

# **CONTRACT FOR TREE TRIMMING SERVICES**

**Contract No. 2017-25**



**The Town of Miami Lakes Council:**

**Mayor Manny Cid  
Vice Mayor Timothy Daubert  
Councilmember Luis Collazo  
Councilmember Tony Lama  
Councilmember Ceasar Mestre  
Councilmember Frank Mingo  
Councilmember Nelson Rodriguez**

Alex Rey, Town Manager  
The Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

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## **SECTION A. DEFINITIONS**

1. **ANSI A300 Standards** means the ANSI A300 Tree Care Standards Manual, the industry-developed standards of practice for Tree care.
2. **Arborist** means a person who is currently certified by the International Society of Arboriculture, who is well versed in the art of arboriculture, including, but not limited to, Tree surgery, the identification, prevention and cure of Tree diseases and insects.
3. **Award** means that the Town Manager or Town Council, as applicable, has approved the award of a contract(s).
4. **Change Order** means a written document ordering a change in the Contract price or Contract time or a material change in the Work.
5. **Complete Tree Pruning** includes, but is not limited to, thinning, restoration, raising, and reduction pruning as defined by ISA and ANSI. It does not include specialty, hazard, clearance, or palm tree pruning as defined by ISA and ANSI.
6. **Consultant** means a firm that has entered into a separate agreement with the Town for the provision of professional services.
7. **Contract** means the RFP, the addendum, and the Proposal documents that have been executed by the Proposer and the Town subsequent to approval of award by the Town.
8. **Contract Documents** means the Contract as may be amended from time to time, and plans, specifications, addendum, clarifications, directives, Change Orders, Work Orders, Work Order Proposals, payments and other such documents issued under or relating to the Contract.
9. **Contractor** means the Successful Proposer who is issued a Purchase Order, Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the Town and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to the Work under the Contract.
10. **Cure** means the action taken by the Contractor promptly, after receipt of written notice from the Town of a breach of the Contract Documents, which must be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach.
11. **Cure Period** means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of a written Notice to Cure from the Town identifying the deficiencies and the time to Cure.
12. **Days** mean calendar days unless otherwise specifically stated in the RFP.
13. **Designated Areas** means pre-designed districts, grids or prune routes, on which routine Tree Pruning will occur on a set cycle that includes all Trees therein.
14. **Diameter at breast height ("DBH")** means the diameter of a Tree's trunk measured at a height four and one-half (4.5) feet above natural grade. In the case of multiple-trunk Trees, the DBH shall mean the sum of each trunk's diameter measured at a height of four and one-half (4.5) feet above natural grade.
15. **Emergency Service** means service that requires expeditious action to mitigate a hazardous condition or safety risk.
16. **Hazard Pruning** means the removal of dead, diseased, decayed, or obviously weak branches two (2) inches in diameter or greater.
17. **Inspector** means an authorized representative of the Town assigned to make necessary inspections of materials and Work performed by the Contractor.

- 18. Landscape Manual** means the Miami-Dade County Landscape Manual, latest edition, which is the official landscape manual issued by Miami-Dade County, Florida, and will act as the standard for which Work performed under this Contract will be measured against.
- 19. Materials** mean goods or equipment or used or consumed in the performance of the Work.
- 20. Notice of Award** means the communication to the Contractor notifying the Contractor that it has been awarded the Contract.
- 21. Notice to Proceed** means the written letter or directive issued by the Town Manager or designee acknowledging that all conditions precedent to award have been met and directing that the Contractor may begin Work.
- 22. Price Proposal Form or Form PP** means the form that contains the goods or services to be purchased and that must be completed and submitted with the Proposal.
- 23. Project** means a task or series of tasks that the Contractor must complete in accordance with the Contract Documents.
- 24. Project Manager** means the individual assigned by the Town Manager or designee to manage a Project.
- 25. Proposal** means the Submittal tendered by a Proposer in response to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Request for Proposals ("RFP") at the time of submittal.
- 26. Proposer** means any person, firm or corporation, or its duly authorized representative tendering a Submittal in response to this solicitation.
- 27. Pruning/Trimming** means the selective cutting of Tree or plant parts to encourage new growth or better flowering; to remove old stems or deadwood; or to shape Trees according to ANSI A300 Standards, ISA requirements or other standards required by the Contract.
- 28. Request for Information ("RFI")** means a request from the Contractor seeking an interpretation or clarification relative to the Contract Documents. The RFI, which must be clearly marked RFI, must clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is required. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.
- 29. Responsive Proposer** means the Proposer whose Proposal conforms in all material respects to the terms and conditions included in the RFP and this Contract.
- 30. Responsible Proposer** means a Proposer who has the capability in all respects to perform in full the contract requirements, as stated in the RFP and this Contract, and the integrity and reliability that will assure good faith performance.
- 31. Subcontractor** means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material, equipment or services necessary to perform the Work.
- 32. Submittal** means the documents prepared and submitted by the Proposer in response to the RFP.
- 33. Town** means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.
- 34. Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- 35. Tree(s)** means any self-supporting woody plant or palm which usually has a single main axis or trunk, with a minimum trunk DBH of two (2) inches and a minimum overall height of twelve (12) feet. This definition excludes plants which are defined as shrubs, hedges, vines, or ground covers. Palms shall have a minimum height of fourteen (14) feet in order to be classified as a Tree.
- 36. Unbalanced Proposal** means pricing that is not consistent with pricing in the industry or with market conditions and a comparison to the pricing submitted by other Proposers.



- 37. Work or Service** as used herein refers to all reasonably necessary and inferable labor, material, equipment, and services, whether or not specifically stated, to be provided by the Contractor to fulfill its obligations under the Contract Documents.
- 38. Work Crew** means the employees assigned by the Contractor to perform Work under the Contract.
- 39. Work Order** means a document issued by the Town awarding a specific Project to a Contractor.
- 40. Work Order Proposal** means a document prepared by the Contractor, at the request of the Town for Work to be performed on a Project.

## **SECTION B. GENERAL TERMS AND CONDITIONS**

### **B1. CONTRACT COMMENCEMENT REQUIREMENTS**

#### **B1.01 CONTRACTOR'S PRE-START REPRESENTATION**

Contractor represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with the nature and extent of the Contract Documents, Work, location of the Work, all local conditions, and any federal, state, county, and local laws, ordinances, rules and regulations that may, in any manner, affect performance of the Work, and represents that it has combined its inspections and observations with the requirements of the Contract Documents.

#### **B1.02 WORK COMMENCEMENT CONFERENCE**

Within fourteen (14) calendar days after execution of the Contract by the Town, and before any Work is performed, the Town and the Contractor will meet to review the performance requirements, the work plan, the schedule as submitted by the Contractor, the invoicing and payment process and any other details as determined by the Project Manager.

### **B2. GENERAL REQUIREMENTS**

#### **B2.01 GENERAL REQUIREMENTS**

The employee(s) of the Contractor will be considered to be at all times its employee(s), and not employee(s) or agent(s) of the Town or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of the Contract a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Town Manager or designee, should the Town Manager or designee make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses necessary to perform the Work, in a competent and professional manner.

The Contractor must at all times cooperate with the Town, or the Consultant (if any) and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Consultant (if any) and other agencies authorized by the Town, must have full access to the Project site at all times.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, will be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

## **B2.02 RULES AND REGULATIONS**

The Contractor must comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor must be familiar with all federal, state and local laws, rules, regulations, codes, and ordinances that affect the Work.

Where portions of the Work traverse or cross federal, state, county or local highways, roads, streets, or waterways, and the agency in control of such property has established standard specifications, rules or regulations governing items of Work that differ from these specifications, the most stringent specifications, rules and regulations will apply.

## **B2.03 HOURS FOR PERFORMING WORK**

All Work must be performed every day between the hours of 10:00 a.m. and 3:00 p.m. on major streets and Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. on residential streets. Work to be performed outside these hours will require the prior written approval of the Project Manager.

## **B2.04 SUBCONTRACTORS**

Contractor agrees to self-perform one hundred percent (100%) of the basic services provided for under this Contract, and therefore acknowledges that subcontracting of basic services is not permitted under this Contract. Contractor may with the prior approval of the Project Manager subcontract any Additional Work for the treatment of Trees for disease or insect infestation.

## **B2.05 CONSULTANT SERVICES**

The Town, at its sole discretion may hire a Consultant who may serve as the Town's representative for the Project. Where a Consultant has been identified, the Consultant and the Project Manager will both have authority to act on behalf of the Town to the extent provided in the Contract Documents and as outlined in Article B2.06, Authority of the Project Manager, where such authority has been delegated in writing by the Town Manager.

## **B2.06 AUTHORITY OF THE PROJECT MANAGER**

The Town Manager hereby authorizes the Project Manager, designated by the Contract Documents or Work Order as applicable, to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under the Contract Documents. The Project Manager may delegate some of the authority contained in this Article to the Consultant.

The Contractor is bound by all determinations or orders of the Project Manager and must promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager and/or Consultant have authority to act on behalf of the Town to the extent provided by the Contract, unless otherwise modified in writing by the Town. All instructions to the Contractor will be issued in writing. All instructions to the Contractor will be issued through the Town Manager or designee or the Project Manager.

The Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

All interpretations and recommendations of the Project Manager and/or Consultant will be consistent with the intent of the Contract Documents.

Interpretation of the Contract terms and conditions will be issued by the Town's Procurement Manager.

The Project Manager and/or Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever, in their opinion, it is considered necessary or advisable to ensure the proper completion of the Work, the Project Manager and/or Consultant will have authority to require special inspections or testing of the Work, whether or not such Work is completed.

The Project Manager's authority to act under this paragraph, or any decision made in good faith either to exercise or not to exercise such authority, will not give rise to any duty or responsibility owed to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

The Project Manager is not responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

#### **B2.07 HURRICANE PREPAREDNESS**

During such periods of time as are designated by the United States Weather Bureau or Miami Dade County as being a severe weather event, including a hurricane watch or warning, the Contractor, at no cost to the Town, must take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor has given notice of same, in accordance with the Miami-Dade County Code.

Compliance with any specific severe weather event or alert precautions will not constitute additional work. In the event of a severe weather event, the Town must be a priority client to the Contractor. At a minimum, Contractor must respond to the Town's requests in accordance with its Emergency Response Plan submitted under Article C4.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, Excusable Delay, and will not give rise to a claim for compensable delay.

#### **B2.08 INDEPENDENT CONTRACTOR**

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

#### **B2.09 THIRD PARTY BENEFICIARIES**

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third-party beneficiaries to this Contract and that no third party will be entitled to assert a claim against either of them based upon this Contract.

#### **B2.10 ASSIGNMENT OR SALE OF CONTRACT**

The performance of this Contract will not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Contract.

The Contractor must notify the Project Manager prior to any Assignment of the Contract, which must be approved by the Town for the transfer of the Contract. The Town may, at its sole discretion, elect not to approve the transfer of the Contract, which will result in the Contract being terminated in accordance with Article B10.03, Termination for Convenience, of the Contract. Any transfer without Town approval will be cause for the Town to terminate this Contract for Default and the Contractor will have no recourse from such termination.

Nothing herein will either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

#### **B2.11 TIME FOR COMPLETION**

Time is of the essence with regard to completion of the Work to be performed under the Contract. Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis. Delays and extensions of time may be allowed only in accordance with the provisions of the Contract. The time allowed for completion of the work will be stated in the RFP.

