

RESOLUTION NO. 12-975

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, TO APPROVE THE AWARD OF A CONTRACT FOR ITB 2012-07, TREE INVENTORY SERVICES, TO ARBORPRO, INC.; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") issued an Invitation to Bid ("ITB") No. 2012-07 on February 6, 2012, for Tree Inventory Services; and

WHEREAS, the Town Manager has determined that ArborPro, Inc. is the lowest responsive and responsible bidder and recommends award of a contract under ITB 2012-07 to same; and

WHEREAS, ArborPro, Inc. will be responsible for furnishing all labor, materials, tools, means of transportation, supplies, equipment, and services necessary for providing Tree Inventory Services covering approximately 6,000 trees and the analysis of potential vacant planting sites.

WHEREAS, the Town Council approves the recommendations of the Town Manager and authorizes the Town Manager to enter into contract with ArborPro, Inc., for Award of Contract ITB 2012-07, for Tree Inventory Services, in the amount of \$39,163.00.

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

Section 1. **Recitals.** The foregoing Recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of the Contract. The Town Council hereby approves the award of ITB No. 2012-07, to Arborpro, Inc., in the amount of \$39,163 for Tree Inventory Services.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract with ArborPro, Inc. for Tree Inventory Services.**Section 4.**

Authorization of Fund Expenditures. The Town Manager is authorized to execute a line item adjustment of \$34,163 from the 'Town Engineer' line item to the 'Tree Inventory' line item within the Public Works Department, and to expend budgeted funds to implement the terms and conditions of the Contract with Arborpro Inc.

Section 5. Execution of Contract. The Town Manager is authorized to execute the Contract with Arborpro Inc for tree inventory services on behalf of the Town for Tree Inventory Services in the amount of \$39,163, in substantially the form attached hereto

INTENTIONALLY LEFT BLANK

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

adoption.

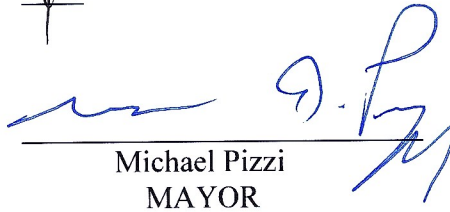
PASSED AND ADOPTED this 13th day of March, 2012.

Motion to adopt by Councilmember Tim Daubert, second by Councilmember Mary Collins.


FINAL VOTE AT ADOPTION

Mayor Michael Pizzi
Vice Mayor Ceasar Mestre
Councilmember Mary Collins
Councilmember Tim Daubert
Councilmember Nelson Hernandez
Councilmember Nick Perdomo
Councilmember Richard Pulido


Yes
Yes
Yes
Yes
Yes
Yes
Yes


Michael Pizzi
MAYOR

Attest:


Marjorie Tejada
TOWN CLERK

Approved as to Form and Legal Sufficiency


Joseph S. Geller
GreenspoonMarder PA
INTERIM TOWN ATTORNEY

TREE INVENTORY SERVICES

CONTRACT NO. 2012-07



The Town of Miami Lakes Council:

**Mayor Michael Pizzi
Vice Mayor Ceasar Mestre
Councilmember Mary Collins
Councilmember Timothy Daubert
Councilmember Nelson Hernandez
Councilmember Nick Perdomo
Councilmember Richard Pulido**

Alex Rey, Town Manager
The Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016

TREE INVENTORY SERVICES

Contract 2011-07

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SECTION 1
NOTICE TO BIDDERS
TOWN OF MIAMI LAKES
TREE INVENTORY SERVICES
ITB 2012-07

The Town of Miami Lakes (the "Town") will be accepting sealed Bids to provide Tree Inventory Services ("Project"). Bidders are to submit three (3) Bids, with original signatures together with a copy of the Bid on a CD-ROM. **Sealed Bids, including the CD-ROM must be received by the Town of Miami Lakes, Town Clerk at 15150 NW 79th Court, Miami Lakes, Florida by 2:00 P.M. on February 27, 2012.**

Scope of Work:

The Work consists of furnishing all labor, materials, tools, means of transportation, supplies, equipment, and services necessary for providing Tree Inventory Services covering approximately 6,000 Trees and the analysis of potential vacant planting sites.

