

CONTRACTOR'S SERVICES AGREEMENT

23-029 Time Specific Palm Pruning - ITB

THIS INDEPENDENT CONTRACTOR'S SERVICES AGREEMENT (hereinafter this "Agreement") is made and entered into this 20th day of September 2023 by and between the **City of Naples** (the "CITY"), and **Tree Scaping of Naples, Inc.**, a Florida Corporation authorized to do business in the State of Florida (hereinafter "CONTRACTOR" or VENDOR).

WITNESSETH

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

WHEREAS, the CITY has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is in the business of providing said services in the City of Naples and elsewhere in the State of Florida; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, CONTRACTOR was the successful bidder for an advertised Invitation to Bid ITB 23-029 titled Tree Removal & Stump Grinding, which satisfies the CITY's Procurement Policy Sec. 2-663; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid documents (ITB 23-029) issued in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
2. **Description of Work.**
 - a. The CITY hereby retains CONTRACTOR to furnish goods and services as described in ITB 23-029, which is incorporated herein by reference. Any conflict between the remaining terms and conditions set forth ITB 23-029, other than the Scope of Services, will be resolved in favor of the terms and conditions in this Agreement.

- b. CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
 - c. CONTRACTOR must also comply with, and abide by, all requirements as contained in the Invitation to Bid (ITB), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the CITY, together with any addenda, all hereinafter the "Bid Documents, as applicable." The Bid Documents, if applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement unless in conflict as resolved by Paragraph 2(a) above.
3. **Commencement and completion/Term.**
- a. CONTRACTOR will commence work under this Agreement upon receipt of a Notice to Proceed (hereinafter "NTP") and Purchase Order.
 - b. Liquidated damages are not applicable to this Agreement.
 - c. This Agreement has a Term of three (3) years, beginning October 1, 2023, and ending September 30, 2026, and may be renewed for up to two (2) additional one (1) year periods, upon agreement of the parties in writing unless sooner terminated under the terms of this Agreement.
4. **Payment.**
- a. The CITY agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in Exhibit A, and made a part of this Agreement. Annual contract authorization shall be limited to the adopted budgets approved by City Council, with a total not to exceed contract amount of \$380,600 in any Fiscal Year. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated rate set forth in Exhibit A as in a Notice to Proceed signed by the City.
 - b. Progress payments, if any, will be made as set forth in an NTP.
 - c. The CITY reserves the right to withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.
5. **Acceptance of work product, payment, and warranty.** Each invoice will be processed upon completion of the CITY's inspection of the terms in the NTP.
- a. Quality Guarantee/Warranty.
 - i. CONTRACTOR will guarantee its work without disclaimers, as stated in the Invitation to Bid Statement of Values Price Schedule, Exhibit A, which is attached hereto and incorporated herein by reference.

ii. Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.

iii. If any service or product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the CONTRACTOR shall pick up the product from the CITY at no expense to the CITY. The CITY reserves the right to reject any or all materials, if in its judgment the items reflect unsatisfactory workmanship or manufacturing or shipping damage. The CONTRACTOR shall refund, to the CITY, any money which has been paid for same.

- b. Acceptance of work product, payment, and warranty. When the CITY receives an invoice sufficiently itemized to permit audit, the CITY will diligently review the invoice. When the CITY finds the invoice acceptable and finds the products and services acceptable, the payment will be paid to CONTRACTOR within thirty (30) days after the date of receipt of the invoice, unless another payment schedule is provided in Exhibit "B." CONTRACTOR guarantees the successful performance of the work for the products and services intended. If the CITY deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the CITY may make an equitable deduction from the contract price, or, in the alternative, the CITY may seek damages. CONTRACTOR warrants that the data utilized by CONTRACTOR (other than as provided by the CITY) is from a source, and collected using methodologies, which are generally recognized in CONTRACTOR's industry or profession to be a reliable basis and foundation for CONTRACTOR's work product. CONTRACTOR must notify the CITY in writing if it appears, in CONTRACTOR's professional judgment that the data or information provided by the CITY for use in CONTRACTOR's work product is incomplete, defective, or unreliable. CONTRACTOR guarantees to amend, revise, or correct to the satisfaction of the CITY any error appearing in the work as a result of CONTRACTOR's failure to comply with the warranties and representations contained herein. Neither inspection nor payment, including final payment, by the CITY will relieve CONTRACTOR from its obligations to do and complete the work product in accordance with this Agreement.

