

To: The Honorable Mayor and Council Members

From: Alberto Destrade, Purchasing Director 

Date: July 12, 2016

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXERCISE THE FIRST OPTION TO RENEW A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND ELAN LAWN AND LANDSCAPE SERVICES, INC., FOR THE PROVISION OF TREE TRIMMING SERVICES FOR A PERIOD OF ONE (1) YEAR, AT A COST NOT TO EXCEED NINETY THOUSAND DOLLARS (\$90,000.00), IN ACCORDANCE WITH INVITATION FOR BID TREE TRIMMING SERVICES IFB NO. 09-13-14, AS AMENDED; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

RECOMMENDATION

Staff is requesting that the Mayor and City Council authorize the City Manager to exercise the first renewal option of the agreement with Elan Lawn and Landscape Services, Inc. (Elan), to continue providing the City with "Tree Trimming Services" on an as-needed basis, for a not-to-exceed amount of \$90,000.

BACKGROUND

On May 29, 2014, the City issued Invitation For Bids (IFB) No. 09-13-14 soliciting bids to provide the City with "Tree Trimming Services" and received eleven (11) proposals in response to the solicitation. Following review and evaluation of the proposals, Elan was selected and awarded a contract commencing on October 20, 2014, for an initial one-year term with the City's option to renew for an additional four (4) years.

In order to ensure that the City continues to have the resources available to perform tree trimming services as needed, the City's Parks and Recreation Department recommends approval of this first renewal of Elan's contract. This option to renew will be effective from October 20, 2015 through October 19, 2016.

This renewal has been reviewed and approved for legal sufficiency by the City Attorney's Office.

FUNDING SOURCE

Funding for this project will be allocated from the Transportation Surtax funds.

ATTACHMENTS

Resolution

Elan Lawn and Landscape Services, Inc. – Tree Trimming Services Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXERCISE THE FIRST OPTION TO RENEW A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND ELAN LAWN AND LANDSCAPE SERVICES, INC., FOR THE PROVISION OF TREE TRIMMING SERVICES FOR A PERIOD OF ONE (1) YEAR, AT A COST NOT TO EXCEED NINETY THOUSAND DOLLARS (\$90,000.00), IN ACCORDANCE WITH INVITATION FOR BID TREE TRIMMING SERVICES IFB NO. 09-13-14, AS AMENDED; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on May 29, 2014, the City of North (“City”) advertised *Invitation for Bid Tree Trimming Services IFB No. 09-13-14*, as subsequently amended (“IFB”), to provide the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary for the comprehensive provision of tree trimming services, in accordance with the terms, conditions, and specifications contained in the IFB (collectively referred to herein as “Services”); and

WHEREAS, Elan Lawn and Landscape Services, Inc., was evaluated by City administration as the highest ranked contractor whose sealed bid demonstrated to be the most advantageous to the City (“Contractor”); and

WHEREAS, Contractor has expressed its capabilities, expertise and willingness to perform the Services pursuant to the terms, conditions, and specifications contained in the RFP; and

WHEREAS, on October 20, 2014, City administration executed an agreement with Contractor for the provision of Services for an initial term of one (1) year (“Agreement”); and

WHEREAS, in accordance with Section 4.1.3 of the Agreement, the City reserved the right of renewal for four (4) additional-successive one-year term periods, unless the Agreement was terminated by the City; and

WHEREAS, City administration desires to exercise the first option to renew the Agreement with Contractor, commencing October 20, 2015 through October 19, 2016, with the same terms and conditions (“First Option”); and

WHEREAS, the Mayor and City Council have determined that the continual provision of Services from Contractor, pursuant to the terms of the Agreement under the First Option, serves to protect the public health, safety and welfare of the City and its residents.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to exercise the First Option to Renew a Professional Services Agreement between the City of North Miami and Elan Lawn and Landscape Services, Inc., for the provision of tree trimming services for a period of one (1) year, at a cost not to exceed Ninety Thousand Dollars (\$90,000.00), in accordance with *Invitation for Bid Tree Trimming Services IFB No. 09-13-14*, as amended.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this ____ day of _____, 2016.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.
Vice Mayor Alix Desulme
Councilman Scott Galvin
Councilwoman Carol Keys, Esq.
Councilman Philippe Bien-Aime