Minimum Qualification Requirements:

Prospective Bidder must meet the following qualifications:

- Bidder must be licensed to conduct business in the State of Florida and Miami-Dade County
- Possess a minimum of seven (7) years' experience in providing Tree Inventory Services.
- Successfully completed a minimum of three (3) projects of a similar size, scope, and complexity.
- Assign a full time ISA Certified Arborist or American Society of Consulting Arborists (ASCA) Consulting Arborist with a minimum of five years' experience in the field of arboriculture and three years' experience in Tree inventory and hazard assessment. Arborist must be a full time employee of the Contractor.

The Town will consider a Bid as responsive where a Bidder has less than the stipulated minimum number of years of experience solely where the Bidder has undergone a name change and such change of name has been filed with the State of Florida.

Bid Documents may be obtained by visiting the Town's website at www.miamilakes-fl.gov and selecting "Contractual Opportunities". Any further inquiries regarding the Project may be directed by e-mail to Gary Fabrikant, Procurement Manager, at fabrikantg@miamilakes-fl.gov.

All Bids shall be submitted in accordance with the Instructions to Bidders. **Any Bids received after the specified time and date will not be considered.** The responsibility for submitting a Bid before the stated time and date is solely and strictly the responsibility of the Bidder.

Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this purchase.

SECTION 2
INSTRUCTIONS TO BIDDERS

2.1 DEFINITION OF TERMS

Area means the discrete sections of the Town established in accordance with Article 4.11 for the purpose of performing the Work in a systematic approach.

ANSI A300 Standards mean the industry-developed standards of practice for Tree identification and care.

Arborist means a person who is currently certified by the International Society of Arboriculture, who is well versed in the art of arboriculture, including Tree surgery, the identification, prevention and cure of Tree diseases and insects.

Bid means the Submittal tendered by a Bidder in response to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Invitation to Bid ("ITB") at the time of submittal.

Bid Form means the form that contains the goods or services to be purchased and that must be completed and submitted with the Bid.

Bidder means any person, firm or corporation, or its duly authorized representative tendering a Submittal in response to this solicitation.

Change Order means a written document ordering a change in the Contract price or Contract time or a material change in the Work.

Construction Change Directive means a written directive to effect changes to the Work, issued by the Project Manager that may affect the ITB Contract price or time.

Contract means the ITB and the Bid documents that have been executed by the Bidder and the Town subsequent to approval of award by the Town.

Contract Documents means the Contract as may be amended from time to time, any and plans, specification, bonds, addendum, clarifications, directives, Work Orders, Work Order Proposals, change orders, payments and other such documents issued under or relating to the Contract.

Contractor means the person, firm, or corporation with whom the Town has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to the Work under the Contract.

Cure means the action taken by the Contractor promptly, after receipt of written notice from the Town of a breach of the Contract Documents, which shall be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach.

Cure Period means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of a written Notice to Cure from the Town identifying the deficiencies and the time to Cure.

Days mean calendar days.

Diameter at Breast Height or DBH means the diameter of a Tree's trunk measured at a height four and one-half (4.5) feet above natural grade. In the case of multiple-trunk Trees, the DBH shall mean the sum of each trunk's diameter measured at a height of four and one-half (4.5) feet above natural grade.

Final Completion means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work and submitted all documentation required by the Contract Documents.

Field Directive means a written direction from the Project Manager directing the Contractor to proceed with Work requested by the Town, which is minor in nature and typically should not involve additional cost.

Inspector means an authorized representative of the Town assigned to make inspections of the Work under the Contract. The Town, at its sole discretion may hire a professional consultant to perform the inspections.

Materials mean goods or equipment incorporated in a Project, or used or consumed in the performance of the Work.

Notice of Award means the written letter issued by the Procurement Manager to the Contractor notifying the Contractor that it has been awarded the Contract.

Notice to Proceed means a written letter or directive issued by the Procurement Manager or Project Manager designee acknowledging that the Contractor may begin Work in a designated Area.

Project or Work means to all reasonably necessary and inferable construction and services required by the Contract Documents including all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations, including completion of the construction in accordance with the Contract Documents.

Procurement Manager means the employee of the Town responsible for the Town's procurements and who serves as the contracting officer for the Town.

