



Price Quote

PROJECT NAME: Phipps Ocean Park Phase 2 Maintenance

ATTENTION: Paul Colby, Facilities Division Manager
Town of Palm Beach
951 Old Okeechobee Road, Suite "D"
West Palm Beach, FL 33401
PColby@townofpalmbeach.com

PRICE QUOTED:

Description	Total Price
Herbicide Treatment	\$32,500.00

SCOPE OF WORK:

Herbicide Treatment

EarthBalance® will provide the labor, equipment, and materials necessary for 2 herbicide treatments on the beach dune at Phipps Ocean Park in Palm Beach County, Florida. Species targeted for treatment include beach vitex (*Vitex rotundifolia*), Brazilian pepper (*Schinus terebinthifolia*), seaside mahoe (*Thespesia populnea*), beach naupaka (*Scaevola taccada*), natal plum (*Carissa macrocarpa*), mother-in-law tongue (*Sansevieria trifasciata*), wedelia (*Sphagneticola trilobata*), and any other listed Category I and II Florida Invasive Species Council’s 2019 “List of Invasive Plant Species.” All target species within the treatment area will be treated with an appropriate dye-laced herbicide approved for use by the State of Florida. The second treatment will take place approximately two (2) months after the initial treatment and will be focused on treating anything that was missed or is growing back since the initial treatment. All work will be directed by a qualified Project Manager licensed to apply herbicides by the State of Florida.

EarthBalance® will perform the services described above for a fixed fee of **\$32,500.00**.



Price Quote (continued)

PROJECT NAME: Phipps Ocean Park Phase 2 Maintenance

CONDITIONS:

This quote shall remain valid for a period not to exceed thirty (30) days beyond the submittal date of **March 13, 2024**. If not accepted within this period, **EarthBalance®** reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement and the attached terms and conditions shall be effective upon its full execution.

QUOTED BY: Chrissy Hensel, MS, PMP, PWS
Senior Project Manager
EarthBalance®
705 13th Street
St. Cloud, FL 34769
chensel@earthbalance.com

IN WITNESS WHEREOF, this Agreement is executed on the dates hereinafter stated.

EARTHBALANCE®

CLIENT

By: _____

By: _____

Printed: _____

Printed: _____

Title: Vice President

Title: _____

Date: _____, 2024

Date: _____, 2024

PLEASE INDICATE IF THE CLIENT IS ALSO THE OWNER OF THE PROPERTY ON WHICH THE SERVICES/WORK WILL BE PERFORMED:

_____ **OWNER**

_____ **NOT THE OWNER**

IF THE CLIENT IS NOT THE PROPERTY OWNER, PLEASE PRINT THE NAME AND CONTACT INFORMATION FOR THE PROPERTY OWNER:

Name: _____

Address: _____

Phone Number: _____



PRICE QUOTE TERMS AND CONDITIONS

1. **Services.** EarthBalance® hereby agrees to provide all supervision, labor, materials, equipment, and other facilities to complete the Work as described in the attached Price Quote ("Scope of Work" or "Work"). EarthBalance® agrees to use its best efforts in completing the Work. The Work shall be accomplished in a workmanlike and professional manner using the degree of skill and care ordinarily exercised by a reputable member of EarthBalance's® profession practicing in the same or similar locality. No other warranty, express or implied, is made or intended, unless provided in the Scope of Work.

This agreement is limited to tasks identified in the attached Price Quote and does not include additional or repeat Work resulting from changes to the project or the information upon which this agreement is based. Modification to the final work products performed at the request of the Client that is not the result of the Contractor's errors or omissions shall be billed to the Client as additional services.

2. **Time.** This quote shall remain valid for a period not to exceed thirty (30) days beyond the date of submittal. If not accepted within this period, EarthBalance® reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement shall be effective upon its full execution.

3. **Duty to Cooperate.** Client agrees to cooperate with EarthBalance® in all respects in connection with EarthBalance's® efforts to discharge the Scope of Work. Client shall make Client's property available to EarthBalance®, shall timely comply with EarthBalance's® requests for information, and shall execute all documents reasonably required by EarthBalance® in discharging the Scope of Work. Client agrees to inform EarthBalance® of any known job site hazards including, but not limited to, hazardous substances, buried debris, ordnance or explosives, sinkholes, wildlife hazards, etc.