#### **B2.12 APPLICABLE LAW AND VENUE OF LITIGATION**

This Contract will be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions the sole venue will be Miami-Dade County, Florida.

#### **B2.13 NON-EXCLUSIVE CONTRACT**

It is the intent of the Town to enter into a Contract with all successful Proposer(s) that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, as it sees fit, including but not limited to: award of other contracts, use of another contractor, or perform the Work with its own employees.

#### **B2.14 SEVERABILITY**

In the event any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision will be excised from this Contract, and the remainder of the Contract Documents will continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision must be made within seven (7) calendar days after the finding by the Court becomes final.

#### **B2.15 CONTRACT DOCUMENTS CONTAINS ALL TERMS**

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract Documents will be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

#### **B2.16 ENTIRE AGREEMENT**

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents will not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

#### **B2.17 INTENTION OF THE TOWN**

It is the intent of the Town to describe in the RFP, the Work to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract. Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results must be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words will be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or

codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, will mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Proposals and Contractor must comply therewith. Town will have no duties other than those duties and obligations expressly set forth within the Contract Documents.

#### **B2.18 NOTICES**

Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice will remain until it has been changed by written notice in compliance with the provisions of this Article. Notice will be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice will be deemed given on the date sent via e-mail or facsimile. Notice will be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Alex Rey  
Town Manager  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014  
reya@miamilakes-fl.gov

Mr. Raul Gastesi  
Town Attorney  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

Procurement Department  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014  
procurement@miamilakes-fl.gov

For Contractor:

**(To Be Determined)**

Space intentionally left blank

During the Work the Contractor must maintain continuing communications with designated Town representative(s). The Contractor must keep the Town fully informed as to the progress of the Work under the Contract.

#### **B2.19 PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract

Documents by reference and a term, statement, requirement, the specifications or any plans, or provision of the Contract Documents the following order of precedence will apply:

In the event of conflicts in the Contract Documents the priorities stated below will govern;

1. Revisions and Change Orders to the Contract will govern over the Contract
2. The Contract Documents will govern over the Contract
3. The Special Conditions will govern over the General Conditions of the Contract
4. Addendum to an RFP will govern over the RFP

#### **B2.20 ROYALTIES AND PATENTS**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

#### **B2.21 OWNERSHIP OF THE WORK**

The Contractor is solely responsible for all Work, until Final Completion of the Work. Contractor is liable for all damage, theft, maintenance, and safety until such time as the Town issues a notice of Final Completion of the Work.

### **B3. INDEMNITY & INSURANCE**

#### **B3.01 INDEMNIFICATION**

The Contractor must indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Contract, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor will in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The Contractor agrees and recognizes that the Town will not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Subcontractor, under this Contract. The Contractor will defend the Town or provide for such defense at its own expense, at the Town's option.

This indemnification obligation will survive the expiration or termination of this Contract.

The Town has provided specific consideration for the indemnification of \$10.00 from the sums due to the Contractor under this Contract.

#### **B3.02 CONTRACTOR'S RESPONSIBILITY FOR DAMAGES TO THE WORK**

Contractor accepts full responsibility for Work against all losses or damages of whatever nature sustained until acceptance by Town Manager or designee, and must promptly repair or replace, at no additional cost to the Town any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

#### **B3.03 DEFENSE OF CLAIMS**

Should any claim be made or any legal action brought in any way relating to the Work under the Contract, the Contractor will diligently render to the Town any and all assistance which the Town may require of the Contractor.

### B3.04 INSURANCE

Without limiting any of the other obligations or liabilities of Contractor, the Contractor must secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance must be qualified to do business in the State of Florida, be rated "B" as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, the insurance carrier must have agents upon whom service of process may be made in the State of Florida. The insurance coverage will be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town will be in excess of the Contractor's insurance and will not contribute to the Contractor's insurance. The insurance coverages must include a minimum of:

#### *B3.04-1 Worker's Compensation and Employer's Liability Insurance:*

Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000 each accident and a waiver of subrogation.

#### *B3.04-2 Comprehensive Business Automobile and Vehicle Liability Insurance:*

This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and must cover operation with respect to onsite and offsite operations and insurance coverage must extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

#### *B3.04-3 Commercial General Liability ("CGL").*

This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

1. Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor must maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
2. Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
3. CGL Required Endorsements
  - a. Employees included as insured
  - b. Contingent Liability/Independent Contractors Coverage

- c. Contractual Liability
- d. Waiver of Subrogation
- e. Premises and/or Operations
- f. Explosion, Collapse and Underground Hazards (if not specifically covered under the policy)
- g. Loading and Unloading
- h. Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

Town is to be expressly included as an **Additional Insured** pursuant to endorsement number CG 2010 11/85 or its equivalence.

#### *B3.04-4 Certificate of Insurance*

Contractor must provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance must not only name the types of policy(ies) provided, but also must specifically cite this Contract and must state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate must be endorsed with a provision that not less than thirty (30) calendar days' written notice must be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.

#### *B3.04-5 Additional Insured*

The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town must be named as additional insured under the CGL, business automobile insurance and umbrella policies. Town must be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, must apply on a primary basis and any other insurance maintained by the Town will be in excess of and will not contribute to Contractor's insurance. Contractor's insurance must contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance must apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor will be responsible for the payment of any deductible or self-insured retention in the event of any claim.

## **B4. SITE ISSUES**

### **B4.01 SITE INVESTIGATION AND REPRESENTATION**

It is the responsibility of the Contractor to satisfy itself as to the nature and location(s) of the Work prior to commencement of Work on the site, the general and local conditions, particularly those bearing upon availability of installation, transportation, disposal, handling and storage of materials, and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

Contractor must verify all Site data provided to the Contractor. Where the Contractor finds a discrepancy between the data provided and existing conditions, the Contractor must immediately notify the Project Manager and provide its findings in writing to the Project Manager.

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. Known utilities and structures adjacent to or encountered in the Work



will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the Town for their accuracy or completeness. No request for additional compensation or Contract time resulting from encountering utilities not shown will be considered.

Should the Contractor identify any utilities, structures, etc., which will or may be encountered during the performance of the Work, the Town must be consulted immediately in order for a decision to be made on the potential relocation or other action(s) to be taken as it relates to the work.

Any failure by the Contractor to familiarize itself with any utilities that may impact the performance of the Work will not relieve Contractor from responsibility for properly estimating the difficulty or cost of performing the Work and will not entitle the Contractor to any additional compensation.

#### **B4.02 METHOD OF PERFORMING THE WORK**

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, will be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract Documents will be made upon that basis.

Contractor shall inspect all equipment and materials immediately prior to use and shall not use any equipment that will result in damage to the Trees or improper cutting of the Trees or install any damaged or defective materials.

Contractor must comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents or applicable Work Order.

The Work to be performed must be done in such a manner so as not to interfere with the normal Town operations. The manner in which the Work is performed will be subject to the approval of the Project Manager, whom if necessary, will have the authority to require changes in the manner in which the Work is performed. There must be no obstruction of Town services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager twenty-four (24) hours in advance of the interruption of Town operations.

The Contractor must familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

Where materials are transported in the performance of the Work, vehicles must not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage must be provided by the Contractor and any damaged curbing, drainage, grass areas, sidewalks or other areas must be repaired at the expense of the Contractor to the satisfaction of the Project Manager.

##### ***B4.02-1 Minimal Disturbance***

All Work done by the Contractor or any Subcontractor must be done with minimal disturbance to the residents of the Town. The noise level must be kept at reasonable levels. Impacts to traffic flow must be minimal. All Contractor personnel and Subcontractors must demonstrate and maintain a courteous and responsible demeanor toward all persons while conducting business in the Town. The Town reserves the right to require the Contractor to permanently remove personnel from Work under the Contract that fail to comply with the requirements of this section.

#### **B4.03 PROTECTION OF PROPERTY, UTILITIES, AND THE PUBLIC**

The Contractor must continuously maintain adequate protection of all its Work from all losses or damage and must protect public and private property, and utilities from injury or loss arising in connection with the Work, and take all necessary precautions to prevent accidents, injuries, or damage to persons or property on or near the Work.

The Contractor is solely responsible for, and must replace and make good all loss, injury, or damage to any property including, but not limited to, landscaping, irrigation, walks, drives, structures, or utilities resulting from performance of the Work.

#### **B4.04 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTIES AND SERVICE**

Where the Contractor's operations could cause damage or inconvenience to telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Contractor must make all arrangements necessary for the protection of these utilities and services or any other known utilities.

Notify all utility companies that are affected by the construction operation at least forty-eight (48) hours in advance. Under no circumstance expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

The Contractor and its Subcontractors will be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions, or claims of any character brought because of any injuries or damage which may result from the construction operations under the Contract Documents.

Neither the Town nor its officers or agents will be responsible to the Contractor for damages as a result of the Contractor's failure to protect property encountered in the Work.

In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, Contractor must promptly notify the owner, any required regulatory authority, and the Project Manager. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair and any required interim measures to ensure safety. In no event will interruption of any utility service be allowed unless granted by the owner of the utility.

In the event water service lines that interfere with trenching are encountered, the Contractor may, by obtaining prior approval of the water utility, cut the service, dig through, and restore the service with similar and equal materials at the Contractor's expense and as approved by the Project Manager.

Replace, with material approved by the Project Manager or Consultant, at Contractor's expense, any and all other laterals, existing utilities or structures removed or damaged during construction, unless otherwise provided for in the Contract Documents and as approved by the Project Manager or Consultant.

Replace with material approved by the Project Manager or Consultant, at Contractor's expense, any existing utilities damaged during the Work.

#### **B4.05 ACCESS TO WATER AND UTILITIES**

The Contractor is responsible for providing all water and power required for the performance of the Work, including the use of a generator. The use of a generator may be subject to the prior approval of the Town's representative should the Work be in a primarily residential neighborhood. Electrical power required during construction must be installed by a qualified electrical contractor approved by the Project Manager.

The Town may at its sole discretion provide access to Town utilities or water should such be available at the Work site. However, the Contractor is responsible to ascertain the location and accessibility of any utilities and potable water sources necessary to perform the Work.

#### **B4.06 COORDINATION OF THE WORK**

Prior to the commencement of the Work under the Contract, the Project Manager will make every effort, based on available information, to notify the Contractor of any ongoing or scheduled project(s) that will be ongoing or commence during the Work on a Project that may require coordination. The Contractor will be solely responsible for coordinating the Work with any other project(s) to minimize any potential adverse impact. Contractor will not be entitled to any days of delay for failure to properly coordinate the Work. The Project Manager may assist the Contractor in coordinating the Work. However, any such assistance, or lack thereof will not form the basis for any claim for delay or increased cost.

If any part of Contractor's Work depends for proper execution or results upon the work of any other persons, Contractor must inspect and promptly report to Project Manager any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report will constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after the execution of Contractor's Work. Contractor must conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor will be liable to the affected contractor for the cost of such interference or impact.

#### **B4.07 ACCESS TO THE PROJECT SITE(S)**

Town will provide the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by Town for the use of Contractor.