Project Manager means the individual assigned by the Town Manager to manage the Project.

Pruning/Trimming means the selective cutting of Tree or plant parts done to encourage new growth or better flowering; to remove old stems or deadwood; or to shape Trees according to the Standards set forth in the ANSI A300 Tree Care Standards Manual ("ANSI A300 Standards"), ISA requirement or other standards required by the Contract, which are incorporated herein by reference. Prior written approval of the Project Manager is required for the pruning or trimming of Tree(s) not in compliance with ANSI 300 Standards, ISA or any other standards established under the Contract.

Request For Information (RFI) means a request from the Contractor seeking an interpretation or clarification relative to the Contract Documents. The RFI, which shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is required. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

ROW Trees mean located in the street medians, alongside the streets, along one or both sides the sidewalks, and expressway arterials.

Subcontractor means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes materials not so worked.

Substantial Completion means that point at which the Work is at a level of completion in substantial compliance with the Contract Documents.

Submittal means the documents prepared and submitted by the Bidder in response to this ITB.

Town means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.

Town Manager means the duly appointed chief administrative officer of the Town of Miami Lakes or his designee.

Tree or Trees means any self-supporting woody plant or palm which usually has a single main axis or trunk, with a minimum trunk diameter at breast height of two (2) inches and a minimum overall height of twelve (12) feet. This definition excludes plants which are defined as shrubs, hedges, vines, or ground covers. Palms shall have a minimum height of fourteen (14) feet in order to be classified as a Tree.

Work or Service as used herein refers to all reasonably necessary and inferable labor, material, equipment, and services, whether or not specifically stated, required by the Contract Documents for the Contractor to fulfill its obligations, under the Contract Documents.

Work Crew means the employees assigned by the Contractor to perform Work under the Contract.

2.2 GENERAL REQUIREMENTS

The ITB and any addendum that may be issued constitute the complete set of documents for this solicitation. The Bid Form page(s), and all forms contained in the ITB shall be completed, signed, and submitted in accordance with the requirements of Sections 1 and 2. All Submittals must be typewritten or filled in with pen and ink, and must be signed in **blue** ink by an officer or employee having authority to bind the company or firm. Errors, corrections, or changes on any document must be initialed by the signatory of the Submittal. Bidder shall not be allowed to modify its Submittal after the opening time and date.

2.3 PREPARATION OF BID

The Bid Form may contain multiple line items and the Bidder must provide prices for all line items. Failure to include pricing on all line items shall result in the Submittal being found non-responsive.

Bidder must use the blank Town forms provided herein. Failure to utilize the Town's Bid Forms will result in a determination that the Bid is non-responsive. The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the Town's forms, or fully complete said forms will, unless otherwise specifically stated herein, result in a determination that the Bid is non-responsive.

A Bid will be considered non-responsive if it is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid includes the furnishing of all labor, materials, equipment, all overhead/indirect expenses and profit, necessary for the completion of the Work, except as may be otherwise expressly provided in the Contract Documents.

No joint ventures are permitted for this Project.

2.4 BID PREPARATION AND RELATED COSTS

All cost involved with the preparation and submission of Bid Submittal to the Town or any work performed in connection therewith, shall be the sole responsibility of the Bidder(s). No payment shall be made for any Bid Submittal received, or for any other effort required of or made by the Bidder prior to commencement of Work as defined by a contract duly approved and executed by the Town Council or Town Manager, as applicable. The Town shall bear no responsibility for any cost associated with any judicial proceedings resulting from the ITB process.

Bidder must also submit with its Submittal all documents and information required by the ITB. Failure to provide these documents and information with the Submittal will result in the Bid Submittal being rejected as non-responsive, except where the Town states it may allow additional time after the Bid opening for receipt of documents.

2.5 PRE-BID CONFERENCE

No pre-bid conference is scheduled for this ITB.

2.6 QUALIFICATION OF BIDDERS

Bidder must meet the minimum qualification requirements stated in Section 1 and must be fully qualified and capable of performing the Work under the Contract.

