

RESOLUTION NO. 2022 – 3991

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING AN AGREEMENT WITH BTS LAND SERVICES, CORP. IN AN AMOUNT NOT TO EXCEED BUDGETED FUNDS FOR TREE AND PALM TRIMMING SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE CITY OF HALLANDALE BEACH REQUEST FOR QUOTES ENTITLED “CITY-WIDE TREE TRIMMING, PRUNING, REMOVAL, AND STUMP GRINDING SERVICES FY 2022, 2023, 2024” PURSUANT TO SECTION 31-11(E)(5) OF THE CITY CODE; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Springs (the “City”) has been named as a “Tree City” and been awarded the “Tree City Growth Award” by the National Arbor Day Foundation on multiple occasions; and

WHEREAS, the City prides itself on, and desires to continue its efforts to enhance, its luscious tree canopy; and

WHEREAS, the City is in need of City-wide tree and palm trimming services (the “Services”); and

WHEREAS, the City of Hallandale Beach has an agreement with BTS Land Services, Corp. (the “Vendor”) for the Services pursuant to the Request for Quotes entitled, “City-Wide Tree Trimming, Pruning, Removal, and Stump Grinding Services FY 2022, 2023, 2024” and the City of Hallandale Beach’s Purchase Order Terms and Conditions (the “City of Hallandale Beach Contract”); and

WHEREAS, Section 31-11(E)(5) of the City’s Code of Ordinances (the “Code”) provides that purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector cooperative purchasing or not-for-profit companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases; and

WHEREAS, in accordance with Section 31-11(E)(5) of the City’s Code of Ordinances, the City Council seeks to authorize the City Manager to execute an agreement in substantially the form attached hereto as Exhibit “A” with the Contractor for

the Services consistent with the terms and conditions of the City of Hallandale Beach Contract (the "Agreement"); and

WHEREAS, the City Council finds that this Resolution is in the best interest and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

Section 2. Approval. That the City Council hereby approves the Agreement with the Contractor for the Services in an amount not to exceed budgeted funds pursuant to Section 31-11(E)(5) of the City Code.

Section 3. Authorization. That the City Council hereby authorizes the City Manager to execute the Agreement in substantially the form attached hereto as Exhibit "A," subject to the approval of the City Attorney as to form, content, and legal sufficiency.

Section 4. Implementation. That the City Manager is authorized to execute any purchase order or required documentation for the Services described in this Resolution and to take any action that is reasonably necessary to implement the purpose of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilman Best who moved its adoption. The motion was seconded by Councilman Vazquez and upon being put to a vote, the vote was as follows:

Vice Mayor Dr. Walter Fajet	<u>YES</u>
Councilman Bob Best	<u>YES</u>
Councilman Jacky Bravo	<u>YES</u>
Councilman Dr. Victor Vazquez	<u>YES</u>
Mayor Maria Puente Mitchell	<u>YES</u>

PASSED AND ADOPTED this 25th day of April, 2022.



MARIA PUENTE MITCHELL
MAYOR

ATTEST:


ERIKA GONZALEZ, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:



WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
CITY ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI SPRINGS
AND
BTS LAND SERVICES, CORP.**

THIS AGREEMENT (this “Agreement”) is made effective as of the _____ day of _____, 2022 (the “Effective Date”), by and between the **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”), and **BTS LAND SERVICES, CORP.**, a Florida for-profit corporation (hereinafter, the “Contractor”). Collectively, the City and the Contractor are referred to as the “Parties.”

WHEREAS, the City is in need of citywide tree and palm trimming services (the “Services”); and;

WHEREAS, the City of Hallandale Beach has an agreement with BTS Land Services, Corp. (the “Vendor”) for the Services pursuant to the Request for Quotes entitled, “City-Wide Tree Trimming, Pruning, Removal, and Stump Grinding Services FY 2022, 2023, 2024” (the “RFQ”) and the City of Hallandale Beach Purchase Order Terms and Conditions (the “Terms”), which documents are attached hereto as Exhibit “A” and Exhibit “B” respectively (collectively, the “City of Hallandale Beach Contract”); and

WHEREAS, the Parties wish to incorporate the terms and conditions of the City of Hallandale Beach Contract in this Agreement, except as otherwise modified or amended herein; and

WHEREAS, Section 31-11(E)(5) of the City Code of Ordinances (the “Code”) provides that “All purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector Cooperative Purchasing or Not-For-Profit Companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases, provided that: (a) The terms and conditions of the original bid or contract by the state or local government are satisfactory to the City and that such terms and conditions are expressly extended to the City. (b) The bid or contract by the state or local government is in force prior to the proposed purchase of supplies or services by the City. (c) The purchasing agent has determined that purchasing materials, goods, supplies and contractual services under existing state or local government bids or contracts are in the best interests of the City.”; and

WHEREAS, pursuant to Section 31-11(E)(5) of the City Code, the City desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and the Contractor agree as follows:

- 1. Incorporation of Contract.** The terms and conditions of the City of Hallandale Beach Contract is incorporated as though fully set forth herein. Except as otherwise specifically set forth or

modified herein, all terms in the City of Hallandale Beach Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