_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)

CITY OF NORTH MIAMI
TREE TRIMMING SERVICES AGREEMENT
(IFB No. 09-13-14)

THIS TREE TRIMMING SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of 10/20/2014, 2014, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL (“City”) and **Elan Lawn and Landscape Services, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal business office at 800 Poinciana Drive, Pembroke Pines, FL 33025 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on May 29, 2014, the City of North (“City”) advertised *Invitation for Bid Tree Trimming Services IFB No. 09-13-14*, as subsequently amended (“IFB”), to provide the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary for the comprehensive provision of tree trimming services, in accordance with the terms, conditions, and specifications contained in the IFB; and

WHEREAS, in response to the IFB, Contractor submitted its sealed bid and related documents expressing the capability, willingness and expertise necessary to perform the Services, pursuant to IFB requirements; and

WHEREAS, the Bid was reviewed and selected by City administration as responsive, and whose price list, qualifications and references demonstrated to be the most advantageous to the City in the procurement of Services; and

WHEREAS, the City Manager finds the execution of this Agreement for the provision of Services, in accordance with the terms, conditions, and specifications contained in the Contract Documents, supports the public health, safety and welfare.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - DEFINITIONS

2.1 The following words, terms and phrases, when used in this Agreement, shall have the following meanings and shall be applicable to both the singular and plural forms thereof:

Agreement – this written Agreement between the City and Contractor covering the Services to be performed, including the Contract Documents that are attached hereto or incorporated by reference.

Change Order – a written document signed by the Parties authorizing an addition, deletion or revision to the Services pursuant to this Agreement and within the general scope of services; or an adjustment to a time schedule or compensation, issued on or after the effective date of this Agreement.

Contract Documents – shall consist of the IFB and all corresponding amendments; Contractor’s response to the IFB, as amended (“Bid”); City’s Bid tabulation; City’s Recommendation of Award, dated August 8, 2014; Certificates of Insurance; copies of current licenses and permits; any additional documents which are required to be submitted under this Agreement; and all amendments, modifications and supplements, and Change Orders, issued on or after the effective date of this Agreement. Contract Documents are hereby incorporated into and made part of this Agreement. Nothing contained in the Contract Documents shall be construed to create a contractual relationship of any kind: 1) between the City and a Subcontractor or supplier, or 2) between any persons or entities other than the City and Contractor.

Day – shall mean a consecutive “calendar day,” unless specifically designated otherwise.

Permitting Authority – means the City of North Miami, Miami-Dade County, the State of Florida, and/or any other governmental entity having jurisdiction over the Contractor and its Services.

Project Manager – a designated representative of the City fully acquainted with the Services and with authority to render decisions necessary to ensure and oversee the proper rendition of Services by Contractor. The Project Manager will provide direct interface with the Contractor, with respect to the City’s responsibilities and Contractor’s obligations hereunder.

Services – means the act of providing the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary for comprehensive provision of tree trimming services by an International Society Arboriculture (ISA) Certified Arborist, in accordance with the National Arborist Association Standards and with the terms, conditions, and specifications contained in the Contract Documents, including lifting of street trees and the removal of basal sprouts

Subcontractor – a person or entity retained by Contractor to provide labor, materials, equipment, services or supplies, necessary to complete a specific portion of Services. Subcontractor shall include all sub-Subcontractors, retained directly or indirectly by Contractor.

Worksite – means the area where Services are to be rendered by Contractor within the City limits.

ARTICLE 3 – INTENT OF AGREEMENT

3.1 Execution of this Agreement is a representation that Contractor has carefully examined the Contract Documents and the Worksite, and represents that the Contractor is thoroughly

familiar with the nature and location of the Services, the Worksite, the specific conditions under which the Services are to be performed, and all matters which may in any way affect the Services rendered to the City. The Contractor further represents that, as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Services, and that the Contractor will abide by same. Claims for additional time in providing Services (or a portion thereof) as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents, will not be permitted.