2.7 PERFORMANCE OF THE WORK

Bidder must be capable of self- performing all of the Work. No Subcontracting of the Work is permitted. By submitting a Bid the Bidder certifies that it will meet these requirements. As part of the Submittal the Bidder is to complete and include the form entitled "Questionnaire". Failure to complete and submit this form or to meet the requirement stated therein may result in the Bid Submittal being deemed non-responsive. Where the Town subsequently determines during the performance of the Work that the Contractor is not meeting the stated requirements the Contractor shall be in default of the Contract Documents. The Town, in its sole discretion, may allow the Bidder to submit information missing from the Questionnaire after the Bid opening.

2.8 EXAMINATION OF CONTRACT DOCUMENTS

It is the responsibility of each Bidder, before submitting a Bid in response to this ITB to:

- Carefully review the ITB, including any Addendum and notify the Town of all conflicts, errors or discrepancies.
- Become familiar with conditions that may affect costs, progress, performance or furnishing of the Work.
- Take into account federal, state and local (Town and Miami-Dade County) including, without limitation the Town's Code, and Miami-Dade County and the State of Florida's

statutes laws, rules, regulations, and ordinances that may affect a Bidder's ability to perform the Work.

- Study and carefully correlate Contractor's observations with the requirements of the ITB.

The submission of a Bid in response to this solicitation shall constitute an incontrovertible representation by Bidder that it will comply with the requirements of the Contract Documents and that without exception, the Bid is premised upon performing and furnishing the Work required under the Contract Documents and that the Contract Documents are sufficient in detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2.9 INTERPRETATIONS AND CLARIFICATIONS

All questions about the meaning or intent of the ITB and specifications shall be directed in writing by e-mail to Gary Fabrikant, Procurement Manager, at fabrikantg@miamilakes-fl.gov. Interpretation or clarifications considered necessary by the Town in response to such questions will be issued by means of addenda. All addenda will be posted on the Town's website, www.miamilakes-fl.gov and it is the sole responsibility of the Bidder to obtain all addenda. Written questions must be received no less than ten (10) days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.

2.10 POSTPONEMENT OF BID OPENING DATE

The Town reserves the right to postpone the date for receipt and opening of Submittals and will make a reasonable effort to give at least five (5) calendar days notice prior to the Bid opening date, of any such postponement to prospective Bidders.

2.11 ACCEPTANCE OR REJECTION OF BIDS

The Town reserves the right to reject any and all Bids, with or without cause, to waive technical errors and informalities, or to cancel or re-issue this solicitation. The Town also reserves the right to reject the Bid of any Bidder who has failed to previously perform under a contract or who is in arrears to the Town.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after Bid opening date. A Bidder may not withdraw its Bid unilaterally nor change its Bid before the expiration of one hundred twenty (120) days from the date of Bid opening. A Bidder may withdraw its Bid after the expiration of one hundred twenty (120) calendar days from the date of Bid opening by delivering written notice of withdrawal to the Town's Procurement Manager prior to award of the Contract by the Town Council or Town Manager, applicable. Once the Town makes the award, the Bid cannot be withdrawn under this Article.

2.12 WITHDRAWAL OF BID

A Bidder may withdraw his Bid at any date and time prior to the date and time the Bids are scheduled to be opened.

2.13 OPENING OF BIDS

Bids will be publicly opened at the appointed time and place stated in the ITB. Late Bids will not be opened. No responsibility will be attached to any Town Staff for the premature opening of a Bid or a Bid not being opened at the Bid opening that is not properly addressed and identified. Bidders or their authorized agents are invited to be present at the bid opening. The lowest Bid identified at the Bid opening does not establish or determine the lowest responsive and responsible Bidder who may be awarded a Contract.

2.14 AWARD OF CONTRACT

Award of a Contract will be to the lowest responsive and responsible Bidder, as determined to be in the best interest of the Town. The Town may require demonstration of competency and, at its sole discretion, conduct site visit(s) and inspections of the Bidder's place(s) of business, require the Bidder to furnish documentation, product data, samples of the materials, and/or require the Bidder to attend a meeting to determine the Bidder's qualifications and ability to meet the requirements of the ITB. The Town shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, knowledge of the trade work to be performed, the quantity of Work being performed by the Contractor and past performance on Town and other contracts. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the Town Manager is satisfied that the Bidder(s) is qualified to perform the Work.

