

**FIRST AMENDMENT TO CITY OF NAPLES, FLORIDA
SERVICES AGREEMENT**

20-054 Fertilization of Foxtail Palms and Ficus Trees

This First Amendment is made and entered into effective on this 26th day of October 2023, by and between the City of Naples, a Florida municipal corporation, whose address is 735 8th Street South, Naples, FL 34102 ("CITY"), and The F.A. Bartlett Tree Expert Company, a Connecticut Corporation authorized to do business in the State of Florida, whose business address is: 3800 Prospect Avenue; Naples, Florida 34119 (the "CONTRACTOR").

WITNESSETH

WHEREAS, the CITY, is a Florida municipal corporation, having a responsibility to provide certain services to benefit the citizens of the CITY; and

WHEREAS, the CITY and CONTRACTOR entered into a Professional CONTRACTOR Service Agreement dated September 2, 2020 (Clerk Tracking No. 2020-00114) (hereinafter the "Agreement"); and

WHEREAS, the CONTRACTOR has provided services under the Agreement, in a manner satisfactory to the CITY; and

WHEREAS, the Agreement provided for a three (3) year initial Term commencing October 1, 2020, and ending on September 30, 2023, with an option for the CITY to extend the term for two (2) additional one year periods if agreeable to the CONTRACTOR; and

WHEREAS, pursuant to Section 2-667(7)(e) of the City of Naples Code of Ordinances, the City Manager has determined that an extension of the term of the Agreement for one additional one year is in the best interest of the CITY; and

WHEREAS, Florida law and the City of Naples Code of Ordinances requires the inclusion of certain terms and conditions in agreements between the City and a CONTRACTOR and those terms and conditions have been included in this amendment as additional terms and conditions of the Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. **Recitals.** The foregoing recitals are true and correct, ratified and incorporated by reference herein as if fully stated.
2. **Term.** The parties agree to extend the term of the Agreement for one additional one (1) year period beginning October 1, 2023, and expiring on September 30, 2024 (Year 4) with one remaining available renewal. Unless otherwise stated herein, all remaining terms, provisions, and conditions, including, but not limited to the terms for payment, of the Agreement dated September 2, 2020, remain in full force and effect.
3. **E-Verify Compliance.** Paragraph 14.7 of the Agreement is hereby amended to update and substitute the existing paragraph with the following: CONTRACTOR shall be obligated to comply with the provisions of Section 448.095, Florida Statutes (2023)

"Employment Eligibility," as amended from time to time. This includes, but is not limited to, registration and use of the E-Verify System to verify the work authorization status of all newly hired employees and requiring any and all subcontractors to provide an affidavit to CONTRACTOR attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The CONTRACTOR shall require any subcontractor to insert into any subcontracts the requirements of this paragraph and shall be responsible for ensuring compliance by all subcontractors. The CONTRACTOR agrees to maintain a copy of such affidavit for the duration of the Agreement. Failure to comply will result in the termination of the Agreement as provided in Section 448.095, Florida Stat. (2023), as amended; and the CONTRACTOR will not be awarded a public contract for at least one (1) year after the date on which the contract was terminated. CONTRACTOR will also be liable for any additional costs to CITY incurred because of the termination of the CONTRACTOR. The CITY shall upon a good faith belief that the CONTRACTOR or its subcontractor has knowingly violated Section 448.09(1), Florida Statutes or the provisions of Section 448.095, Florida Statutes, terminate this Agreement, which shall not be considered a breach of contract and may be challenged pursuant to Section 448.095(2)(d), Florida Statutes.

4. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or extending a contract for goods or services of any amount if, at the time of contracting or extending, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or extending a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or extending, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to Section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with CITY for goods or services of any amount may be terminated at the option of CITY if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of CITY if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.
5. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by CITY specified in the Agreement shall not be construed as a waiver of CITY's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28,

Fia. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by CITY in the Agreement in derogation hereof shall be void and of no force or effect.

6. **Non-appropriation.** CITY's performance and obligation to pay under this Agreement is contingent upon an appropriation during the CITY's annual budget approval process. If funds are not appropriated for a fiscal year, then the CONTRACTOR shall be notified as soon as is practical by memorandum from the CITY Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal yearend shall be without penalty or expense to the CITY subject to the CITY paying all invoices for services rendered during the period the Agreement was funded by appropriations.
7. **Ethics.** CONTRACTOR acknowledges that it is a "Covered Person" as that term is defined by Section 17.3(1)(a) of the Naples Charter and the City of Naples Code of Ethics, and understands and agrees that it is prohibited from employing, or offering to employ any compensated public official or city employee who is substantially involved with the regulation, oversight or management of the contract or the transaction of business during the term, and for a period of two years after termination, of the Agreement and that it may be liable to the CITY for payment of liquidated damages in favor of the CITY for violation of this prohibition in the amount equal to the greater of: (1) the compensation received by the compensated public official or city employee from the business entity, and (2) the amount equal to the total of the compensated public official's or city employee's last two years of gross compensation from the city
8. **Counterparts.** This Extension may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.
9. Unless otherwise stated herein, all remaining terms, provisions, and conditions, including but not limited to, the terms of payment of the Agreement all remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have caused this Extension to be duly executed by their duly authorized officers, all as of the day and year first above written.

ATTEST: **
ON THE
By: Patricia C. Rambosk
Patricia C. Rambosk, City Clerk

CITY OF NAPLES, FLORIDA

By: Jay Boodheshwar
Jay Boodheshwar, City Manager

Approved as to form and legal sufficiency:

By: [Signature]
City Attorney

CONTRACTOR:

THE F.A. BARTLETT TREE EXPERT COMPANY

(CORPORATE SEAL)

Heidi Wolff
Witness (Signature)

Printed
Name: Heidi Wolff

Sebastian Evans
Witness (Signature)

Printed
Name: Sebastian Evans

By: Matt Smith
(Signature)

Printed
Name: Matt D Smith

Title: local manager