#### **B4.08 CLEANING UP; TOWN'S RIGHT TO CLEAN UP**

Contractor must, at all times, keep the work site(s) free from accumulation of excess materials, waste materials or rubbish caused by its operations. At the completion of Work at a work site(s), Contractor must remove all Tree and landscape cuttings, excess leaves, waste materials and rubbish from and about the Service(s) as well as any tools, equipment, machinery and surplus materials or supplies. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Town may do so and the cost incurred will be charged to the Contractor. Any combustible waste materials must be removed from the work site(s) at the end of each day. Any paved areas including curbs, sidewalks or gutters which have been strewn with soil, sod waste, fertilizer, tree branches, leaves or other waste must be thoroughly swept. The Project Manager shall be the sole judge as to the adequacy of the cleanup. The Town is not required to supply areas or facilities for storage or removal of waste on-site.

Subject to the following conditions, the Contractor may be authorized to dispose of the cuttings and other debris at a site that does not require the Landscape Permit. The proposed disposal site(s) must be licensed to receive the cutting or other debris and be capable of providing the Contractor documents of disposal. Such sites and the documentation to be provided to the Town documenting disposal will be subject to the review and approval of the Town. During the Proposal evaluation process the Town may require the Proposer to submit any necessary documentation to evaluate the alternative site(s). Proposer may identify up to two (2) alternate sites. Approval of alternate sites will be at the sole discretion of the Town.

Clippings, cuttings, debris, waste material or rubbish must not be disposed of in Town-owned dumpsters, or private commercial or residential dumpsters, or thrown or washed down any storm drains.

#### **B4.09 MAINTENANCE OF TRAFFIC**

Any Work performed in the public right-of-way will require the prior approval of the appropriate public agencies. These public agencies include, but are not limited to, the Town, Miami-Dade County Public Works Department, and FDOT. Contractor will not be entitled to any additional compensation for Work performed in the public right-of-way, except for the cost of any required use of police officers, which reimbursement is addressed in the Contract.

Prior to commencing any Work the Contractor must install warning signs and any other warning and safety devices advising motorists and pedestrians of Work being performed. All signs must be temporary and must be removed at the end of the day or at the end of the completion of the Work, whichever is shorter.

The following guidelines must be followed during each maintenance operation:

**1. When no lanes are blocked:**

- a. All Contractor vehicles must have beacons and flashes on.
- b. **“MEN WORKING”** signs must be set up before starting operations.
  - On two lane roads: one (1) sign must be posted at each end of site, for each direction of travel (total of two (2) signs).
  - On four lane roads two (2) signs at each end of site (one on median and one on shoulder) for each direction of travel (total of four (4) signs).
  - Orange safety cones must be set at edges of travel lanes in the immediate area of work.
- c. Vehicles will be parked next to median at the transition area of left turn lanes. Orange traffic cones must be placed from the start of transition of the left turn lane to the front of vehicle at fifteen feet (15') intervals.

**2. When a lane is to be blocked:**

- a. No traffic lane may be blocked for any period between the hours of 7:00 to 10:00 AM and 3:30 to 7:00 PM.
- b. No traffic lanes may be blocked for a period longer than fifteen (15) minutes, unless a Maintenance of Traffic (M.O.T.) Plan has been approved at least twenty-four (24) hours in advance.
- c. A traffic lane may be blocked for up to fifteen (15) minutes, if absolutely necessary. However, the following M.O.T. must be followed:
  - Flagmen must be posted at the edge of the travel lane at least five hundred (500) feet prior to start of transition.
  - There must be a minimum of two hundred (200) feet transition with traffic cones, prior to lane closure. It is recommended that vehicle-blocking lane have a flashing arrow board.

Failure by the Contractor to comply with the Maintenance of Traffic requirements will result in the Town issuing a Stop Work Order until corrective action is taken. The Contractor will not be entitled to any additional time resulting in any delays due to issuance of a Stop Work Order.

**B4.10 STAGING AND STORAGE OF VEHICLES AND EQUIPMENT**

Work must be performed in a manner that minimizes the impact to vehicular traffic, pedestrians, homeowners, and Town park patrons and properties.

Staging and the location of all equipment used in the Work, including but not limited to trucks, trailers, mowers, and similar equipment, will be subject to the approval of the Project Manager. Where the Work requires that equipment be stored overnight on the public right-of-way, medians, swales, or other public property, the Contractor must obtain the prior written authorization from the Project Manager.

The Project Manager may, at his sole discretion, authorize the Contractor to store its vehicles and/or equipment on Town Property. Contractor should not anticipate approval of long term storage or use of Town Property. Such authorization will be granted in writing in advance of any such storage and only for short term usage. Should the

Contractor store any of its equipment or vehicles on Town property, the Town assumes no liability or responsibility for the safety of such equipment or vehicles.

#### **B4.11 ACCESS TO WATER AND UTILITIES**

The Contractor is responsible for providing all power required for the performance of the Work, including the use of generators, fuel, etc. The use of a generator is subject to the prior approval of the Project Manager and may be withheld when the Work is in a primarily residential neighborhood.

Contractor will be responsible to provide all of its employees sufficient access to drinking water at the Site(s).

The Town may at its sole discretion provide access to Town utilities and/or water should such be available at the Work site. However, the Contractor is responsible to ascertain the location and accessibility of any utility sources necessary to perform the Work. The ability of the Town to make utilities available to the Contractor must not form any basis for a change order or claim by the Contractor.

### **B5. SAFETY ISSUES**

#### **B5.01 SAFETY PRECAUTIONS**

Contractor is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor must take all necessary precautions for the safety of, and must provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Project site and other persons who may be affected thereby;
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and
3. Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

The Contractor must take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and must comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor must notify owners of adjacent property and utilities when prosecution of the Work may affect them.

The Contractor must comply with the OSHA "Federal Right to Know" Regulation, 29 CFR 1910, 1915, 1917, 1918, and 1926, regarding informing employees of toxic substances in the workplace, providing training, and emergency procedures.

Contractor must adhere to applicable environmental protection guidelines for the duration of the Work. The Contractor must comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Town, Miami-Dade County, State of Florida), which bear on the performance of the Work

The Contractor must provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration.

Contractor's duties and responsibilities for the safety and protection of the Work must continue until completion of the Contract.

#### **B5.02 MATERIAL SAFETY DATA SHEETS**

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a part of the Project must be accompanied by a Material Safety Data Sheet (MSDS) which must be obtained from the manufacturer. The MSDS must include the following information:

1. The chemical name and the common name of the substance.
2. The hazards or other risks in the use of the substance, including:
  - a. The potential for fire, explosion, corrosion, and reaction;
  - b. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance; and
  - c. The primary routes of entry and symptoms of overexposure.
3. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure.
4. The emergency procedure for spills, fire, disposal, and first aid.
5. A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information.

The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

## **B6. PLANS, DOCUMENTS & RECORDS**

### **B6.01 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS AND DATA**

Contractor must verify all dimensions, quantities and details shown on any plans, specifications or other data received from Project Manager and must notify the Project Manager of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished to the Project Manager. Contractor will not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager.

### **B6.02 REQUEST FOR INFORMATION**

The Contractor must submit a Request for Information ("RFI") where the Contractor believes that the Contract Document's specifications are unclear or conflict. All requests must be submitted in a manner that clearly identifies the specification section or drawing detail, if furnished, where clarification or interpretation is being requested. As part of the RFI, Contractor must include its recommendation for resolution. The Town must respond in writing.

The RFI process is not intended to be used to correct defective Work performed by the Contractor. Solutions to correct defective Work, including means and methods are the sole responsibility of the Contractor. Should the RFI process be utilized to correct defective Work, the Contractor may be required to reimburse the Town for any costs incurred by the Town in responding to the RFI. Such reimbursements will be taken as a deduction against any payments due the Contractor.

### **B6.03 ACCESS, REVIEW AND RELEASE OF RECORDS**

Town will have the right to inspect and copy, at Town's expense, the books, records, and accounts of Contractor which relate in any way to the Contract. The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

#### ***B6.03-1 Public Records***

Proposer affirms, by virtue of submitting its Proposal, that its Proposal is a public record, and the public will have access to all documents and information pertaining to the Proposal and the solicitation, subject to the provisions of Chapter 119, Florida Statutes. Proposer acknowledges that the Town may provide public access to or provide copies of all documents subject to disclosure under applicable law. If the Project is funded by grants, either

partially or fully, records will be made available to the granting agency in accordance with that agency's requirements, when necessary.

Proposer is responsible for claiming applicable exemptions to disclosure as provided by Chapter 119, Florida Statutes, in its Proposal by identifying the materials to be protected and providing a reason for why such exclusion from public disclosure is necessary and legal.

#### *B6.03-2 Retention and Transfer of Public Records*

Upon termination by the Town or final completion of the Contract the Contractor must, in accordance with Section 119.0701 of the Florida Statutes, transfer to the Town, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All public record stored electronically must be provided in .pdf format or another format acceptable to the Town. Any payments due the Contractor will not be made until the Town receives the public records. Failure to return such documents will result in the documents being subject Chapter 119 of the Florida Statutes

The Contractor must comply with the applicable provisions of Chapter 119, Florida Statutes and Town will have the right to immediately terminate this Contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor must retain all other records associated with this Contract for a period of five (5) years from the date of termination.

**Should the Contractor have any questions related to the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this Contract, contact the Town's custodian of public records at the Office of the Town Clerk 6601 Main Street, Miami Lakes, Florida 33014 either in writing to by telephone at (305) 364-6100 or [clerk@miamilakes-fl.gov](mailto:clerk@miamilakes-fl.gov).**

### **B7. CONTRACTOR RESPONSIBILITIES**

#### B7.01 LABOR AND MATERIALS

Unless otherwise provided herein, Contractor must provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work. All materials must be new unless otherwise specified in the Contract Documents.

#### B7.02 VEHICLES AND EQUIPMENT

Contractor must have on hand at all times clean and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All equipment must be well maintained and all hand tools must be properly sharpened to ensure no unnecessary damages to Trees or other applicable property. The Town may require the repair or replacement of equipment as reasonably necessary. Contractor must ensure that all equipment is routinely cleaned to prevent contamination of trees.

In addition to the equipment mentioned above, the Contractor must, at a minimum, own or have under long term lease/rental contract for the term of the Contract the following vehicles/equipment:

- a. 2 Trucks for the hauling and disposal of Tree cuttings, waste and debris;
- b. 2 Bucket trucks with one capable of cutting Trees 40' in height, Polecat type or similar with 360 degree trimming capabilities to avoid encroachment onto private property;
- c. Rubber tired vehicle that meets the requirements of Article D13, Pruning at Town Parks; and
- d. 1 Chipper

Contractor must list all equipment and vehicles owned or under lease or rental contract, including information on their age and whether they will be dedicated for use solely on this Project as part of its response to the

Questionnaire in the RFP. Contractor may be required during the Proposal evaluation process to provide supporting documentation.

### **B7.03 SUPERVISION OF THE WORK**

Contractor is responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract. Project Management includes, but is not limited to: obtaining Proposals from subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that subcontractors comply with the requirements of the Contract; performing the Work in accordance with the Contract to the satisfaction of the Project Manager; paying all subcontractors; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion, as applicable.