Any Bidder who, at the time of submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency, the Bid may be declared non-responsive. Any Bidder who has filed a lawsuit against the Town or where the Town has filed a lawsuit or won a court judgment against a Bidder, such Bidder may be declared non-responsive.

If the Town accepts a Bid, the Town will notify the Bidder that it is the apparent awardee and that award is conditioned upon executing the Contract, and submission and approval of the required insurance certificates. The Town will provide a written notice of award upon the Bidder meeting these requirements.

If the successful Bidder to whom a contract is proposed to be awarded forfeits the Award by failing to meet the conditions as stated above, the Town may, at the Town's sole option, award the Contract to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise the ITB.

2.15 LOCAL PREFERENCE

Business located within the boundaries of the Town of Miami Lakes may be entitled to a preference based on the Town's Procurement Ordinance, which is available for review on the Town's website at http://www.miamilakes-fl.gov/c-our_govt/admin-procurement.php.

2.16 BID PROTESTS

The Town's Bid Protest procedures are applicable to this solicitation. Any such protest must be submitted in accordance with the Town's Procurement Ordinance, which is available for review on the Town's website at http://www.miamilakes-fl.gov/c-our_govt/admin-procurement.php.

2.17 COLLUSION

Where two (2) or more Bidders are related, including ownership, sharing of offices, or similar evidence such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of the parties in preparation and submission of Bids under the ITB. Related parties shall mean employees, officers or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Bidder have a direct or indirect ownership interest in another Bidder for the same project(s) or where one or more employees, officers or the principals thereof participated in the preparations of more than one Submittal. ITB responses found to be collusive shall be rejected and the Bidders may be subject to other action in accordance with the Town's Procurement Code.

2.18 BIDDER IN ARREARS OR DEFAULT

The Bidder represents and warrants that the Bidder is not in arrears to the Town and is not a defaulter as a surety or otherwise upon any obligation to the Town. In addition the Bidder warrants that the Bidder has not been declared "not responsible" or "disqualified" by or debarred from doing business with any state or local government entity in the State of Florida, the federal government or any other state/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Bidder's responsibility or qualification to receive public contracts. The Bidder considers this warrant as stated in this Article to be a continual obligation and shall inform the Town of any change during the term of the Contract.

2.19 PUBLIC ENTITY CRIMES ACT

In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

END OF SECTION

SECTION 3

GENERAL TERMS AND CONDITIONS

3.1 INTENTION OF THE TOWN

It is the intent of the Town to describe in the ITB the Project to be completed in accordance with all industry standards, codes, rules and regulations governing all the Work to be performed under this Contract. Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be furnished by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor shall comply therewith. Town shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

3.2 TIME IS OF THE ESSENCE

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents.

The date and period of time set forth in the Notice to Proceed for the commencement, commencement and completion of the Work was included because of its importance to the Town.

3.3 NOTICES

Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice shall remain until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Alex Rey
Town Manager
Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016
(305)-364-6100
reya@miamilake-fl.gov

Mr. Gary Fabrikant
Procurement Manager
Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016
(305)-364-6100
fabrikantg@miamilake-fl.gov

For Contractor:

Mr. Keith Henning
President
22605 La Palma Ave., #509
Yorba Linda, California 92887
(714) 694-1924
khennig@arborprousa.com

During the Work the Contractor shall maintain continuing communications with designated Town representative (s). The Contractor shall keep the Town fully informed as to the progress of the Work under the Contract.

3.4 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract Documents by reference and a term, statement, requirement, the specifications or any plans, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents the priorities stated below shall govern;

- Revisions and Change Orders to the Contract shall govern over the Contract.
- The Contract Documents shall govern over the Contract.
- The Special Conditions shall govern over the General Conditions of the Contract
- Addendum to an ITB shall govern over the ITB.
- Where provisions of codes, or industry standards are in conflict, the more restrictive or higher quality shall govern.

3.5 INDEMNIFICATION-

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 Contract, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The Contractor agrees and recognizes that the Town shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under this Agreement. The Contractor shall defend the Town or provide for such defense at its own expense, at the Town's option.

This indemnification obligation shall survive the expiration or termination of this Contract.