6. Termination.

- a. **Termination at Will:** This Agreement may be terminated by the CITY in whole or in part at any time without cause by the CITY giving written notice to CONTRACTOR not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
- b. **Termination for Cause:** This Agreement may be terminated by either party for cause by the CITY or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7. Project management

- a. The Project Managers for this project are as follows: Any subsequent changes to the Project Manager for either party must be provided by notice as described in paragraph eight (8) below and does not require an amendment to this Agreement.
- b. CITY's Project Manager assigned is Heather Shields, City Arborist – Project Manager.
- c. CONTRACTOR's Project Manager assigned is Gustavo Leon, President.

8. Notices. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR or the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following addresses of record:

- a. **To CITY:** City of Naples, Attention: City Manager's Purchasing Division, 735 8th Street South; Naples, Florida 34102.
- b. **To CONTRACTOR:** Tree Scaping of Naples, Inc., Attention: Gustavo Leon, President; 1180 23rd Street SW, Naples, Florida 34117.

9. Insurance.

- a. CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the CITY from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The City's General Insurance Requirements, attached as Exhibit B, shall apply.
- c. The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.

10. General Provisions. CONTRACTOR must comply with the following general provisions:

- a. Bond. A Payment & Performance Bond are required in this Agreement.
- b. Non-Exclusive. This Agreement is a non-exclusive contract; the CITY is not prohibited, or deemed to be prohibited, from bidding similar services either as an independent job or a component of a larger project.
- c. Retainage. (N/A) Not applicable to this Agreement.

- d. Compliance with Laws. In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- e. Personal nature of Agreement: Assignment.
- i. The parties acknowledge that the CITY places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the CITY.
 - ii. If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the CITY Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- f. Discrimination.
- i. CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii. CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- g. Independent Contractor.
- i. CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the CITY. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the CITY. None of the benefits, if any, provided by the CITY to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the CITY to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the CITY and is subject to the CITY's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The CITY will not be held responsible for

the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.

- ii. CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
- iii. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement as provided in Paragraph 10(n).

h. Indemnification.

- i. CONTRACTOR must indemnify and hold the CITY harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the CITY, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the CITY against any claim that any product purchased or licensed by the CITY from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the CITY by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the CITY and not considered to be the CITY's exclusive remedy.
- ii. In the event that any claim in writing is asserted by a third party which may entitle the CITY to indemnification, the CITY must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the CITY decides to participate in the proceeding or defense, the CITY will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information

necessary or advisable for the defense, compromise or settlement of such claim.

- iii. The indemnification provisions of this paragraph will survive the termination of this Agreement.
- i. 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, Fla. 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.
- j. Sovereign Immunity. Nothing in this Agreement extends, or will be construed waive or to extend, the CITY's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Agreement is a consent, or will be construed as waiver or consent, by the CITY to be sued by third parties in any matter arising out of this Agreement.
- k. Public records.
 - i. CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 1. Keep and maintain public records required by the CITY to perform the service.
 2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the CITY.
 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
 - ii. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
 - iii. If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.

- iv. CONTRACTOR consents to the CITY's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by CITY.
- v. CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the CITY.
- vi. Public Records Compliance Indemnification. CONTRACTOR agrees to indemnify and hold the CITY harmless against any and all claims, damage awards, and causes of action arising from the CONTRACTOR'S failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CONTRACTOR'S failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CONTRACTOR authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against CONTRACTOR in Collier County Circuit Court on an expedited basis to enforce the requirements of this section.

vii. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119 FLORIDA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK AS CITY OF NAPLES CUSTODIAN OF PUBLIC RECORDS, AT TELEPHONE: 239-213-1015, OR EMAIL PUBLICRECORDSREQUEST@NAPLESGOV.COM; AT: PHYSICAL ADDRESS: 735 8TH STREET SOUTH; NAPLES, FLORIDA 34102. MAILING ADDRESS: 735 8TH STREET SOUTH; NAPLES, FLORIDA 34102.