Contractor must have a competent English speaking supervisor ("Supervisor") who will represent the Contractor in the field and all directions given to the Supervisor will be as binding as if given to Contractor. Contractor will provide properly licensed personnel where such personnel are required by any rule, regulations, or law. Contractor and the Supervisor will give efficient and sufficient supervision to the Work, using their best skill and attention to ensure the Work is performed in accordance with the Contract Documents.

The Project Manager and the Contractor as necessary during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor must publish, keep, and distribute minutes and any comments thereto of each such meeting.

### **B7.04 TOWN LICENSES, PERMITS AND FEES**

In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee the Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Contract are as follows:

1. Contractor must have and maintain during the term of this Contract all appropriate Town licenses. Fees for which must be paid in full in accordance with the Town's Fee structure for such licenses. THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.
2. During the performance of this Contract there may be times when the Contractor will be required to obtain a Town permit for such Work. It is the responsibility of the Contractor to ensure that he has the appropriate Town permits to perform such work as may become necessary during the performance of the Work. Any fees related to Town required permits in connection with this Contract will be the responsibility of the Contractor and will be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

### **B7.05 TAXES**

Contractor must pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

Contractor must include all sales and other taxes for which it is liable in its Proposal price.

### **B7.06 REMOVAL OF UNSATISFACTORY PERSONNEL**

Contractor must at all times enforce strict discipline and good order among its employees and subcontractors at the Project(s) site(s) and must not employ on any Work any unfit person or anyone not skilled in the Work to which they are assigned.

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor



must respond to the Town within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town will make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

#### **B7.07 COMPLIANCE WITH APPLICABLE LAWS**

The Contractor must comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

#### **B7.08 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, & ADA**

Contractor will not unlawfully discriminate against any person, will provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contract. Contractor will comply with all applicable federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

#### **B7.09 PURCHASE AND DELIVERY, STORAGE AND INSTALLATION**

All materials must be F.O.B. delivered and included in the cost of the Work. The Contractor is solely responsible for the purchase, delivery, off-loading and installation of all equipment and material(s). Contractor must make all arrangement for delivery. Contractor is liable for replacing and damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, FDOT, Miami-Dade County, and Town rules and regulations.

No materials will be stored on site without the prior written approval, using the appropriate Town form, by the Project Manager. The Town's Forms are available at the website address identified in Article B8.

### **B8. PAYMENT PROCESS**

#### **B8.01 COMPENSATION**

Contractor shall be paid for actual Work performed based on the completion of Phases or Programs, unless otherwise stated in a Work Order. The Town reserves the right to prorate the compensation due to the Contractor based on Form PP submitted with Contractor's Proposal and actual number of Trees trimmed. For Work Orders issued containing Work outside the then-current Phase or Program, the compensation due to Contractor will be based on the unit price for the DBH and the type of pruning performed as contained in Contractor's price proposal.

#### **B8.02 PAYMENTS**

Payments must be based on the invoices submitted on a monthly basis for Work performed in the previous month. The Town will not issue any payments based on a statement of accounts. Any reductions in the amount paid to the Contractor must be done in accordance with Article B8.03, Invoicing, of the Contract. All payments must be made in accordance with the State of Florida Local Government Prompt Payment Act.

#### **B8.03 INVOICING**

Contractor must invoice upon completion of a Designated Area or Annual Program at the following completion intervals: 25%; 50%; 75%; and 100%, unless otherwise approved in writing by the Project Manager. The invoice must be signed by the Town Arborist with a statement that the Arborist is certifying that the invoiced Work meets the standards and requirements established in the Contract.

Contractor must use the Town's Tree Trimming Invoice Form ("Invoice") for the payment requests. Failure to use the Invoice form and full complete the required information will delay payment. Payments will not be made based on statements of accounts.

The Invoice form will be made available on the Town's website at [http://www.miamilakes-fl.gov/index.php?option=com\\_content&view=article&id=149&itemid=358](http://www.miamilakes-fl.gov/index.php?option=com_content&view=article&id=149&itemid=358).

Contractor must include the following information with each invoice:

- Name and address of Contractor
- Contract Number
- Date of Invoice
- Invoice number (cannot be repeated)
- Timeframe covered by the invoice
- Work Order number (for additional services only)
- Location of Work performed (based on Work Plan)
- Specific Trees pruned, including:
  - Tree by GPS location or Tree number (Tree numbers to be used where it is provided by the Project Manager)
  - Two digital color photographs of each Tree, one prior to pruning and another one after pruning. Photographs will be in digital format, i.e. .jpeg, and submitted to the Town in a method, order and format acceptable by the Town.
- Trees pruned by price category, including:
  - Number of Trees, unit price, and extended price
- Additional Services or costs allowed by the Contract
- Total Value of Invoice

When Contractor invoices for an Additional Service, Contractor must include receipts for all materials purchased during the performance of Additional Services, when applicable.

#### **B8.04 REIMBURSABLE EXPENSES**

Copies of receipts for all materials purchased for the Work. All reimbursable expenses must receive prior written approval from the Project Manager before the expense is incurred. Reimbursable expenses must only apply to Additional Work issued under Articles C8, Additional Work, and C9, Work Orders, and for permits issued for M.O.T. Reimbursable expenses must not be reimbursed to the Contractor without evidence that the requested reimbursement amount does not exceed the direct cost to the Contractor.

#### **B8.05 LINE ITEM PRICING**

Line item pricing must include all costs, both direct and indirect to perform the Work except for those costs specifically identified as reimbursable costs as stated in Article B8.06. This includes any incidental costs associated with the Work under a Work Order not specifically stated, i.e., the installation of drainage may require backfill and patching, whether permanent or temporary.

The Price Proposal Form contains line item prices and the Proposer is required to submit prices for all line items. Where a Proposer fails to provide line item prices for all line items the Proposal will be rejected as non-responsive.

#### **B8.06 ADDITIONAL LINE ITEM PRICING**

The Town reserves the right to request price quotes for additional items not contained in the initial award. Should the Town add any additional line items the Town will do so through the Change Order process set forth in Article B9.02.

#### **B8.07 SET-OFFS, WITHHOLDING, AND DEDUCTIONS**

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

1. Any amount of any claim by a third party;

2. Any Liquidated Damages; and/or
3. Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town will notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, will be paid to the Contractor in accordance with the Local Government Prompt Payment Act

## **B9. CONTRACT MODIFICATIONS & DISPUTE PROCESS**

### **B9.01 FIELD DIRECTIVE**

The Project Manager may at times issue Field Directives to the Contractor based on visits to the Project Site. Such Field Directive(s) will be issued in writing and the Contractor is required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor must, within 48 hours, notify the Project Manager that the work covered by the Field Directive is outside the scope of the Work. At that time, the Field Directive may be rescinded by the Project Manager or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor may notify the Project Manager that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive, in accordance with the requirements of Article B9.06. At no time will the Contractor refuse to comply with the Field Directive. Failure to comply with the Field Directive may result in a determination that the Contractor is in default of the Contract.

### **B9.02 CHANGE ORDERS**

Without invalidating the Contract Documents and without notice to any Surety, the Town reserves and has the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete the Work in a manner satisfactory to the Town. The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract, and which are within the general scope of the Contract Documents, and all such changes will be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

Any changes to the Contract must be contained in a written Change order, using the Town's Change Order Form, executed by the both parties. However, under circumstances determined necessary by the Town, a Change Order may be issued unilaterally by Town.

In the event a satisfactory adjustment cannot be reached and a Change Order has not been issued or time is of the essence, the Town reserves the right, at its sole option to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work.

Where the Town directs the Contractor to proceed on a time and materials basis, Contractor must maintain detailed records of all labor and material costs for review by the Town.

For all Change Orders the Contractor will be entitled to a combined profit and overhead rate for Change Orders that will not be in excess of ten (10%) percent inclusive of all direct/indirect costs including labor, material, and equipment costs, unless the Procurement Manager determines that the complexity and risk of the Change Order work is such that an additional factor is appropriate.

The final amount to be paid to the Contractor for Change Order Work is subject to negotiation between the Town and the Contractor.

Failure by the Contractor to proceed with Change Order Work when so directed by the Town Manager or designee may result in the Contractor being found in default of the Contract.

Contractor must utilize the Town's standard requests for change orders and change order forms unless otherwise specifically approved by the Town's Procurement Manager. The Town's Forms are available at the website address identified in Article C8.03.

#### B9.03 FORCE MAJEURE

Should any failure to perform on the part of Contractor be due to a condition of Force Majeure as that term is interpreted under Florida law, then, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a Force Majeure condition, the Contractor must request a time extension from the Town within two (2) working days of said Force Majeure occurrence. Any time extension will be subject to mutual agreement and will not be cause for any claim by the Contractor for extra compensation unless additional services are required by the Town.

A Force Majeure event **does not include** inclement weather except that which is permitted by Florida law and does not include the acts or omissions of Subcontractors or suppliers.

#### B9.04 EXTENSION OF TIME

Any reference in this Article to the Contractor will be deemed to include suppliers, and permitted Subcontractors, whether or not in privity of contract with the Contractor for the purpose of this Article.

If the Contractor is delayed at any time during the performance of the Work beyond the Contract Time, Notice to Proceed and/or Work Order by the neglect or failure of the Town or by a Force Majeure, then the time frame set forth in the Contract Documents or Work Order will be extended by the Town subject to the following conditions:

1. The cause of the delay could not have been anticipated by the Contractor by reasonable investigation before performing the Work;
2. The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed; and
3. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

A delay meeting all the conditions of the above, will be deemed an Excusable Delay.

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay must be made within five (5) calendar days after the time when the Contractor knows or should have known of any cause for a specific event, for which it may claim an extension of time and must provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Contractor to furnish such additional information or documentation, as the Project Manager will reasonably deem necessary or helpful in considering the requested extension.

The Contractor will not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager will endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor is obligated to continue to perform the Work required

regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike or interference of public origin which may delay the Project, the Contractor must promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same was granted. The Town must be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction has been obtained and move to dissolve the same or otherwise, as the Town may deem proper.

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Article C9.05, Excusable Delay, Non-Compensable, the Contractor will not be entitled to a separate extension for each one of the causes, only one period of extension will be granted for the delay.

Any extension of time granted by the Town will be effectuated using the procedure set forth in Article B9.02, Change Orders, of the Contract.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, will not waive the Town's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

#### **B9.05 EXCUSABLE DELAY, NON-COMPENSABLE**

Excusable Delay is either (i) caused by circumstances that could not be foreseen and are beyond the control of Contractor, its subcontractors, or suppliers, or is (ii) caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the Town. Then Contractor will be entitled only to a time extension and no compensation for the delay.

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor must document its claim for any time extension as provided in Article B9.04.

Failure of Contractor to comply with Article B9.04, as to any particular event of delay will be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

#### **B9.06 CLAIMS**

Contractor will only be entitled to submit a claim after submitting its request for additional compensation or time in accordance with Articles B9.02 and B9.04 of the Contract and the request(s) have been denied or the Contractor does not agree with the decision of the Town.

Any claim for a change in the Contract time for completion of any Work, the Contract Term, or Contract price must be made by written notice by Contractor to the Town representatives identified in Article B2.18, Notices, within five (5) calendar days from the date of the event giving rise to the claim, stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation must be provided unless the Procurement Manager allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes will be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract will be waived if not submitted in strict accordance with the requirements of this Article.