The Town has provided specific consideration for the indemnification of \$10.00 from the sums due to the Contractor under this Contract.

3.6 **INSURANCE**

Without limiting any of the other obligations or liabilities of Contractor, the Contractor shall secure and maintain throughout the duration of this Contract, 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 B as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, The insurance carrier shall 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:

- a. Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law" and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident and a waiver of subrogation.
- b. 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 \$500,000.00 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.
- c. 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 \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage 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.

d. Certificate of Insurance: Contractor shall provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. 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, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.

e. 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 Contract. 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.

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.

3.7 GENERAL REQUIREMENTS

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not employee(s) or agent(s) of the Town or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of the Contract a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Town Manager or designee, should the Town Manager or designee make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Work, in a competent and professional manner.

The Contractor shall at all times cooperate with the Town, or the Consultant (if any) and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Consultant (if any) and other agencies authorized by the Town, shall have full access to the Project site at all times.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

3.8 RULES AND REGULATIONS

The Contractor shall comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor shall be familiar with all federal, state and local laws that affect the Work.

3.9 SITE INVESTIGATION AND REPRESENTATION

The Contractor acknowledges that it has satisfied itself as to the nature and locations of the Work under the Contract Documents subsequent to receiving a Notice To Proceed and prior to commencement of Work, the general and local conditions which could in any way affect the Work under the Contract Documents.

Any failure by the Contractor to familiarize itself with any conditions that may impact the performance of the Work shall not relieve Contractor from responsibility for properly estimating the difficulty or cost of performing the Work and shall not entitle the Contractor to any additional compensation.

3.10 METHOD OF PERFORMING THE WORK

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract Documents shall be made upon that basis.

3.11 PROTECTION OF PROPERTY, UTILITIES, AND THE PUBLIC

The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any public or private buildings or property (including landscaping, irrigation, walks, drives, structures or utilities).

3.12 SAFETY PRECAUTIONS

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, to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

Contractor must adhere to applicable environmental protection guidelines for the duration of the Work. The Contractor shall comply with **all** applicable codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Town, Miami-Dade County, State of Florida, and the federal government), which bear on the performance of the Work

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project duration.

3.13 LABOR AND MATERIALS

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified in a Work Order.

3.14 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 Contract.

3.15 SUPERVISION OF THE WORK

Contractor shall have competent full time English speaking supervisor whom shall be an ISA Certified Arborist or American Society of Consulting Arborists (ASCA) Consulting Arborist who shall represent Contractor and all directions given to the supervisor shall be as binding as if given to Contractor. Contractor will provide properly licensed personnel where such personnel are required by any rule, regulations, or law. Contractor shall give efficient supervision to the Work, using its best skill and attention.

3.16 SUBCONTRACTORS

Subcontracting of any of the Work under the Contract is **not** permitted.

3.17 AUTHORITY OF THE PROJECT MANAGER

The Town Manager hereby authorizes the Project Manager to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under the Contract Documents.

The Contractor shall be bound by all determinations or orders of the Project Manager and shall promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager shall have authority to act on behalf of the Town to the extent provided by the Contract, unless otherwise modified in writing by the Town Manager. All instructions to the Contractor shall be issued in writing. Any directions initially provided in writing must be followed up in writing by the Project manager to be binding. All instructions to the Contractor shall be issued through the Project Manager, the Town Manager or designee.

The Project Manager will not be responsible for means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

All interpretations and recommendations of the Project Manager shall be consistent with the intent of the Contract Documents.

The Project Manager will not be responsible for the acts or omissions of the Contractor, or any of its agents or employees, or any other persons performing any of the Work.

3.18 TAXES

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

3.19 REMOVAL OF UNSATISFACTORY PERSONNEL

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor to perform Work under the Contract. The Contractor shall respond to the Town within two (2) business days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town shall make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not constitute and direction to the Contract for the termination, demotion, or other personnel related action related to said individual(s).

3.20 INSPECTION OF THE WORK

The Project Manager, Town Manager or designee, Inspectors, representing the Town, shall at all times have monitor the performance of the Work.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager.

