

RESOLUTION NO. 06-365

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE AGREEMENT BETWEEN SALMAN MAINTENANCE SERVICES AND THE TOWN OF MIAMI LAKES FOR THE TREE REPLACEMENT PROGRAM; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 24, 2005 Hurricane Wilma passed through the South Florida area and devastated much of the landscape within the Town of Miami Lakes (the "Town"); and

WHEREAS, the high winds of Hurricane Wilma toppled many trees that were located in the swale areas by the Town's streets and adjacent to the Town's sidewalks; and

WHEREAS, on December 12, 2005 the Town issued an Advertisement for Bids (the "Bid") entitled "Tree Replacement Program" to provide and install new live oak trees and hedges throughout the Town; and

WHEREAS, the Bid provided that the award of contract would be to the lowest Responsive and Responsible Bidder; and

WHEREAS, on January 3, 2006 the Town received five (5) bids which were reviewed by the Town Engineer; and

WHEREAS, the Town Engineer determined that Salman Maintenance Services ("Salman") to be the lowest Responsive and Responsible Bidder and the Town Manager accepted the determination; and

WHEREAS, the Town Council accepts the recommendation of the Town Manager;
and

WHEREAS, the Town desires to employ Salman to provide and install new live oak trees and hedges throughout the Town and in accordance with the agreement attached as Exhibit “A” (the “Agreement”); and

WHEREAS, the Town Council finds that approval of the Agreement between Salman and the Town to provide and install new live oaks trees and hedges is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Agreement. The Agreement between Salman and the Town to provide and install new live oak trees and hedges throughout the Town, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved. The Town Manager is authorized to negotiate the final compensation to Salman provided that the compensation shall not exceed the amount specified in Salman’s proposal.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations

imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 5. Execution of Agreement. The Town Manager is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Town Attorney.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this tenth day of January, 2006.

Motion to adopt by Mary Collins, second by Peter Thomson.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Robert Meador	<u>absent</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Michael Pizzi	<u>absent</u>
Councilmember Nancy Simon	<u>absent</u>
Councilmember Peter Thomson	<u>yes</u>


Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:



Debra Eastman, MMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.A.
TOWN ATTORNEY

EXHIBIT A
TOWN OF MIAMI LAKES
TREE REPLACEMENT PROGRAM
AGREEMENT/CONTRACT

THIS CONTRACT is made this ___ day of _____, 2006 by and between the Town of Miami Lakes, Florida (the "Town") and Salman Maintenance Services (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

1. **SCOPE OF WORK**- The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the Scope of Work for the Tree Replacement Program, as outlined in the Specifications in this Agreement, attached and incorporated herein.
2. **COMPENSATION/PAYMENT**-
 - 2.1. Contractor shall provide the Town with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.
 - 2.2. The Town shall make payment on said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished. If there is a dispute with regard to an invoice, the Town may withhold payment until all requested supporting materials are received from Contractor and the dispute is resolved.
 - 2.3. The Contractor shall be compensated at the unit prices specified in the Proposal/Bid Form attached and incorporated herein as Section 4 based upon the actual Work completed for the month. The total compensation under this Agreement shall not exceed \$134,250.00 per year.
 - 2.4. The Contractor shall be compensated for approved Allowance Work based upon the Actual Work completed for the month, as specified in Specification 01020, Allowances, attached and incorporated herein as part of Section 5. The total compensation for Allowances shall not exceed \$5,000.00 per year.
3. **TERM**- This Agreement shall be effective upon execution by both parties and shall continue for a term of three (3) separate one-year terms each not to exceed the total compensation noted in section 2.3 above. At its sole discretion, the

Town shall have an option to renew this Agreement upon the same terms and conditions for up to two (2) additional one (1) year extensions (the "Options"). The Options may be exercised at the sole discretion of the Town Manager. Any extension shall be effective upon receipt of a written notice from the Town Manager to the Contractor dated no later than 30 days prior to the date of termination.

4. **NON-WAIVER**- The approval, and/or acceptance of any part of the Work by the Town shall not operate as a waiver by Town of any other terms and conditions of the Agreement.
5. **PROTECTION OF PROPERTY AND THE PUBLIC**- The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:
 - 5.1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
 - 5.2. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
 - 5.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the Town and of any land adjoining the work site, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.

- 5.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

6. **INDEMNIFICATION-**

- 6.1. The Contractor shall indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Agreement, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.
- 6.2. This indemnification obligation shall survive the termination of this Agreement.
- 6.3. The Contractor shall defend the Town or provide for such defense, at the Town's option.
- 6.4. The Town has provided specific consideration for the indemnification of \$100.00 from the sums due to the Contractor under this Agreement.
- 6.5. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the Town.