The Town may require the Contractor to submit its claim utilizing a specific format or forms to facilitate the Town's evaluation of the claim. The Town at its sole discretion may require that additional documentation or information be provided by the Contractor to assist in its review and evaluation of the claim.

The Contract time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made as provided in this Article. Such delays include, but are not limited to, acts or neglect by any separate contractor employed by Town, fires, floods, labor disputes beyond the control of the Contractor, epidemics, abnormal weather conditions (if applicable), or acts of God.

The Contractor will not be entitled to an increase in the Contract price, payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be it reasonable or unreasonable, foreseeable or unforeseeable, avoidable or unavoidable. Contractor will only be entitled to an extension of the Contract Time for completion of the Work, as the sole and exclusive remedy for such resulting excusable delay.

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the Town or any of its representatives and the Contractor agrees that any such claim will be compensated solely by an extension of time to complete performance of the Work due to an Excusable Delay as defined in Articles B9.04, and Article B9.05. The Contractor alone specifically assumes the risk of such delays, including, without limitation: delays in processing or approving any submittals to the Town or by the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor will not receive monetary compensation for Town delay(s).

Failure of Contractor to comply with this Article as to any particular event of claim will be deemed conclusively to constitute a waiver of any and all claims resulting from that particular event.

#### **B9.07 DISPUTES AND MEDIATION**

Contractor understands and agrees that all disputes between it and the Town upon an alleged violation of the terms of this Contract by the Town must be submitted for resolution in the following manner.

Initial effort(s) should be made by the Contractor to resolve any issues with the Project Manager or other Town representative(s) it works within in the coordination and performance of the Work.

Should the initial efforts of mediation not end in a mutual resolution then the Contractor must notify in writing the Procurement Department as identified in Article B2.18, Notices, of the claim or dispute. The Contractor must submit its dispute in writing, with all supporting documentation, to the Town's Procurement Manager. Upon receipt of said notification the Procurement Manager will review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute the Contractor must submit their dispute in writing within five (5) calendar days of the written finding being issued by the Procurement Manager to the Town Manager. Failure to submit such appeal in the stated timeframe of the written finding will constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager will review the issues relative to the claim or dispute and issue a written finding.

Appeal to the Town Manager for resolution is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the Contractor be entitled to compensation hereunder, the Town Manager's decision may be subject to approval by the Town Council. Contractor will not be entitled to seek judicial relief unless:

1. it has first received Town Manager's written decision, approved by the Town Council if applicable, or
2. a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired in an instance where Town Manager's decision is subject to Town Council for approval; or

3. Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Term, the parties will participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator will be shared on a 50/50 basis. Should the claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

#### **B9.08 CONTINUING THE WORK**

Contractor must continue to perform all Work under the Contract Documents during all disputes or disagreements with Town, including disputes or disagreements concerning a request for a Change Order and the Work must not be delayed or postponed pending resolution of any disputes or disagreements. Failure to continue the Work will place the Contractor in default of the Contract.

#### **B9.09 FRAUD AND MISREPRESENTATION**

The Town may terminate this Contract or any other contracts with the Town with any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the Town through fraud, misrepresentation or material misstatement. Such person, individual, corporation, entity, or affiliate will be responsible for all direct or indirect costs associated with termination or cancellation.

#### **B9.10 STOP WORK ORDER**

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order will be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town will either:

1. Cancel the Stop Work Order; or
2. Terminate the Work covered by such order as provided in Article B10.03, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor must resume the Work without compensation to the Contractor for such suspension other than extending the time to complete any Work under the Contract or extending the Contract Term to the extent that, in the opinion of the Project Manager, the Contractor may have been delayed by such suspension. In the event the Project Manger determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor, or any other reason caused by Contractor's fault or omission, the Contractor will not be entitled to an extension of time or Contract Term or (Time) as a result of the issuance of a Stop Work Order.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, Excusable Delay, and will not give rise to a claim for compensable delay.

#### **B9.11 MATERIALITY AND WAIVER OF BREACH**

Town and Contractor agree that each requirement, duty, and obligation set forth in the Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Contract Documents will not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of the Contract Documents.

#### **B9.12 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN**

In the event the Contractor may be deemed to have a cause of action against the Town, no action will lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Town or its agents, unless such action is commenced within six (6) months after the date of issuance of a final payment under the Contract, or if the Contract is terminated under the provisions of the Contract, unless such action is commenced within six (6) months after the date of such termination by the Town.

#### **B9.13 NINETY DAY CONTRACT EXTENSION**

The Town reserves the right to extend the Contract for up to ninety (90) calendar days beyond the Contract term, inclusive of any Options to Renew exercised by the Town. In such event, the Town will notify the Contractor in writing of such extensions.

### **B10. EARLY TERMINATION & DEFAULT**

#### **B10.01 CONTRACTOR DEFAULT**

##### *B10.01-1 Event of Default*

An Event of Default ("Default") means a breach of the Contract by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, includes but is not limited to, the following:

1. The Contractor has not performed the Work in a timely manner;
2. The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
3. The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services, materials, or supplies provided to Contractor;
4. The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
5. The Contractor has failed to obtain the approval of the Town where required by the Contract Documents;
6. The Contractor has failed in the representation of any warranties stated herein; or
7. When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work.

##### *B10.01-2 Notice of Default-Opportunity to Cure*

In the Event of Default, the Town may, at its sole discretion, notify the Contractor of its Default, specify the basis for such Default, and provide the Contractor with an opportunity to cure within a time frame specified by the Town. The Town reserves the right to terminate the Contract should Contractor fail to cure its Default within the specified time frame. Regardless of whether the Town issues such notification, the Town retains the right to terminate the Contract for Default under Article B10.01-3 and seek all remedies available at law.



The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Town Manager or designee may also suspend any payment or part thereof or order a Work stoppage until such time as the issue(s) concerning compliance are resolved.

#### *B10.01-3 Termination for Default*

Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Contract. Contractor understands and agrees that termination of this Contract under this Article will not release Contractor from any obligation accruing prior to the effective date of termination.

In the event of termination by the Town Manager or designee, the Town Manager or designee may immediately take possession of all applicable documentation and data, material, equipment, and supplies to which it is entitled to under the Contract or by law.

Where the Town erroneously terminates the Contract for default, the terminations will be converted to a Termination for Convenience, and the Contractor will have no further recourse of any nature for wrongful termination.

#### **B10.02 TERMINATION FOR CONVENIENCE**

In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice will state the date upon which Contractor must cease all Work under the Contract, and if applicable vacate the Project(s) site(s).

Upon receipt of such notice, unless otherwise directed by the Town, the Contractor must stop all Work on the date specified in the notice ("the Effective Date") and must:

1. Take such action as may be necessary for the protection and preservation of the Town's materials and property;
2. Cancel all cancelable orders for materials and equipment;
3. Remove all materials, supplies or equipment that may be used by the Contractor on other work;
4. Assign to the Town and deliver to the Town, at a site(s) specified by the Town, any non-cancelable orders for materials and equipment that can not otherwise be used by the Contractor on other work;
5. Take no action that will increase the amounts payable by the Town under the Contract Documents; and take reasonable measures to mitigate the Town's liability under the Contract Documents; and
6. Turn over all documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, to the Town. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Contractor for the actual cost, or the fair and reasonable value, as substantiated by invoice documentation, of any non-cancellable material(s) and equipment that cannot be used elsewhere by the Contractor in the performance of its work.

In no event, will any payments under this Paragraph exceed the maximum cost set forth in the Contract and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the

Contractor. Contractor will not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

#### **B10.03 REMEDIES AVAILABLE TO THE TOWN**

The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

#### **B10.04 FUNDS AVAILABILITY**

Funding for this Contract is contingent on the availability of funds and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

### **B11. SUBSTITUTIONS**

Substitution of any specified material or equipment requires the prior written acceptance of the Project Manager. It is the sole responsibility of the Contractor to provide sufficient information and documentation to the Project Manager to allow for a thorough review and determination on the acceptability of the substitution. Approval of a substitution does not waive or mitigate the Contractor's sole responsibility to meet the requirements of the Contract Documents. The Town may require an adjustment in price based on any proposed substitution.

The Contractor may request the Town to approve substitution where the specified materials are not available. Such requests must be submitted in writing to the Project Manager in advance with sufficient information to evaluate the substitution. The Contractor must provide the substitute materials plant designation, type, grade, quality, and size. Acceptance of substitutions will be at the sole discretion of the Town. The Town may require an adjustment in price based on any proposed substitution.

### **B12. INSPECTION OF THE WORK**

The Project Manager, other Town representatives, and inspectors representing the Town and other public entities having jurisdiction over the Work must at all times have access to the Work

Should the Contract Documents, or any laws, ordinances, or any public authority require any of the Work to be tested, Contractor must provide timely notice of readiness of the Work for testing and timely notice must be given of the date fixed for such testing so that the appropriate representatives of the Town, DERM, or other entities can be present for such testing. Contractor will be responsible for making arrangements for all tests and for all associated costs for all required testing. The original copies of all testing reports are to be sent directly to the Project Manager by the testing firm, with a copy to the Contractor.

The Town, at its sole discretion may conduct testing in addition to the required testing. In such instances the Town will pay all testing costs unless the tests determine that the material, Work, or equipment is not compliant with the requirements of the Contract Documents. In such instances the Contractor must reimburse the Town for all incurred testing costs and the Contractor will be responsible for any costs associated with re-testing to ensure compliance.

Inspectors have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager.

**END OF SECTION**

## **SECTION C. SPECIAL TERMS AND CONDITIONS**

### **C1. SCOPE OF WORK**

Contractor must provide all personnel, equipment, tools, labor, supervision, and other items and services, both necessary and incidental to ensure that the Tree Trimming Services are performed in a manner that will maintain healthy Trees and present a clean, neat, and professional appearance. All Work must be performed in accordance with the requirements of the Contract Documents.

Contractor may be required to perform the following tree maintenance activities, as further defined in Section D herein, throughout the Town:

- a. Tree Pruning
- b. Tree Removal
- c. Tree Planting
- d. Crew Rental
- e. Emergency Response
- f. Clearance Pruning
- g. Grid Pruning Program
- h. Tree Watering
- i. Small Tree Care
- j. Palm Trunk Skinning
- k. Root Pruning
- l. Specialty Equipment Rental
- m. Arborist Services/Inspection
- n. Foliar and Pesticide Treatments (if necessary)

### **C2. CONTRACT TERM**

The Contract will become effective on the date it is executed by both parties and will remain in effect for a period of three (3) years from the date of execution by the Town or until the Contract value has been expended. No Work shall commence until a written Notice to Proceed is issued.

### **C3. CONTRACT TERM EXTENSION INCENTIVE**

As an incentive to fully meet Town service expectations, the Contractor will be granted a six (6) month extension of the Contract term, beyond three (3) years, or thirty-six (36) months, for each Phase the Contractor completes with a total average of one hundred fifty (150) trees trimmed per week at a ninety eight percent (98%) acceptable trim rate. The Contract Term Extension Incentive provision will become effective immediately upon the commencement of the Work.

Example: Phase II has 2646 Trees. If Contractor starts the Work on October 21, 2017 and completes the Work on February 22, 2018, and the Work is completed with a 98% acceptable trim rate, then Contractor has completed the Phase with an average of 150 trees trimmed per week and will be granted six (6) month extension to the contract for a total of forty-two (42) months.