- i. Ethics. CONTRACTOR agrees and understands that by entering into this contract, Contractor is a "Covered Person" as that term is defined by Section 17.3. (1)(a) of the City Charter and must comply with the City of Naples Code of Ethics, as applicable and as it may be amended from time to time. Any conflict between the City's Ethics Code and the contractual terms which follow shall be resolved in favor of the City's Ethics Code, as it may be amended from time to time. As provided in Section 2-975(h)(3)(a) and (b) of the Ethics Code, except as otherwise prohibited by law:

1. CONTRACTOR 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 t ears after termination, of the contract; and

2. CONTRACTOR agrees to pay for liquidated damages in favor of the city for violation of this subsection in the amount equal to the greater of: (i) the compensation received by the compensated public official or city employee from

the business entity; and (ii) the amount equal to the total of the compensated public official's two years of gross compensation from the city.

- m. Federal or State Funding. If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply, provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the CITY's Project Manager to determine whether Federal or State funding is applicable to this Agreement.
- i. E-Verify. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR during the Term of this Agreement.
 - ii. Agency. CONTRACTOR agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
 - iii. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the CITY, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the CITY's sovereign immunity.
 - iv. Workers' Compensation Insurance. CONTRACTOR must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, CONTRACTOR must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), CONTRACTOR must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. CONTRACTOR must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
 - v. Liability Insurance. CONTRACTOR shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. CONTRACTOR shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be

primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. CONTRACTOR shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the CITY and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The CITY and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The CITY's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the CITY or the State of Florida may have.

- vi. Inspections. CONTRACTOR shall permit, and require its subcontractors to permit, the CITY's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described in the Contract Documents.
- vii. Auditor General Cooperation. CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.

- n. E-Verify Compliance. Vendor 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 vendor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The vendor shall require any subcontractor to insert into any subcontracts the requirements of this section and shall be responsible for ensuring compliance by all subcontractors. The Vendor shall agree 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 vendor will not be awarded a public contract for at least one (1) year after the date on which the contract was terminated. Vendor 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 vendor or its subcontractor has knowingly violated Section 448.09(1), Florida Statutes or the provisions of Section 448.095, Florida Statutes, terminate the contract, which shall not be considered a breach of contract and may be challenged pursuant to Section 448.095(2)(d), Florida Statutes. Vendor acknowledges that upon termination of the contract by the City for a violation of this Section, the vendor may not be awarded a public contract for at least

one (1) year and that the Vendor is liable for any additional costs incurred by the City as a result of the termination. An affidavit of compliance with the E-Verify requirement is attached as Exhibit C.

11. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:
- a. **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.
 - b. **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the CITY'S staff do not suffice to legally bind the CITY in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized CITY representatives.
 - c. **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
 - d. **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
 - e. **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
 - f. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
 - g. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the CITY's rights under this Agreement, or of any cause of action the CITY may have arising out of the performance of this Agreement.
 - h. **Force Maieure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement

arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.

- i. 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 renewing a contract for goods or services of any amount if, at the time of contracting or renewal, 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 renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, 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.
- j. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Collier County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.
- k. 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 year-end 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.

12. **Special Provisions.**

a. None.

This Agreement 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.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

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

CITY OF NAPLES, FLORIDA

By: Jay Boodheshwar
Jay Boodheshwar, City Manager

Approved as to form and legal sufficiency:

By: Nancy Strickland
City Attorney

TREE SCAPING OF NAPLES, INC.
1180 23rd Street SW
Naples, Florida 34117

by Gustavo Leon
Gustavo Leon, as its President and
Authorized Agent

(CORPORATE SEAL)

ATTEST:
Somer Adams
Printed Name: Somer Adams, Title Purchasing Coordinator

STATE OF Florida

CITY OF Naples

The foregoing instrument was acknowledged before me by means of physical presence or

online notarization, this 13th day of September, 2023, by GUSTAVO LEON of Tree Scaping of Naples, Inc. a Florida Inc., on behalf of the company, and he/she is personally known to me or has produced DRIVER LICENSE as identification.