7. **CONTRACT DOCUMENTS/CONTRACTOR'S EMPLOYEES -**

- 7.1. Contract Documents - The following documents shall, by this reference, be considered incorporated into and a part of this Agreement:

Instructions to Bidders;
Agreement/Contract;
Proposal/Bid Form;
Specifications;
Cone of Silence;
Addendum Acknowledgement Form;
Anti Kickback Affidavit;
Non-Collusive Affidavit;
Sworn Statement on Public Entity Crimes;
Supplement to Bid/Tender Form;
Performance Bond;
Notice of Intent to Award;
Notice to Proceed;
Planting Details;

7.2. Contractor's Employees -

7.2.1. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner. Contractor's employees shall be subject to a criminal background check, performed by the Town's police department.

7.2.2. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.

7.2.3. Contractor shall, upon receipt of a written request from the Town, immediately exclude any employee of Contractor from providing Work under this Agreement.

7.2.4. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

7.2.5. All references in this Agreement to the Contractor shall include Contractor's employees or subcontractors, wherever applicable.

8. **VEHICLES AND EQUIPMENT-** Contractor shall have on hand at all times clean and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The Town may

require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

9. **INSURANCE/BONDS** - The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

9.1. **Worker's Compensation and Employer's Liability Insurance:** Coverage 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.

9.2. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$2,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

9.3. **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$2,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and

must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

9.4. **Certificate of Insurance:** Contractor shall provide the Town Manager with Certificates of Insurance for all required policies. 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 Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies 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 Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

9.5. **Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. 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 in the same manner as if separate policies had been issued to each.

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

9.7. The Contractor has provided a Performance Bond to the Town attached and incorporated herein as Section 12. The Town shall have the right to utilize the bond should the Contractor default in the performance of the Work.

10. **ASSIGNMENT AND AMENDMENT**- No assignment by the Contractor of this Agreement or any part of it, or any monies due or to become due, shall be

made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.

11. **TERMINATION-**

11.1. Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

11.2. Upon notice of such termination, the Town shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

11.3. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

11.4. The Town may terminate this Agreement upon five (5) days written notice if the Contractor defaults on any material term of this Agreement.

12. **CHOICE OF LAW-** This Agreement shall be governed by the laws of the State of Florida. Venue shall lie in Miami-Dade County.

13. **ATTORNEY'S FEES-** In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

14. **ACCESS TO PUBLIC RECORDS-** The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Agreement for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of Termination.

15. **INSPECTION AND AUDIT-** During the term of this Agreement and for three (3) years from the date of Termination the Contractor shall allow Town representatives access during reasonable business hours to Contractor's and Subcontractor's records related to this Agreement for the purposes of inspection

or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall remit such payments to the Town.

16. **SEVERABILITY**- If a term, provision, covenant, or condition of this Agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.
17. **WAIVER OF JURY TRIAL**. The parties knowingly, voluntarily, intentionally and irrevocably, waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
18. **COUNTERPARTS**- This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.
19. **INDEPENDENT CONTRACTOR** – It is expressly agreed and understood that the Contractor shall be in all respects an independent contractor as to the Work, and that Contractor is in no respect an agent, servant or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded Town employees. Contractor further understands that Florida Worker’s Compensation benefits available to employees of the Town are not available to Contractor, and agrees to provide worker’s compensation insurance for any employee or agent of Contractor rendering services to the Town under this Agreement. All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of Contractor, under its sole discretion and not an employee, contractor or agent of the Town.
20. **ACCIDENT PREVENTION AND REGULATIONS** – Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Contractor responsible for same.
21. **BACKGROUND CHECKS** - The Contractor will be responsible for maintaining current background checks on all employees and subcontractor’s employees involved in the performance of this Agreement. Background checks must be performed prior to the performance of any Work by the employee under the Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.

22. **CODE OF ETHICS** - Contractor warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in Chapter 112, Florida Statutes, and the Conflict of Interest and Code of Ethics Ordinances in Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.
23. **LAWS, RULES & REGULATIONS** - Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Contractor shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the Town.
24. **POLICY OF NON-DISCRIMINATION** - The Contractor shall comply with all federal, state and local laws and ordinances applicable to the Work or payment for Work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of Work under this Agreement.
- 2.26 **NOTICES**- Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

Town:

Town of Miami Lakes
 6853 Main Street
 Miami Lakes, FL 33014
 Attention: Town Clerk

Contractor:

Contractor: _____
 Address: _____

 Name and Title _____
 Telephone: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

Attest:

TOWN OF MIAMI LAKES

By: _____
Town Clerk

By: _____
Wayne Slaton, Mayor

By: _____
Weiss Serota Helfman Pastoriza Cole & Boniske, P.A.
Town Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____

By: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____, _____ of _____, who is (check one) [] personally known to me or [] has produced _____ as identification.

Notary Public, State of Florida

My commission expires:

Print or Type Name of Notary Public

(* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.