Each extension will be effectuated through the procedure set forth in Article B9.02, Change Orders. The maximum term of the Contract, excluding the extension option provided for in Article B9.13, will not exceed five (5) years or sixty (60) months.

#### **C4. EMERGENCY RESPONSE TIME**

The Contractor shall be required to provide emergency on-call response to Prune Trees that present a hazardous condition or have sustained damage as a result of storms or other reasons. Emergency calls may occur at any given time. The Contractor will be provided with locations and the work to be done at each location via telephone from a Town authorized representative. Contractor must respond within one (1) hour during regular working hours and within two (2) hours after regular working hours.

Contractor shall be required to provide a twenty-four (24) hour emergency phone number or the names of at least ten (10) contact individuals upon execution of the Contract. Should the contact persons or their phone numbers change during the course of the contract, Contractor must notify the Town of those changes within two (2) calendar days.

Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines or any utility lines the Contractor shall be required to notify the responsible utility company.

Work performed under the emergency provision of this contract shall be paid for on a crew hour basis. This shall include all labor, tools equipment, disposal fees and necessary materials.

#### **C5. SUPERVISION OF THE WORK**

In addition to the requirements of Article B7.03, Supervision of the Work, the following provisions apply to Work performed under this Contract:

##### **C5.01 FIELD SUPERVISOR**

Contractor must have a competent English-speaking Field Supervisor that is certified by ISA or similar certification. The Field Supervisor shall be responsible for the day-to-day management of the Work for the Contractor. The ISA certification may be substituted with three (3) years of field supervisory experience in work of a similar size, scope, and complexity and/or related certifications. Such substitution must be approved in advance by the Project Manager.

All directions given to the Field Supervisor by the Project Manager will be binding on the Contractor as if they were given directly to the Contractor. Supervisor must be fully trained and aware of all established standards for Tree trimming as well as rules, regulations, and standards related to this Contract. The Field Supervisor must comply with all directions of the Arborist in the pruning of the Trees.

##### **C5.02 ARBORIST**

Contractor is required to have on staff an Arborist certified by the International Society of Arboriculture ("ISA") with a minimum of three (3) years' experience on projects of similar size, scope, and complexity. The Arborist must be on site for a minimum of eight (8) hours per week. The Arborist shall visit the Work site(s) daily to ensure compliance with the standards required in the Contract Documents. The Arborist will be the sole individual responsible for the decision on behalf of the Contractor for Tree Trimming requirements, including the removal or invasive species in lieu of Trimming. The Field Supervisor shall take all directions on Tree Trimming from the Arborist.

#### **C6. SCHEDULING**

Based on the accepted Work Plan the Contractor will prepare an initial two week schedule to submit for review and acceptance by the Project Manager. The initial two week schedule must be submitted with the initial submittal of the Work Plan. Each week, the Contractor must update the two week schedule based on

the performance during the previous week, which shall be subject to the review and acceptance of the Project Manager. Contractor must maintain a two week schedule at all times, unless otherwise approved in writing by the Project Manager.

## **C7. QUALITY CONTROL PLAN**

Within fourteen (14) calendar days from the date of Contract execution, the Contractor must provide a Quality Control Plan ("QCP") to the Project Manager for review and acceptance. The basic premise of the QCP is that the Contractor is responsible for quality control. All methods, procedures, and forms shall support this premise. The QCP must clearly identify how the Contractor will ensure that the Work is performed to the standards established in the Contract Documents. The QCP must provide for the Arborist checking the daily progress of the Work at each location where Work is being performed. These checks by the Arborist shall be in addition to the requirement for daily supervision under Article C5.02. At a minimum the QCP must address:

- a. An inspection system that is tailored to the different types of areas and Work covered under the Contract.
- b. A system for identifying and correcting deficiencies in the quality of the Work before the level of performance becomes unacceptable and/or Town inspectors or the Project Manager point out the deficiencies.
- c. A system to ensure that the Contractor's employees are notified of deficiencies, that the noted deficiencies are corrected (if possible); and that the employees are counseled/retrained as necessary to ensure that deficiencies do not recur.
- d. A system that provides the Project Manager access to all Contractor documentation, reports, and files (to include any forms on which quality control inspections are documented) with respect to Contractor quality control inspections and any corrective action taken.
- e. The identity of all personnel who will be performing QCP inspection by name, and title. The person who actually performed the Work shall not perform Quality Control inspections.
- f. A written description of methodology to be used for notifying residents prior to commencement of tree work. (Door hangers are permitted in the Town.)
- g. The methodology in which the firm will handle complaints from the public and damage to public and private property.
- h. A written description of the firm's plan to report greenwaste generated and the method for its disposal.

Where the QCP is returned by the Project Manager for revisions or corrections, the Contractor shall resubmit the QCP within seven (7) calendar days of receipt from the Project Manager, with the requested revisions or corrections. The Contractor will not implement any changes to its approved QCP prior to review and acceptance by the Project Manager

The Contractor must conduct Quality Control inspections using qualified personnel (i.e. – personnel knowledgeable of all technical aspects of the Work, which would allow identification/discovery of improperly performed services) and provide documentation of the results to the Project Manager on a monthly basis. The documentation must be signed and dated by the inspector at the time the inspection is completed. Where the inspector is anyone other than the Arborist, the Arborist will also sign the inspection report acknowledging that the Arborist has reviewed inspection report. All completed inspection reports must be submitted to the Project Manager.

## **C8. ADDITIONAL WORK**

The Town may request the Contractor to perform additional work for which prices are not established in the Contract. In such circumstances, the Town will provide a written request to the Contractor that will include the work to be performed and the information to be provided by the Contractor. Contractor will provide the Project Manager with a Work Order Proposal in accordance with Article C9 below. Upon acceptance of the Work Order Proposal, which may be revised through negotiations, the Project Manager shall issue a Work Order for the Contractor to perform the additional Work.

Any Specialty Pruning Work will be issued by Work Order as Additional Work.

## **C9. WORK ORDERS**

The Town shall issue a Work Order for all Additional Work to be performed by the Contractor. Upon receipt of a request for Additional Work from the Project Manager, the Contractor shall prepare a Work Order Proposal. Work Order Proposals shall use a time and materials basis unless otherwise approved by the Project Manager. The Work Order Proposal must include the following:

- A detailed description of the work to be performed, and if required the method(s) to be used in performing the work.
- Information on materials to be used (including any MSDS data sheets)
- Number of hours, hourly rate, and total cost per classification of personnel to be used based on the hourly rates contained in the contract. (should a classification or hourly rate not exist, the additions will be subject to the approval of the Project Manager and will be added to the Contract through the Change Order process set forth in Article B9.02).
- Timeframe for completion of the work from the issuance of a Notice to Proceed by the Town.
- Description and cost of any specialized equipment to be used for the work. (Such cost is only permissible where the Contractor must rent the equipment. Cost will be reimbursed at actual cost to the Contractor.)

## **C10. INSPECTIONS**

All Town Trees must receive routine maintenance and periodic inspections. Any issue pertaining to the health or appearance of any Town Tree that is visible during an inspection, but not considered hazardous, must be reported to the Town for direction and/or further evaluation. In addition to issues revealed during periodic inspections, Contractor's Work Crew must notify the Town of any issue pertaining to the health or appearance of any Town Tree if the issue is clearly visible while performing maintenance in the area. Proper notification is to be made in writing to the Project Manager. Issues considered to be hazardous must be communicated to the Project Manager within twenty-four (24) hours of discovery. Contractor must notify the Town of nonhazardous issues as early as practicable from the time of discovery, with the condition that the Town receives notice with enough time to address the issue before it becomes hazardous.

The Town will perform periodic announced and unannounced inspections to check the performance of the Work for compliance with the Contract requirements. At the completion of the Work in a specific section of the Plan or Work Order the Town shall perform a scheduled inspection at the site with the Contractor's Field Supervisor and Arborist prior to the submission of an invoice.

## **C11. LIQUIDATED DAMAGES**

The Contractor is obligated and guarantees to perform the Work to in accordance to the standards established in the Contract Documents. In the event the Project Manager determines that the Work was not

performed to the standards established in the Contract, the Town may take the following action, which is hereby agreed upon as liquidated damages and not as a penalty:

- Where possible the Town shall direct the Contractor to correctly prune the Tree(s) in accordance with the established standards at no additional cost to the Town within 48 hours of notification. Failure to prune the tree within 48 hours shall result in a \$250 inspection fee assessed.
- Where it is not possible to correct the pruning of the Tree(s) to the established standards the Town shall deduct the applicable cost of the pruning of the Tree(s) based on the Contract price for the type of pruning and the DBH in addition to a \$250 inspection fee.
- Where the pruning of the Tree(s) evidences the Tree(s) is dying or has sustained stress or damage that reflects a reduced lifespan within two (2) years of Pruning, the Town may direct the Contractor to replace the Tree(s) at no cost to the Town, with a similar Tree(s) in addition to a \$250 inspection fee.
- For each incident of Tree abuse the Town shall deduct \$250.00 from any payment(s) due the Contractor. This includes, but is not limited to, incorrect pruning, lion tailing, hat racking, girdling, spiking, over pruning a stressed Tree, pruning that leads to infestation or disease, cambium layer penetration, or damage to or excessive cutting to the root system.
- For each instance where the Contractor has improperly disposed of Tree cuttings, waste materials, or debris in violation of Article B4.08, \$250.00 shall be deducted from any payments due the Contractor.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the Town, the Contractor shall pay the difference upon demand by the Town. Should the Contractor fail to compensate the Town for any liquidated damages, the Town shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

## **C12. WARRANTY**

Contractor warrants that all Work will be performed in accordance with the requirements of the Contract Documents. Where the Town determines that the Work has not been performed in accordance with the requirements of the Contract, the Contractor must correct the Work at no cost to the Town and/or the Town may reduce payments in accordance with Article C11, Liquidated Damages.

## **C13. RESTRICTION ON PARKING**

Where parking areas must be blocked off to perform the Work, the Contractor can post "No Parking" notices or similar signs forty-eight (48) hours in advance of the Work. Barricades may also be used to block the spaces the day before the Work is to be performed.

## **C14. TRAINING**

Contractor must provide all required training to its employees performing Work under this Contract. Employees must be provided training commensurate with the Work they will be performing. At a minimum, employees should receive the following training:

- Training on all tools used in the Work
- Work practices

- OSHA safety procedures and equipment
- ISA and ANSI A300 Standards and requirements

Contractor must provide proof of training of the workers who will perform Work upon the request of the Project Manager. Where the Contractor replaces or adds workers to perform Work, the Contractor must provide proof of training prior to the worker performing any Work. The Project Manager may direct the Contractor to remove any worker for whom the training documentation has not been provided.