2. **Conflicts; Order of Priority.** This document without exhibits is referred to as the “Base Agreement.” In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:
 - A. First Priority: Base Agreement;
 - B. Second Priority: Exhibit C – E-Verify Affidavit;
 - C. Third Priority: Exhibit A – City of Hallandale Beach RFQ;
 - D. Fourth Priority: Exhibit B – City of Hallandale Beach Terms.
3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the City of Hallandale Beach Contract unless otherwise provided in this Agreement. All references to the City of Hallandale Beach shall be replaced with the City of Miami Springs where applicable.
4. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
5. **Compensation and Payment.**
 - A. Compensation for Services provided by the Contractor shall be in accordance with the unit prices quoted in the City of Hallandale Beach RFQ. Total compensation for the Services provided under this Agreement shall not exceed \$100,000.00.
 - B. Consultant shall deliver an invoice to City no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant’s invoice, which shall be based upon the percentage of work completed for each task invoiced. The City shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Manager.
6. **Amending Section entitled “Boycott” of City of Hallandale Beach Contract.** The Section entitled “Boycott” of the City of Hallandale Beach Terms is hereby deleted in its entirety and replaced as follows:

Nondiscrimination. During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

7. **Amending Section entitled “Indemnification” of City of Hallandale Beach Contract.** The Section entitled “Indemnification” of the City of Hallandale Beach Terms is hereby deleted in its entirety and replaced as follows:

Indemnification.

- A. Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor’s performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys’ fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor’s performance or non-performance of this Agreement.
 - B. Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The City is subject to section 768.28, Florida Statutes, as may be amended from time to time.
 - C. The provisions of this section shall survive termination of this Agreement.
8. **Amending Section entitled “Insurance” of City of Hallandale Beach Contract.** The Section entitled “Insurance” of the City of Hallandale Beach Terms is hereby deleted in its entirety and replaced as follows:

Insurance.

- A. Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to City, naming the City as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents, and volunteers naming the City as additional insured. Any insurance maintained by the City shall be in excess of the Contractor’s insurance and shall not contribute to the Contractor’s insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the City as it deems necessary or prudent.
- (1) Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and

Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

- (2) Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

- (3) Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- (4) Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

- B. Certificate of Insurance.** Certificates of Insurance shall be provided to the City, reflecting the City as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by City and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the

completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.

- C. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the City is to be specifically included as an Additional Insured for the liability of the City resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- D. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- E. The provisions of this section shall survive termination of this Agreement.

9. **Amending Section entitled "Litigation Venue" of City of Hallandale Beach Contract.** The Section entitled "Litigation Venue" of the City of Hallandale Beach Terms is hereby deleted in its entirety and replaced as follows:

Venue and Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

10. **Amending Section entitled "Termination" of City of Hallandale Beach Contract.** The Section entitled "Termination" of the City of Hallandale Beach Terms is hereby deleted in its entirety and replaced as follows:

Termination.

- A. The City Manager, without cause, may terminate this Agreement upon five (5) calendar days' written notice to the Contractor, or immediately with cause.
- B. Upon receipt of the City's written notice of termination, Contractor shall immediately stop work on the project unless directed otherwise by the City Manager.

- C. In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Contractor has first complied with the provisions of subsection (D).
- D. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the City, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

11. Attorneys Fees and Waiver of Jury Trial.

- A. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- B. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. Ownership and Access to Records and Audits.

- A. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- B. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall 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 the Agreement, and following completion of the Agreement until the records are transferred to the City.

- C. Upon request from the City's custodian of public records, Contractor shall 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
- D. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
- E. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- F. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- G. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.
- H. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** 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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ERIKA GONZALEZ, MMC, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, GONZALEZE@MIAMISPRINGS-FL.GOV.

13. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

14. E-Verify Affidavit. In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how

to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

CITY OF MIAMI SPRINGS

BTS LAND SERVICES, CORP.

By: _____
William Alonso, CPA, CGFO
City Manager

By: _____

Name: _____

Attest:

Title: _____

By: _____
Erika Gonzalez, MMC
City Clerk

Entity: _____

Approved as to form and legal sufficiency:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
City Attorney

Addresses for Notice:

City of Miami Springs
Attn: City Manager
201 Westward Drive
Miami Springs, FL 33166
305-805-5011 (telephone)
alonso@miamisprings-fl.gov (email)

Addresses for Notice:

_____ (telephone)
_____ (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Haydee Sera, Esq.
City of Miami Springs City Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
hsera@wsh-law.com (email)

With a copy to:

_____ (telephone)
_____ (email)

EXHIBIT "A"

City of Hallandale Beach
Request for Quotes entitled, "City-Wide Tree Trimming, Pruning, Removal, and Stump
Grinding Services FY 2022, 2023, 2024"

EXHIBIT "B"

City of Hallandale Beach
Purchase Order Terms and Conditions

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City of Miami Springs requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____
_____(name of person) as _____ (type of authority) for _____
_____(name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath