account Title: | Amount Not to Exceed: |
|-----------------|----------------|-----------------------|
|                 |                |                       |

- This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.
- This legislative action does not impact the County financially and does not require Finance/Budget approval.



**JACKSON COUNTY  
Parks + Rec**

22807 Woods Chapel Road  
Blue Springs, Missouri 64015  
MakeYourDayHere.com

Michele Newman, Director  
(816) 503-4800  
Fax: (816) 795-1234

**MEMORANDUM**

**TO:** Katie Bartle, Senior Buyer, Purchasing Department  
**FROM:** John Johnson, Superintendent, Park Operations  
**DATE:** March 5, 2018  
**SUBJECT:** Toro Utility Cart

Parks+Rec will primarily use this utility cart to inspect and effect repairs along the Longview Lake Trail and to serve as a safer and more efficient option to inspect and effect repairs to the lighting displays at Christmas in the Park while open to the public and vehicular traffic is heavy. The cart will allow our associates to safely move between displays without having to stay on the paved road surface. Currently associates use a pickup truck that must remain in the flow of traffic to move from point A to point B.

Parks staff were allowed to demo this model of utility cart during two major special events and were pleased with the durability and operation of this equipment.



*Frank White, Jr., County Executive*



Professional Turf Products, L.P.  
 10935 Eicher Dr.  
 Lenexa, Kansas 66219  
 Brad Davisson  
 (913) 449-8238  
 davissonb@proturf.com



|             |                              |   |           |
|-------------|------------------------------|---|-----------|
| Ship To     | Jackson County - Parks Dept. | Date  | 1/17/2018 |
| Bill To     |                              | Tax Rate  |           |
| Contact     | John Johnson                 | Destination   |           |
| Address     | 22807 Woods Chapel Rd.       | Trade-In  |           |
| City        | Blue Springs, MO             | Finance   |           |
| State       | MO                           | Account Type  | Contract  |
| Postal Code | 64015                        | Comments:<br>National IPA Contract #2017025; Participating Agency #NIPA7169 |           |
| Phone       | (816) 795-8200               |   |           |
| Fax         | jljohnson@jackson.gov.org    |   |           |



| Qty | Model #  | Description   | Unit | Extended  |
|-----|----------|---|------|-----------|
| 1   | 07042    | GTX Workman (Gas) 2017+   |      |           |
| 1   | 07142    | ROPS Certified Cab  |      |           |
| 1   | 07150    | Cab Door Kit  |      |           |
| 1   | 130-5615 | WASHER FLUID KIT  |      |           |
| 2   | 130-5448 | KIT-MIRROR, EXTERIOR  |      |           |
| 1   | 130-5484 | KIT-BEACON  |      |           |
| 1   | 130-5485 | KIT-WORK LIGHTS   |      |           |
| 1   | 132-8579 | BRAKE AND SIGNAL LIGHT KIT, GTX   |      |           |
| 1   | 07144    | 12v Electric Lift Kit   |      |           |
| 1   | 131-8550 | 12V POWER POINT KIT   |      |           |
| 1   | RPSL681  | Road Pro 12V Ceramic Heater - Direct Connection to Battery (Allied Product) |      |           |
| 1   | 07423    | ATV Tire Kit (Set of Four Tires and Rims)                                   |      |           |
| 1   | 136-6280 | MVP KIT 400 WORKMAN GTX   |      |           |
|     |          | <b>Toro Workman GTX</b>   | \$   | 16,188.65 |

|                             |    |                  |
|-----------------------------|----|------------------|
| SubTotal                    | \$ | 16,188.65        |
| Destination Tax (Estimated) |    | Included Exempt  |
| <b>TOTAL</b>                | \$ | <b>16,188.65</b> |

**Comments:**

**Terms & Conditions:**

- Orders are considered contractual. Order cancellations are subject to fees up to 10% of the original order value.
- New equipment delivery time is estimated at six weeks from the time credit is approved & documents are executed.
- Pricing, including finance options, valid for 90 days from time of quotation.
- After 90 days all prices are subject to change without notice.
- Used and Demo equipment is in high demand and availability is subject to change.
  - Upon firm customer commitment to purchase, said equipment availability will be determined and "locked".
  - In the event equipment is unavailable at time of order, PTP will employ every resource to secure an acceptable substitute.

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this \_\_\_ day of March, 2017, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and The Toro Company, a(n) Delaware corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

### RECITALS

- A. The City issued solicitation number **2017025** ("Solicitation") for **GROUNDS MAINTENANCE EQUIPMENT; PARTS, ACCESSORIES, SUPPLIES, RELATED SERVICES AND EQUIPMENT**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

### TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **April 1, 2017** and ending on **March 31, 2022**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 5.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
  - 5.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
  - 5.3 **Delivery**. City acknowledges that delivery will be made by contractor's dealers and/or distributors, which are independent businesses. Deliveries shall be made to the location(s) contained in the Scope of Work within thirty (30) days after receipt of an order.
2. **Scope of Work**. Except as otherwise specified in this Agreement, the Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.
3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
- a. Agreement
  - b. Exhibits
    1. Mesa Standard Terms & Conditions
    2. Scope of Work
    3. Other Exhibits not listed above
  - c. Solicitation including any addenda
  - d. Contractor Response

5. **Payment.**

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("**Pricing**") in consideration of Contractor's performance of the Scope of Work during the Term.

5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. 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.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

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

Notwithstanding any of the other provisions in this Agreement, 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 and/or distributors. Contractor agrees to make the terms of this agreement known to applicable dealers and/or distributors and to use reasonable efforts to incite to provide goods and services to City or Participating Agency subject to the terms of this agreement. Contractors dealers and distributors that agree to utilize this agreement also agree to abide by the pricing and terms and conditions set within.

5.3 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered, pricing of each unit, and freight charges (as applicable);
- i. Applicable Taxes
- j. Total amount due.



- 5.4 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise; payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.
- 5.5 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance.**

- 6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.
- 6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.
- 6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
- 6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.



- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
  - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$3 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
  - 6.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
7. **Requirements Contract.** The Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase prior to the time any product within the purchase order has been shipped; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled the City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
  - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
  - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
  - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will

constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:

- (A) Scope of Work
- (B) Pricing / (B-1) MSRP/Discount Lists
- (C) Mesa Standard Terms and Conditions
- (D) National IPA Documents

13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written

**CITY OF MESA, ARIZONA**

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



Digitally signed by Edward Quedens  
DN: cn=Edward Quedens, o=City of Mesa, Arizona, ou=Business Services, Director, email=ed.quedens@mesaaz.gov, c=US  
Date: 2017.03.27 15:07:12 -07'00'

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**THE TORO COMPANY**

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



Printed Name Brad Hamilton

Title \_\_\_\_\_

VP, General Manager

Date \_\_\_\_\_

2/21/17

Date \_\_\_\_\_

**Reviewed by:**



Signature

Jess Romney, CPPB  
Procurement Officer