## **C15. REPORTS**

Each month, the Contractor must submit a report to the Project Manager monthly for Work performed in a Designated Area identifying the Work performed in the previous month. The report must be signed by the Arborist. The format of the report shall be subject to the approval of the Project Manager and at a minimum must include:

- a. Trees trimmed, including GPS coordinates or Tree numbers (Tree numbers will be used where the numbers have been provided by the Project Manager);
- b. Type of trimming performed;
- c. Any special information concerning the condition of the Trees; and
- d. Digital photographs as required under Article B8.03 on a USB or other acceptable digital format
- e. Additional Services provided

## **C16. TREE INVENTORY SOFTWARE**

The Town uses ArborPro Tree Inventory software as a tool to manage the Town's Tree Inventory. As the application is improved, the Town anticipates the application may transition to a cloud based software allowing crews to receive and provide real time information about tree care services. Should the Town elect to use such software during the Contract Term, the Contractor agrees to also use this software during the performance of the Work. Contractor, at its sole expense, will be responsible for the purchase of any software licenses or electronic devices required to implement use of said software in the performance of the Work.

**END OF SECTION**



## **SECTION D. PERFORMANCE WORK STATEMENT**

### **D1. OBJECTIVES**

#### OBJECTIVES

The Town estimates that it has 14,500 Trees that will require periodic pruning services over a three-year period.

Tree Trimming and pruning objectives include, but are not limited to:

- Improve structural strength and reduce failure potential (including dead branch removal)
- Prevent or mitigate a pest problem
- Improve aesthetic characteristics
- Provide clearance for pedestrians, vehicles, and structures
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Reduce maintenance costs (i.e., when applied to young Trees)
- Influence flowering and fruiting of some species

In addition, the Contractor may be required to perform the following tree maintenance activities throughout the Town:

1. Tree pruning
2. Tree removal
3. Tree planting
4. Crew rental
5. Emergency response
6. Clearance pruning
7. Grid pruning program
8. Tree watering
9. Small tree care
10. Palm trunk skinning
11. Root pruning
12. Specialty equipment rental
13. Arborist services/inspection
14. Foliar and pesticide treatments if necessary

### **D2. TREE TRIMMING/PRUNING STANDARDS**

All tree pruning shall comply with good arboreal practice for the particular species of trees and shall be consistent with the pruning standards and best management practices as adopted by the International Society of Arboriculture. The Contractor shall also meet the requirements of the American National Standards, Z133-1-2006, entitled "Safety Requirements for Arboricultural Operation," published by the American National Standard Institute, Inc., 1430 Broadway, New York, New York 10018.

Unless otherwise specified the following standards, and any subsequent updates or revisions, shall be used in the performance of the Work. Where there is a conflict in these standards the Contractor shall bring the conflict to the attention of the Project Manager who shall make the binding determination as to which standard(s) shall apply.

- ANSI A300-2008
- ANSI Z133.1 Safety Requirements for Arboricultural Operations
- ANSI Z133 Safety Requirements
- OSHA Electrical Power Standard 1910.269
- ISA Best Management Practices: Tree Pruning
- National Arborist Association Pruning Standards

### **D3. ANNUAL PRUNING PROGRAM**

The Annual Pruning Program (“APP”) will be a comprehensive, proactive plan for tree trimming services throughout the Town, which will be developed as a collaborative effort of the Contractor(s) and the Town. It includes routine tree pruning per pre-designed districts, grids or prune routes (“Designated Areas”) on a set cycle to include all trees. Pruning will include structural pruning, crown raising, and crown cleaning in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices), and the ANSI A300. The intent of this contract is to have all designated Trees pruned a minimum of one time by the end of the 3-year contract period.

The Town currently possesses information on approximately 14,000 Trees in the Town, which is provided in Appendix A. Maps reflecting the location of the 14,000 Trees is provided for information purposes only. The Town anticipates it will add additional Trees during the term of the Contract as new annual tree plantings are completed.

All work to be done under the APP will be divided and completed in three phases: Fall-Summer 2017, Fall-Summer 2018 and Fall-Summer 2019. Phase I (map and inventory is exhibit 1) shall be completed within three hundred (300) calendar days between October 1, 2017 and August 30, 2018. Phase II (map and inventory is exhibit 2) shall be completed within three hundred (300) calendar days between October 1, 2018 and August 30, 2019. Phase III (map and inventory is exhibit 3) shall be completed within three hundred (300) calendar days between October 1, 2019 and August 30, 2020. If the Contract is extended, the program continues beginning with Phase I again. The Project Manager may amend the APP schedule as necessary with the goal of completing each phase within each of the Town’s fiscal years.

At its option, the Town may approve an APP of its palm trees (map and inventory is Exhibit 4) and aesthetic pruning of trees on major corridors (map and inventory is Exhibit 5) (NW 154 Street, Town Center-Miami Lakeway North, NW 82 Avenue, NW 87 Avenue, and NW 67 Avenue). If assigned to the Contractor, the Contractor shall have thirty (30) days to complete each of the programs.

The Town reserves the right to reduce quantities or amend the pruning programs as necessary.

### **D4. WORK PLAN FOR DESIGNATED AREAS**

Initially the Town will provide the Contractors with Designated Area(s) for Pruning, with each Designated Area having a combined minimum total of 100 Trees.

As required by Article B1.02, within fourteen (14) days of Contract execution, the Project Manager and designated Town Staff will meet with the Contractor(s) for a Work Commencement Conference to discuss details of the Work. At this conference the Project Manager will initially identify a minimum of two Designated Areas and establish a priority order for the Work to be performed. Within ten (10) calendar days of the meeting the Contractor(s) shall prepare an individual Work Plan (“Plan”) for each Designated Area that clearly identifies the location, need for Pruning, Pruning objectives, Pruning specifications, scope of Pruning, and frequency of Pruning, and the timeframe to complete the Work in the Designated Area. A checklist shall

be developed by the Contractor as part of each of the Designated Areas, which will then be one of the tools used by the Town to determine if the Work has been properly completed.

The submittal of each Plan to the Project Manager shall occur within two weeks of the designated area(s) being assigned to the Contractor(s).

Upon completion of the initial Designated Areas, the Project Manager will meet with the Contractor(s) to review the performance of its Work. At this meeting, the Project Manager will also determine how many new Designated Areas the Contractors will be provided. Contractor will prepare and submit a new Work Plan for each new Designated Area within ten (10) days of being assigned additional Designated Areas, unless otherwise agreed to by the Project Manager and the Contractor(s).

The assigning of new Designated Areas will be based on the Project Manager's determination that the Contractor has complied with the requirements of the Contract Documents, inclusive of the standards established in the Contract for Pruning and Trimming.

The Plan(s) must be approved and signed by the Arborist and submitted to the Project Manager for review prior to the commencement of any Work. No Work shall be performed prior to the review and written acceptance of the Work Plan by the Project Manager.

Any Pruning that is requested by the Project Manager that is outside a Designated Area shall be assigned under Articles D8 and D9.

## **D5. METHODS AND AMOUNT OF PRUNING**

Pruning shall be performed in a manner that maximizes the production of energy by the Tree for growth and pest resistance and is consistent with industry practice for the size and species of the Tree being pruned. Pruning should be limited to the amount needed to accomplish the pruning objectives. Excessive pruning or overthinning, which can stimulate water sprout development should be avoided. Excessive pruning may also result in loss of Tree form and reduction of light penetration.

All dead, broken, damaged, diseased, or insect infested limbs are to be removed at the trunk or main branch. All limbs 2" or greater shall be undercut to prevent splitting. The remaining limbs and branches are not to be split or broken at the cut. All crossed or rubbing limbs shall be removed unless removal will result in large gaps in the general outline of the Tree. Trees shall be pruned to thin smaller limbs to distribute the foliage evenly. All dead wood, damaged limbs, or limbs considered to be a hazard must be removed as part of the trimming process. Canopies may need to be reduced on larger trees when deemed necessary. All limbs removed need to be cut in accordance with ANSI A300 standards. No more than 25% of the crown of a Tree shall be removed within an annual growing period, unless otherwise specified by the Project Manager. The percentage of foliage removed should be adjusted according to age, health, and consideration of the species.

The Contractor shall notify any impacted residents and/or businesses forty-eight (48) hours in advance of pruning.

## **D6. WHEN TO PRUNE**

Typically, Trees can be pruned throughout the year. However, pruning should be avoided when leaves are forming or falling or during flowering periods

## **D7. WOUND TREATMENT**

Pruning wound treatments must not to be used without the prior approval of the Project Manager. Furthermore, such treatments will not be approved unless the Town is provided clear and convincing

scientific evidence that such treatment(s) reduce decay or accelerate wound closure. The approval of the use of such treatments shall be at the sole discretion of the Project Manager.

## **D8. PRUNING EQUIPMENT**

To promote callus development and wound closure, it is important to make clean pruning cuts. Bark surrounding the cut should not be torn, shredded, stripped away, or otherwise separated from the wood. This can be accomplished by using pruning equipment that is sharp and sized appropriately for the job. Clean, well-maintained equipment (blades, chains, bars, and air/fuel filters) produces cleaner cuts with less effort, improves worker safety, and reduces the potential for the spread of pathogens.

Climbing spikes, gaffs, spurs or **shall not** be used. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning Trees infected with a pathogen that may be transmitted (on tools) from one Tree to another. Disinfectants should be used before and after pruning individual Trees.

## **D9. PRUNING TYPES**

Different types of pruning can be used to achieve different objectives, including; thinning, restoration, raising, reduction, specialty, palm tree, hazard specialty, water sprout removal, which must be performed as described in ANSI A300 Standards and ISA Best Management Practices: Tree Pruning. As such, it is important to select the correct type of pruning to achieve the selected objective.

Cuts shall be made in a manner to promote fast callous growth and final pruning cuts are to be made without cutting into the branch collar or the branch ridge.

## **D10. PROHIBITED PRUNING TYPES**

The following types of pruning or cuts are prohibited or require prior approval from the Project Manager:

- Topping is not permitted.
- Lions Tailing is not permitted.
- Girdling or barking

Notwithstanding the foregoing, any pruning or cuts that are not in accordance with the standards established by the Contract Documents or applicable ISA or ANSI standards are prohibited or require prior approval from the Project Manager.

## **D11. STRESSED TREES**

Generally, pruning should be limited to the removal of dead branches and significant structural defects. Removal of live branches and associated leaf area should be minimized or avoided.

## **D12. STREET PRUNING**

Tree pruning for traffic clearances shall provide clearances of at least fourteen (14') feet and no greater than sixteen feet (16') above finish grade for moving vehicles within the traveled roadway, for pedestrians on sidewalks in accordance with standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards under "Pruning to Raise." Clearance trims are performed on a grid system or on a street-by-street basis. Clearances for adjacent structures shall be determined by the Project Manager and will conform to the following:

- a. The minimum clearance under trees within the street right-of-way shall be fourteen (14') feet over the traveled road, and ten feet (10') over the curb line and the sidewalk side of the

- tree. When pruning the bottom branches, care shall be given to obtain a balanced appearance when viewed from across the street immediately opposite the tree.
- b. Cut to laterals to preserve the natural form of the tree. Remove lateral branches at their point of origin, or shorten the length of a branch by cutting to a lateral, which is large enough to assume leadership.
  - c. When cutting back, avoid cutting back to small suckers. Remove smaller limbs and twigs in such a manner as to leave the foliage pattern evenly distributed.
  - d. Trees shall be trimmed to provide a minimum clearance of ten (10) feet over structures/roof lines. Trees shall also be trimmed to remove any obstruction around traffic control devices, traffic signs and streetlights. Street pruning includes all portions of the tree canopy even if the canopy overhangs private property. A polecat or other 360 degree aerial lift should assist with trimming trees without encroaching onto private property.