3.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of Services by the Contractor. Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

3.3 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

3.3.1 Specific written direction from the Project Manager.

3.3.2 This Agreement.

3.3.3 The IFB.

3.3.4 The Bid.

3.4 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the IFB prior to Contractor submitting its Bid or the right to clarify same shall be waived.

ARTICLE 4 – TERM OF AGREEMENT

4.1 Subject to City authorized adjustments, the Term of Agreement shall be as follows:

4.1.1 The initial term of Agreement shall commence on the date indicated on the City's Notice to Proceed, upon a fully executed Agreement between the Parties.

4.1.2 The initial term shall be a period of one (1) year with the first six (6) months being a trial period. If at the conclusion of this trial period the Services provided by Contractor are to the City's satisfaction, then the Agreement may continue and be in effect for the remaining initial term period.

4.1.3 Following the initial term period, the City reserves the right to renew this Agreement in writing for four (4) additional-successive one-year term periods, unless earlier terminated by the City.

4.1.4 Notwithstanding the foregoing Term of Agreement, this Agreement may be terminated by the City at any time, in accordance with Article 12 or Article 13.

4.2 Contractor agrees that Services shall be rendered to the City on schedule, diligently and uninterrupted. Contractor shall be required to show just cause for delays or for additional time requests. Failure to achieve timely Services shall be regarded as a breach of this Agreement and subject to the appropriate remedies available hereunder and at law.

4.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 5 – CONTRACTOR COMPENSATION

5.1 The Contractor shall be paid an amount not to exceed Ninety Thousand and no/100 Dollars (\$90,000.00) as full compensation for the provision of Services, for the initial term period of one (1) year. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) Days written notice to Contractor.

5.2 The making of final payment shall not constitute a waiver of any claims by the City (or third party) and shall not relieve the Contractor of the responsibility for negligence or defects in Services. Upon written notice by the City, the Contractor shall remedy any defects due thereto and pay all expenses for any damages resulting therefrom.

ARTICLE 6 – CONTRACTOR'S SCOPE OF SERVICES

6.1 Contractor hereby agrees that it will exert every reasonable and diligent effort to ensure that all labor and services employed by Contractor, including that of its Subcontractors for Services, shall be in accordance with the Contract Documents and shall incorporate the requirements set forth by applicable rules, regulations, codes and statutes of Permitting Authorities.

6.2 Contractor covenants to perform Services in accordance with that degree of care skill ordinarily exercised by reputable members of its profession and use its best efforts to furnish Services in the best, safest and soundest way and in the most expeditious manner consistent with the best interest of the City.

6.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required in the provision of Services, including but not limited to full qualification and good standing to do business in Florida with personnel fully licensed, as may be required by law; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during

the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

6.4 Contractor shall provide the Services as set forth in the Contract Documents, and render full and prompt cooperation with the City in all aspects of Contractor's performance of such Services.

6.5 Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of Services under this Agreement. All things not expressly mentioned in this Agreement but necessary in carrying out its intent are required by this Agreement, and Contractor shall perform the same as though they were specifically mentioned, described and delineated herein.

6.6 Contractor warrants that all Services which may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by Contractor at its own cost, whether or not specifically called for.

6.7 Contractor warrants and accepts that any and all work, materials, services or equipment necessitated by Permitting Authorities as are applicable to bring Services into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no extra cost to the City.

6.8 Contractor shall strive to ensure maximum local business and workforce preference requirements are realized in the rendition of Services.

6.9 Contractor shall supervise and achieve performance of Services, using the highest quality established by industry standards. The Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and safety procedures and for coordinating all portions of Services under this Agreement, unless Contract Documents or the Project Manager provide other specific instructions concerning these matters.

6.10 Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, Subcontractors and their agents and their employees, and other persons performing portions of the Services.

6.11 Contractor shall be responsible for and coordinate any and all inspections required by the Permitting Authorities having jurisdiction over Services and/or the Worksite. Failure to obtain any required approval because of failure of the Contractor to conform to the Contract Documents shall not extend the Term of Agreement.

6.12 Contractor shall employ sufficient, competent personnel who shall be in attendance at the Worksite during the performance of Services.

6.13 Contractor shall secure all necessary permits from Permitting Authorities, the cost of which shall be paid by Contractor.

6.14 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, equipment and machinery, utilities, transportation and other facilities and services necessary for the proper execution and completion of Services.