Jessica R Rosenberg
Signature of Notary Public - State of Florida

Jessica R. ROSENBERG
Printed/Typed/Stamped Name of Notary

My commission expires: 1/7/25



ITB 23-029		Schedule of Values		Time Specific Palm Pruning	
COMMON NAME	BOTANICAL NAME	ESTIMATED QUANTITY	COST PER PALM	TOTAL COST	
Canary Island Date Palm	Phoenix canariensis	14	\$ 150.00	\$ 2,100.00	
Chinese Fan Palm	Livistonia chinensis	57	\$ 35.00	\$ 1,995.00	
Coconut Palm	Cocos nucifera	3299	\$ 45.00	\$ 148,455.00	
Medjool Date Palm	Phoenix dactylifera	6	\$ 150.00	\$ 900.00	
Sabal Palm	Sabal palmetto	1322	\$ 50.00	\$ 66,100.00	
PALM BANDING		ESTIMATED QUANTITY	COST PER PALM	TOTAL COST	
Royal Palm	Roystonea regia	50	\$ 75.00	\$ 3,750.00	
BID TOTAL				\$ 223,300.00	

Storm Recovery: \$350.00 Per Hour Rate/ Per Crew (refer to page 42; V. Post – Storm Response)

The contractor will be required to provide at least 1 tree trimming crew to the City immediately following any emergency (windstorm, hurricane, etc.) to act as its tree clearing representative and a total of 2 crews no later than 24 hours after emergency re-entry begins.

This solicitation has potential for P-Card Payment. Does your company accept credit card payment? YES X NO

If "yes" please indicate payment options on the below chart.

Payment Options	YES	NO	PERCENT AND/OR TERMS FOR EARLY PAYMENT
Is there a discount for a credit card payment?		X	
Is there an additional charge for credit card payment?	X		5%
Discount for early payment?		X	
Prompt payment terms: <u> </u> % <u> </u> Days; Net 30 Days		X	

Company Name: Tree Scaping of Naples, Inc.

EIN: 46-1317135

Email: treescapingtonaples@hotmail.com

Name and Title of individual completing this schedule:

Gustavo Leon
(Printed Name)

president
(Title)

X 
(Signature)

07-28-2023
(Date)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SOLES INSURANCE GROUP INC 456 S Indiana Avenue Englewood, FL 34223	CONTACT NAME: Van Soles PHONE (A/C, No, Ext): (941)460-3684 E-MAIL ADDRESS: CAROLYN@SOLESINS.COM FAX (A/C, No): (941)460-6122
	INSURER(S) AFFORDING COVERAGE INSURER A: INSURER B: INSURER C: INSURER D: INSURER E: INSURANCE COMPANY OF THE WEST INSURER F: NAIC # 27847
INSURED TREE SCAPING OF NAPLES, INC 1180 23RD ST SW NAPLES, FL 34117	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTP	TYPE OF INSURANCE	ADDL SUBR INSR W/O	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY CLAIMS MADE / UNCLIP GEN'L AGGREGATE LIMIT APPLIES PER POLICY / PRO-JECT / LOC OTHER					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (A/C, No, Ext) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS / COMP / OP AGG \$
	AUTOMOBILE LIABILITY OWNED AUTOS ONLY / SCHEDULED AUTOS / HIRED AUTOS ONLY / NON OWNED AUTOS ONLY					BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB / EXCESS LIAB / DEC / RETENTIONS	OCCUR / CLAIMS MADE				EACH OCCURRENCE \$ AGGREGATE \$
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE / OFFICER / MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	WFL5071316 00	5/16/2023	5/16/2024	PER STATUTE / TH ER PER STATUTE / TH ER EL DISEASE / CA EMPLOYEE \$ EL DISEASE / TH LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

BID NUMBER-23-029-TIME SPECIFIC PALM PRUNING-ITB
 IF APPLICABLE, THESE COVERAGES ARE PRIMARY TO ALL OTHER COVERAGES THE CITY POSSESS FOR THIS CONTRACT ONLY.