4. **Payment.** Client agrees to pay a fee for the Work performed based upon the information contained in attached Price Quote. As soon as may be practicable at the beginning of each month, EarthBalance® shall invoice Client for all work performed in the prior month and any other sums due EarthBalance®. Client shall pay the invoice amount within thirty (30) days after the invoice date. EarthBalance® may cease performing work under the attached Price Quote if any payment due hereunder is not paid within thirty (30) days of the invoice date. EarthBalance® accepts cash, check, credit card, ACH or Wire Transfer as payment. A convenience fee of 5% will be added to all credit card payments.

Client agrees that EarthBalance® may place a lien upon the Property for Work performed under the attached Price Quote and that EarthBalance® may record and enforce the lien for Work performed in accordance with the provisions of Florida's Construction Lien Law. In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. In addition, if EarthBalance® places this executed Price Quote in the hands of an attorney for the collection of any sums due hereunder, Client agrees to reimburse EarthBalance® for its reasonable attorney's fees and costs relating thereto.

5. **Termination and Default.** This agreement may be terminated by either party giving the other party thirty (30) days written notice of intent to terminate. Upon a notice of termination without cause, Client shall pay EarthBalance® for all labor and materials procured to the date of termination, including a reasonable profit not to exceed 10% of completed work that complies with the Contract Documents. This shall include all cost incurred in preparing to fulfill the contractual obligations and any re-stocking fees along with all other damages associated with termination. In addition, upon default by Client, monetary or otherwise, this agreement may be terminated by EarthBalance® with seven (7) days written notice of intent to terminate if the default remains uncured after such notice period and EarthBalance® shall be entitled to recover all damages both actual and consequential, incurred as a result of said default. EarthBalance's® liability to Client or any related party for any claim related to or arising out of (i) this agreement or (ii) EarthBalance's® Work shall be limited to two times the amount of fees paid by Client hereunder.

6. **Force Majeure Event.** EarthBalance® shall not be liable to Client for damages resulting from delay in or termination of EarthBalance's® Work because of fire or casualty, riots, strikes, picketing, boycotts, lockouts, labor disturbances, shortages of materials, epidemics, pandemics, war, terrorism or combined action of the workmen or others, governmental delays, or any acts of God including, but not limited to, severe snowstorms, earthquakes, hurricanes, floods, or any other cause or condition beyond its control making it inadvisable in EarthBalance's® determination to proceed with the Work (collectively, a "Force Majeure Event"). EarthBalance® shall have no obligation to resume Work discontinued under this Section. If EarthBalance® elects not to resume the Work, Client's sole and exclusive remedy shall be payment on a pro-rata basis for the percentage of Work that has actually been completed as of the date of its receipt of EarthBalance's® notice of the Force Majeure Event.

7. **Warranties.** Unless otherwise provided: **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** All warranties/guarantees provided by EarthBalance®, if any, shall be deemed null and void if Client fails to strictly adhere to the payment terms contained in the Agreement. All warranties and guarantees, if any, provided under the Agreement are solely for the original Client and are non-transferable, unless otherwise agreed to by Client and EarthBalance® in writing. Any express warranty provided, if any, by EarthBalance® is the sole and exclusive remedy for alleged defects, in lieu of all other remedies, implied or statutory. Warranties to be issued upon completion and full payment of this Agreement.



8. **Price Escalation.** If there is an increase in the price of labor, materials, or fuel surcharge charged to **EarthBalance®** in excess of **five (5%) percent**, subsequent to making this Agreement, then the price set forth in this Agreement shall be increased without the need for a written change order or amendment to the Agreement to reflect the price increase and additional direct cost to **EarthBalance®**. **EarthBalance®** shall submit written documentation of the increased charges to Client. As an additional remedy, if the actual cost of any line item increases more than ten (10%) percent subsequent to entering into this Agreement, **EarthBalance®**, at its sole discretion, may terminate the Agreement for convenience.

9. **Delay.** This contract contemplates installation on N/A . As living plants, Client acknowledges that ongoing watering, feeding, maintenance and storage costs will continue beyond the specified installation date at a per diem rate of N/A . Accordingly, despite any Contract Document provision to the contrary, **EarthBalance®** will be compensated for any delays beyond the Installation Date via change order at the per diem rate.