6.15 Contractor shall develop and maintain a program to assure quality control and safety measures related to the provision of Services. Contractor shall supervise all Subcontractors providing instructions to each when their work does not conform to the requirements of the Contract Documents and shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient rendition of Services. The City shall be the final judge of performance and acceptability of Services.

6.16 Contractor shall enforce strict discipline and good order among the Contractor's employees and Subcontractors while on the Worksite. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

6.17 Contractor shall keep the Worksite premises and surrounding areas free from accumulation of debris, waste, garbage or materials as a result of rendering Services. Failure to clean Worksite as provided herein may cause the City to do so, and the cost incurred thereof shall be charged Contractor.

6.18 Contractor accepts, understands and agrees that these provisions of the Agreement constitute a material inducement for the City to enter into this Agreement and that the City has indeed relied on these particular provisions in making its decision to enter into this Agreement with Contractor.

ARTICLE 7 - CHANGES IN SERVICES

7.1 The City, without invalidating this Agreement, may order changes in the Services within the general scope of this Agreement. Contractor's compensation may be adjusted accordingly upon an executed amendment to this Agreement. All such changes in the Services shall be authorized by Change Order, subject to any limitations in the Contract Documents.

ARTICLE 8 - INDEPENDENT CONTRACTOR

8.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of Contractor rendering Services to the City under this Agreement.

ARTICLE 9 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

9.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

9.2 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

9.2.1 Employees, Subcontractors, agents, invitees, attendees, and members of the public on or about the Worksite and all other persons who may be affected thereby.

9.2.2 The Worksite and any public or private property at the Worksite and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of providing Services.

9.3 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of Permitting Authorities and public authorities bearing on the safety of persons or property, their protection from damage, injury or loss.

9.4 Contractor shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.

9.5 Contractor shall promptly remedy any damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by the City and whose acts are not attributable to the fault or negligence of the Contractor.

9.6 Contractor shall designate a responsible person at the Worksite whose duty shall be prevention of accidents or injury to persons or property.

9.7 Contractor shall not load or permit any part of the Worksite to be so loaded or congested so as to create a hazard, or endanger the Worksite, any person or property.

9.8 Contractor shall promptly report to the City and all accidents arising out of or in connection with the Services.

ARTICLE 10 - CORRECTION OF SERVICES

10.1 Contractor shall promptly correct those portions of Services rejected by the Permitting Authorities or failing to conform to the requirements of the Contract Documents. The Contractor shall bear costs of correcting such rejected Services, including any additional testing and inspections.

10.2 Contractor shall restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the Contractor during the performance of Services. Contractor shall leave the work site unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.

10.3 Contractor shall bear the cost of correcting or replacing damaged or destroyed portions or sections of the Worksite or property caused by the Contractor in the performance of Services.

ARTICLE 11 - CONFLICTS OF INTEREST

11.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

11.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 12 – CITY’S RIGHT TO TERMINATE AGREEMENT

12.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) Days written notice to Contractor. The City shall not be liable to Contractor for any compensation, or for any consequential or incidental damages or loss of profits.

12.2 In the event of termination, Contractor shall stop Services on the date specified in the written notice and take such action as may be necessary for the protection and preservation of the Worksite.

12.3 Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 13 - DEFAULT

13.1 In the event the Contractor fails to comply with any provision of this Agreement, the City may declare the Contractor in default by written notification, specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the City will be terminated. Notwithstanding, the City may, in its sole discretion, allow the Contractor to rectify the default to the City's reasonable satisfaction within ten (10) Days period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Contractor has commenced curing default and is effectuating a cure with diligence and continuity during such ten (10) Days period or any other period which the City prescribes. The default notice shall specify the date the Contractor shall discontinue the Services as the termination date.

13.2 An event of default shall mean a breach of this Agreement by Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an event of default, shall include the following:

13.2.1 Contractor has not delivered Services or a portion thereof, on a timely basis.

13.2.2 Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled staff personnel.

13.2.3 Contractor has become insolvent (other than as interdicted by the bankruptcy laws), 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.