### **D13. PRUNING AT TOWN PARKS**

Contractor shall use caution in the performance of the Work in areas where the public is present in a Park.

Removal of Tree limbs and other debris shall be performed by human means to a location where a light weight all terrain type vehicle with a trailer can be used to haul the Tree limbs and debris from the site. The vehicle shall be have rubber tires and shall be similar to a John Deere Gator with a vehicle weight not exceeding 900lbs and the trailer should have a carrying capacity that does not exceed 400lbs. The use of any vehicle without rubber tires or exceeding the stated capacity must be approved by in writing by the Project Manager prior to the use of such equipment.

### **D14. PRUNING YOUNG & JUVENILE TREES**

Young Trees need to have a strong, well-established central leader, strong branch attachments, adequate spacing/distribution of scaffold branches, and temporary branches retained both between scaffolds and below the lowest scaffold. Training of young Trees is an on-going process for most species so structural characteristics need to be established as soon as possible.

Pruning should accentuate the natural branching habit of a Tree and should also correct structural problems. By correcting any defect in the structure of a young Tree, pruning helps develop a mechanically stronger and healthier Tree.

### **D15. PALM PRUNING**

Generally, only dead palm leave fronds should be removed. The removal of live fronds should be limited to those that are broken or severely chlorotic. Fronds should be should be severed close to the petiole base, being carefully to avoid damage to living tissue. All flower structures are fruit shall be removed at each pruning. To avoid transmitting disease-causing organisms on pruning tools, Contractor must disinfect tools before and after pruning individual Trees.

### **D16. ROOT PRUNING**

Root pruning should be considered only when other options for correcting a conflict between roots and infrastructure are deemed not practical as this practice results in the loss of roots impacting both Tree health and structural stability. Certain Trees should not be root pruned, such as Trees in poor condition or Trees that are leaning. In addition, some species do not respond well to root pruning.

Trees requiring root pruning should be included as part of the Work Plan. Where root pruning is identified at a later date an assessment and plan shall be performed and developed by the Arborist. The assessment and

plan must be signed by the Arborist and submitted to the Project Manager prior to the performance of any Work. To minimize root-pruning impacts, a Tree assessment should be conducted prior to pruning. Both Tree and site conditions need to be evaluated to determine the potential for injury and structural stability loss. Following the assessment, a plan should be developed that identifies the maximum allowable size of roots to be cut, allowable proximity to the trunk for cuts, time of year when root cutting is allowable, and the most suitable method for making cuts. Both the assessment and plan should be completed by a qualified arborist. Crown pruning prior to or following root pruning shall be done only in cases where the potential for structural failure may increase substantially because of root pruning.

#### **D17. HERBICIDAL TREATMENT**

Prior to pruning any Tree(s) Contractor shall inspect the Tree(s) for any infestation, mold, disease, or any other adverse conditions. Contractor shall immediately notify the Project Manager of such condition in writing within two (2) calendar days of discovery and shall also include such information in its monthly report. The Project Manager may direct the Contractor, as and Additional Service, to provide a Work Order Proposal for the treatment of the Tree(s). The Price Proposal Form requires that prices be provided for the treatment of whitefly bases on the DBH of a Tree(s). Contractor shall not be required to treat for whitefly unless the Project Manager issues a Work Order.

#### **D18. SERVICE REQUEST TREE PRUNING**

Trees that need service prior to their scheduled annual trim shall be trimmed according to the following timeline. The Town shall provide a list of Work Orders to the Contractor during the last week of each month. The service requests on that list shall be completed within the first two (2) weeks of the following month.

The trimming shall provide a symmetrical shape and aesthetically pleasing appearance typical of the species. In addition, trees shall be trimmed to provide a minimum clearance of fourteen (14) feet over the roadway and ten (10) feet over walkways and property roof lines. Trees shall also be trimmed to remove any obstruction around traffic control devices, traffic signs and streetlights. Additional trimming shall be performed to mitigate any extreme effect of the clearance trimming and provide an aesthetic appearance.

The techniques employed shall be consistent with industry practice for the size and species of tree being trimmed. All dead, broken, damaged, diseased or insect infested limbs shall be removed at the trunk or main branch. All cuts shall be made sufficiently close, ½ inch to the parent stem so that healing can readily start under normal conditions. All limbs 2" or greater shall be undercut to prevent splitting. The remaining limbs and branches shall not be split or broken at the cut. All crossed or rubbing limbs shall be removed unless removal will result in large gaps in the general outline of the tree. All trees shall be thinned of smaller limbs when necessary to distribute the foliage evenly.

#### **D19. TREE REMOVALS**

Contractor is responsible for calling for underground locates when directed by Town to perform Tree removal. Contractor will be responsible for removing Trees as directed and hauling away all debris. Contractor's Work Crew must grind stumps to a depth of twelve (12") to sixteen (16") inches. All holes will be backfilled; as well as all debris cleaned up and hauled away. Special projects that are difficult to access with equipment, or require the need for a crane or an aerial tower over seventy-five (75') feet would fall under Crew Rental rates. The Town's Project Manager shall make the final determination to remove or provide public noticing for removal at a later date. Removals shall be conducted in accordance with the ISA and ANSI A300 standards for the arboricultural profession.

All wood from removed trees is the property of the Town and shall be disposed of at the direction of the Project Manager. No wood shall be left along the public right-of-way unless approved by the Project manager. All Tree parts are to be loaded into transport vehicles or containers. The vehicles or containers must have the front, sides and rear solid and the top shall be tarped, or otherwise tightly enclosed. The transporting of tree parts must be made so that no debris escapes during the transport. Branches, suckers, bark and other tree parts that are chipped are to be covered while transported and hauled to the disposal site during the workday.

The Town is responsible for marking Trees so that they are easily identifiable by underground locates and the Contractor. The Contractor shall be required to call underground locates at least two (2) calendar days before stumps are to be ground out. All tree stumps must be removed to at least eighteen (18") inches below the lowest soil level adjacent to the stump or until deep roots are no longer encountered. The Contractor shall grind the stump a minimum distance of one and a half (1½') feet either side of the outer circumference of the stump, or until surface roots are no longer encountered.

Stumps should be cut low enough to the ground where routing can be done safely. This may be accomplished by cutting the stump at the time of grinding, or at the time of tree removal except for infrastructure conflicts. Holes created by stump and root grinding must be filled the same day. The resultant chips from routing may be used to fill the hole to two (2") inches above normal ground level. All excess routing chips debris will be removed and loaded into transport vehicle for disposal. Any damaged paved surfaces shall be restored to their original condition.

## **D20. TREE PLANTING**

Planting includes the tree, stakes, ties and complete installation and watering for ninety (90) calendar days. Planting lists should be compiled by the Project Manager and submitted monthly or as needed. Contractor will guarantee the quality of the tree stock and workmanship. Tree pricing will be determined through an estimate from an approved nursery and with a 10% markup. Installation, delivery, and grow-in maintenance costs are established as part of this Contract.

- a. Contractor shall provide all equipment, labor and materials necessary for the planting of trees throughout the Town in accordance with the specifications herein.
- b. The Town shall be responsible for marking locations and the Contractor will notify underground locates prior to planting.
- c. Planting pit shall be dug twice the width and the same depth of the root ball. Before placing the tree in the planting pit, Contractor shall examine root ball for injured roots and canopy for broken branches. Damaged roots should be cleanly cut off at a point just in front of the break. Broken branches should be cut out of the canopy making sure that the branch collar is not damaged.
- d. Tree shall be placed in the planting pit with its original growing level (the trunk flare) at the same height of the surrounding finish grade. In grass-covered parkways, the top of the root ball shall be level or slightly higher than the surrounding soil. In a concrete tree well, the root ball shall be 3 inches below the level of the finished surface of the concrete.
- e. Backfill material should be native soil. Eliminate all air pockets while backfilling the planting pit by watering the soil as it's put into the hole.
- f. Trees that are planted in parkways shall have a 4"-6" high water retention basin built around the tree capable of holding at least ten (10) gallons of water. In a concrete tree well, soil

should be raked against the edge of the concrete to create a sloping basin. Immediately after planting, the tree shall be watered thoroughly by filling the water retention basin twice.

- g. All trees shall be staked with two wooded lodge poles and two ties per pole or Town approved system.
  - i. Minimum size of lodge poles shall be ten (10') feet long, with a one and a half (1½") inch diameter. Tree ties shall be placed at one third (⅓") and two-thirds (2/3) of the trunk height. Stakes shall not penetrate the root ball and shall be driven into the ground approximately twenty-four to thirty (24"-30") inches below grade.
- h. Trunk protectors such as Arbor-Gards or an approved equal shall be placed at the base of the trunk of all new trees immediately after planting.
- i. In some cases, root barriers may be required. The Town will make this determination. Should a root barrier be required, the Contractor will install a mechanical barrier that redirects root growth downward, eliminating the surface rooting that damages expensive hardscapes and creates a hazard. The barrier shall be twelve (12") inches in depth and at a length determined by the Town and placed in a circular fashion surrounding the tree's root system. Root barriers are an additional service and cost.
- j. Clean up all trash and any soil or dirt spilled on any paved surface at the end of each working day.
- k. All trees shall be of good nursery stock that adheres to the American Standard for Nursery Stock as described in the ANSI Z60.1-1996 Standards. Trees shall be free from pests, disease and structural defects.

## **D21. CREW RENTAL**

The standard crew is three men, one chipper truck, one chipper, one aerial tower and all necessary hand tools. The crew and equipment can be modified to complete any type of miscellaneous tasks including special projects that may consist of extraordinary work such as hanging flags, changing light bulbs, or trimming specific trees requiring immediate attention prior to their scheduled trim. Trees requiring service prior to their regularly scheduled grid or annual trim to rectify a specific problem such as blocked street lighting or signs, right-of-way clearance for utility lines, or broken limbs may be performed under the Crew Rental rate.

## **D22. TREE WATERING**

Watering is performed by a one man crew with a water truck who will water various routes including landscape median and young trees that are three (3) years old and younger.

## **D23. SMALL TREE CARE**

The Town requires an active approach to the care of its young and newly planted trees. The Contractor shall be required to perform basic maintenance that will include but not be limited to tree well adjustments and watering, removal of weeds from tree wells, structural pruning, and re-staking when necessary.

## **END OF SECTION**



## **SECTION E. CONTRACT EXECUTION FORM**

This Contract **2017-25** is entered into this \_\_\_\_ day of \_\_\_\_\_ in the year **2017**, in an amount not to exceed \$1,800,000 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and \_\_\_\_\_, hereinafter called the "Contractor."

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

Attest:

TOWN OF MIAMI LAKES

By: \_\_\_\_\_  
Gina Inganzo, Town Clerk

By: \_\_\_\_\_  
Alex Rey, Town Manager

By: \_\_\_\_\_  
Raul Gastesi, Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CORPORATE RESOLUTION**

WHEREAS, \_\_\_\_\_, Inc. desires to enter into a contract with the Town of Miami Lakes for the purpose of performing the work described in the contract to which this resolution is attached; and

WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the \_\_\_\_\_,  
(type title of officer)

\_\_\_\_\_, is hereby authorized  
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the Town of Miami Lakes upon the terms contained in the proposed contract to which this resolution is attached.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)