10. **Site Conditions.** Should **EarthBalance®** discover concealed or unknown conditions in the existing soil suitability that vary from those conditions ordinarily encountered and generally recognized as inherent in the work of the character identified in this Agreement, then the Agreement amount shall be equitably adjusted upon notice thereof from **EarthBalance®** to Client.

11. **Choice of Law, Venue and Attorney's Fees.** This Agreement shall be governed by the laws of the State of Florida. Venue of any proceeding arising out of this Agreement shall be **Sarasota County, Florida**. The non-prevailing party in any legal or equitable action arising out of or relating to this Agreement including arbitration, administrative, appellate and/or bankruptcy proceedings shall reimburse the prevailing party on demand for all attorney's fees, costs, and expenses incurred by the prevailing party in connection with the action.

12. **Arbitration.** If a dispute shall arise between **EarthBalance®** and Client with respect to any matters or questions arising out of or relating to this Agreement or the breach thereof, such dispute, other than collection matters, shall be decided by arbitration administered by and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

13. **Jury Trial Waiver.** In the event there is litigation over the enforcement of a collection matter or construction lien, the parties **KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF OR PERTAINING TO THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON OR PARTY RELATED TO THIS AGREEMENT; THIS IRREVOCABLE WAIVER OF THE RIGHT TO A JURY TRIAL BEING A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.**

14. **Damage Limitation.** In no event, whether based on contract, warranty (express or implied), tort, federal or state statute or otherwise arising from or relating to the work and services performed under the Agreement, shall **EarthBalance®** be liable for special, consequential, punitive, or indirect damages, including loss of use or loss of profits. **EarthBalance®** and Client agree to allocate certain risks so that, to the fullest extent permitted by law, **EarthBalance's®** total aggregate liability to Customer is limited to the dollar amount of the Agreement for any and all injuries, damages, claims, expenses or claim expenses including attorneys' fees arising out of or relating to this Agreement regardless of whether it is based in warranty, tort, contract, strict liability, negligence, errors, omissions, or from any other cause or causes.

15. **Claims.** It is Client's duty to notify **EarthBalance®** in writing within **three (3) days** of the occurrence of any claim, defect or deficiency arising out of work, services or materials provided by **EarthBalance®** under this Agreement ("Occurrence"). Failure of Client to provide written notice of the Occurrence shall result in Client waiving all claims that may be brought against **EarthBalance®** arising out of or relating to the Occurrence, including claims arising in law, equity, contract, warranty (express or implied), tort or federal or state statutory claims.

16. **Shortages.** In the event that any specified material or equipment becomes unavailable either temporarily or permanently after the Agreement is executed, provided that such availability is a result of factors beyond **EarthBalance's®** control, then in the event of temporary unavailability, the Agreement time shall be extended to reflect the duration of time that **EarthBalance®** is delayed by the unavailability, and in the case of permanent unavailability, **EarthBalance®** shall be excused from providing said material or equipment and allowed to provide an available substitute. To the extent an available substitute is provided by **EarthBalance®** under this provision, any increase in the cost between the originally specified material or equipment and its substitute shall be paid by the Customer to the **EarthBalance®**. Due to material shortages, Client may experience delays related to the inability to timely obtain materials for this project. In the event of such a delay, **EarthBalance®** shall notify Client, and Client agrees to provide **EarthBalance®** with an extension of time for any delay attributable to the temporary inability to obtain materials.

17. **Miscellaneous.** The invalidity of any provision of the agreement shall not impair the validity of any other provision. If any provision of this agreement is determined to be unenforceable by a court of competent jurisdiction, such provision shall be deemed severable and the remaining provisions of the agreement shall be enforced. Headings are for convenience only and do not affect interpretation. This Agreement records the entire agreement of the parties and supersedes any previous or contemporaneous agreement, understanding, or representation, oral or written, by the parties and may only be amended, modified or terminated by the written mutual consent of all the parties hereto and duly executed by the authorized representatives of the parties hereto. All documents/exhibits referred to in this Agreement are an integral part of the Agreement and are incorporated by reference.