CERTIFICATE HOLDER THE CITY OF NAPLES 735 EIGHTH STREET SOUTH NAPLES, FL 34102	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS AUTHORIZED REPRESENTATIVE:
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY):
07/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Jay Sussman Insurance of Florida 331 W Platt Street #357 Tampa FL 33606	CONTACT NAME Jay Sussman PHONE (A/C, No, Ext) 813 499-9767 FAX (A/C, No) 813 379-2626 E-MAIL ADDRESS jaysussman123@gmail.com INSURER(S) AFFORDING COVERAGE NAIC # INSURER A Progressive Insurance Company INSURER B Burlington Insurance Company INSURER C INSURER D INSURER E INSURER F
INSURED TREE SCAPING OF NAPLES INC 1180 23rd Street SW Naples FL 34117	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC OTHER: _____ AUTOMOBILE LIABILITY <input type="checkbox"/> ANY ALTO <input checked="" type="checkbox"/> SCHEDULED <input type="checkbox"/> ALL OWNED AUTOS AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	986B000365	03/19/2023	03/19/2024	EACH OCCURRENCE \$ 1 000 000 DAMAGE TO RENTED PREMISES (Each occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1 000 000 GENERAL AGGREGATE \$ 2 000 000 PRODUCTS - LUMP OR AGG \$ 2 000 000
A	UMBRELLA LIAB EXCESS LIAB WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below		08221291	10/21/2022	10/21/2023	COMBINED SINGLE LIMIT (Eg accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$ Products \$ PER STATUTE WITH-OUT-STATUTE E1 DISEASE - EA EMPLOYEE \$ E2 DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

These coverages are primary to all other coverages the City possesses for this contract only

bid number: 23-029 and title Time Specific Palm Pruning - ITB

CERTIFICATE HOLDER The City of Naples 735 Eighth Street South Naples Florida 34102	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jay Sussman <i>Jay Sussman</i>
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Attachment: Immigration Law Affidavit Certification

This Affidavit is required and should be signed by an authorized principal of the firm, notarized and submitted with formal Invitations to Bid (ITB's) and Request for Proposals (RFP) submittals. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Failure to include this Affidavit and acceptable evidence of enrollment in the E-Verify program, may deem the (Vendor / Bidder) being a Contractor, Firm, Consultant, etc., and their Submittal of a Bid (ITB, RFP, RFQ, etc.) as non-responsive.

City of Naples will not intentionally award CITY contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA").

City of Naples may consider the employment by any vendor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the contract by City of Naples.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at the time of submission of the Vendor's / Bidder's proposal.

Company Name Tree Scaping of Naples, Inc.
Print Name Gustavo Leon Title president
Signature [Handwritten Signature] Date 07-28-2023

State of Florida
County of Collier

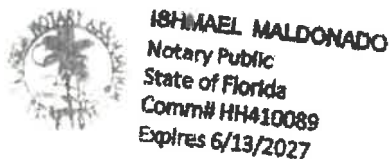
The foregoing instrument was signed and acknowledged before me this 28 day of Jul, 2023, by

Gustavo Leon who has produced Passport as identification.
(Print or Type Name) (Type of Identification and Number)

Notary Public Signature

[Handwritten Signature]
Printed Name of Notary Public

287-1-1-2027
Notary Commission Number/Expiration



The signee of these Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made



Company ID Number: 1381235

Approved by:

Employer

Tree Scaping of Naples Inc

Name (Please Type or Print)

Gustavo F Leon

Title

Signature

Electronically Signed

Date

02/15/2019

Department of Homeland Security - Verification Division

Name (Please Type or Print)

USCIS Verification Division

Title

Signature

Electronically Signed

Date

02/15/2019



Company ID Number: 1381235

Information Required for the E-Verify Program

Information relating to your Company:

Company Name	Tree Scaping of Naples Inc
Company Facility Address	1180 23RD ST SW NAPLES, FL 34117
Company Alternate Address	1180 23RD ST SW NAPLES, FL 34117
County or Parish	COLLIER
Employer Identification Number	461317135
North American Industry Classification Systems Code	811
Parent Company	
Number of Employees	10 to 19
Number of Sites Verified for	1 site(s)



Company ID Number: 1381235

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State.

FL 1



Company ID Number: 1381235

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name	Gustavo F Leon
Phone Number	2393313103
Fax	
Email	treescapinonaples@hotmail.com