13.2.4 Contractor has failed to obtain the approval of the City where required by this Agreement.

13.2.5 Contractor has failed to provide "adequate assurances" as required by this Agreement.

13.2.6 Contractor has failed in the representation of any warranties stated herein.

13.2.7 Contractor's failure to maintain the minimum insurance coverage as required herein.

13.2.8 Contractor's failure to provide access to Permitting Authorities for inspections.

ARTICLE 14 - NOTICES

14.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor: Elan Lawn and Landscape Services, Inc.
Attn: Michael Garcia, President
800 Poinciana Drive
Pembroke Pines, FL 33025
Phone: (954) 961-6138
Fax: (954) 961- 5052

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney

City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

14.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

14.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 15 - INDEMNIFICATION

15.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractors, employees and managers in the performance of Services under this Agreement.

15.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, Subcontractors, suppliers, or other persons directly or indirectly employed by its Subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

15.3 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment's or discharge of such obligations.

15.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Services are performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any Services, labor, construction services, material, equipment, or other items furnished in connection with the Services, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the City.

15.5 Contractor has visited the Worksite and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

15.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2014). Additionally,

the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 16 - INSURANCE

16.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all required insurance coverage, as more particularly described in the IFB, with the following minimum coverage:

16.1.1 Commercial General Liability - With project dedicated minimum limits of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. This coverage shall also include personal and advertising injury, medical payments and products completed operations to be maintained for three (3) years after completion of Services.

16.1.2 Commercial Automobile Liability - With minimum limit of One Million Dollars (\$1,000,000.00) covering any automobile including non-owned, hired or leased vehicles.

16.1.3 Worker's Compensation - As required by the State of Florida with statutory limits, and Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.

16.2 Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

16.3 The City shall be named as an additional insured for claims caused in whole or in part by the Contractor, Subcontractor's, employees or assignee's negligent acts or omissions during the term of this Agreement. This provision shall not limit the City's recovery for coverage under the Contractor's insurance policy.

16.4 Contractor shall not permit any Subcontractor to begin Services until after similar minimum insurance to cover Subcontractor has been obtained and approved.

16.5 In the event the insurance certificate provided by Contractor or Subcontractor indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) Days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance coverage remains in full force and effect.

16.6 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 17- CITY'S LIMITATION OF LIABILITY

17.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability will never exceed the agreed sum of One Thousand Dollars (\$1,000.00). Contractor expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any action or claim arising from this Agreement to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).

17.2 Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor agrees that the City shall not be liable to Contractor for damages in an amount in excess of One Thousand Dollars (\$1,000.00), for any action or claim for breach of contract or for any action or claim arising out of this Agreement.

ARTICLE 18 - FORCE MAJEURE

18.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 19 - EMERGENCIES

19.1 In any emergency affecting the safety of persons or property, the Contractor shall act at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 20 - PUBLIC RECORDS

20.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes (2014), and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 21 - AUDITS

21.1 The City, or its duly authorized representatives or other governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its Subcontractors and suppliers which apply to all matters of Contractor's Services to the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

ARTICLE 22 - SURVIVAL OF TERMS

22.1 The Parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 23 - TAXES

23.1 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

23.2 Contractor shall assume full responsibility for and shall pay all applicable taxes and assessments that accrue in the provision of Services, or to the improvements thereon, including sales and use taxes (if any).

ARTICLE 24 - MISCELLANEOUS PROVISIONS

24.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both Parties hereto or their authorized representatives.

24.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

24.3 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

24.4 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

24.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

24.6 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

24.7 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

24.8 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

24.9 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

24.10 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

24.11 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

24.12 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

24.13 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: *Amanda Diaz*

Print Name: Amanda Diaz

Date: 10/15/14

Elan Lawn and Landscape Services, Inc., a Florida for-profit corporation,

“Contractor”:

By: *Michael Garcia*

Print Name: Michael Garcia

Date: 10/15/14

ATTEST:

DocuSigned by:
By: *Michael A. Etienne*
2C7010872EE8414...
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation,
“City”:

DocuSigned by:
By: *Aleem Ghany*
AD8C42C3AF4E44B...
Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

DocuSigned by:
By: *Regine Monestime*
8787B801BC7F413...
Regine M. Monestime
City Attorney