3.21 DEFECTIVE OR NON-COMPLIANT WORK

The Project Manager shall have the authority to reject or disapprove Work that is found to be defective or not in compliance with the requirements of the Contract. If required Contractor shall promptly either correct all defective or non-compliant Work or remove such defective Work and replace it with non-defective/non-compliant Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections.

Correction of such Work shall be at no cost to the Town. Should Contractor fail or refuse to remove or correct any defective or non-compliant in accordance with the requirements of the Contract Documents within the time indicated in writing by the Town Manager of designee, the Town Manager or designee shall have the Work performed by others.

3.22 CHANGE ORDERS

The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract Documents and all such changes shall be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

Any changes to the Contract must be contained in a written document, executed by the both parties. However, under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

Failure by the Contractor to proceed with Change Order Work when so directed by the Town Manager or designee may result in the Contractor being found in default of the Contract.

3.23 FORCE MAJEURE

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, then, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the Town within five (5) days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law.

3.24 EXTENSION OF TIME

If the Contractor is delayed at any time during the performance of the Work beyond the Contract Time by the neglect or failure of the Town or by a Force Majeure, then the Contract Time set forth in the Contract shall be extended by the Town subject to the following conditions:

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;
- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

Note: A delay meeting all the conditions of the above, shall be deemed an Excusable Delay.

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay shall be made within five (5) days after the time when the Contractor knows or should have known of any cause for which it may claim an extension of time and shall provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of

the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Contractor to furnish such additional information or documentation, as the Project Manager shall reasonably deem necessary or helpful in considering the requested extension.

The Contractor shall not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall be obligated to continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, shall not waive the Town's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

3.25 EXCUSABLE DELAY, NON-COMPENSABLE

Contractor shall only be entitled to a time extension and no compensation for the delay for Excusable Delays, as defined in Article 3.24.

Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 3.26.

Failure of Contractor to comply with Article 3.24, Article 3.25 and Article 3.26, as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

3.26 CLAIMS

Any claim for a change in the time for completion of the Work or the Contract price shall be made by written notice by Contractor to the Procurement Manager within ten (10) days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim, except for Excusable delays which shall fall within Article 3.24. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Procurement Manager allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes shall be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract shall be waived if not submitted in strict accordance with the requirements of this Article.

The Contract time will be extended in an amount equal to time lost due to Excusable Delay(s) if a claim is made as provided in this Article.

The Contractor shall not be entitled to an increase in the Contract price or payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract time for completion of the Work, as the sole and exclusive remedy for such resulting excusable delay.

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the Town or any of its representatives and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work due to an excusable delay as defined in this Article. The Contractor alone specifically assumes the risk of such delays, including without limitation: delays in processing or approving any submittals to the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor shall not receive monetary compensation for Town delay(s).

Failure of Contractor to comply with this Article as to any particular event of claim shall be deemed conclusively to constitute a waiver of any and all claims resulting from that particular event.

3.27 DISPUTES AND MEDIATION

Contractor understands and agrees that all disputes between it and the Town upon an alleged violation of the terms of this Contract by the Town shall be submitted for resolution in the following manner.

Initial effort(s) should be made by the Contractor to resolve any issues with the Project Manager.

Should the initial efforts at resolution not end in a mutual resolution then the Contractor shall notify in writing the Procurement Manager identified in Article 3.3, Notices, of the claim or dispute

The Contractor shall, within five (5) business days, submit its dispute in writing, with all supporting documentation, to the Procurement Manager. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute the Contractor shall submit their dispute in writing within five (5) calendar days of the written finding being issued by the Procurement Manager to the Town Manager. Failure to submit such appeal in the stated timeframe of the written finding by the Procurement Manager shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager shall review the issues relative to the claim or dispute, based on the documentation previously submitted, and issue a written finding.

The Town Manager and Procurement Manager may hold meetings to further clarify the issues related to the claim or dispute or in an effort to resolve the issues related to the claim or dispute.

Appeal to the Town Manager for his/her resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the Contractor be entitled to compensation hereunder, the Town Manager's decision may be subject to approval by the Town Council. Contractor shall not be entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Council if applicable, or
- (ii) a period of sixty (60) days has expired after submitting the dispute to the Town Manager, or a period of (90) days has expired where Town Manager's decision is subject to Town Council for approval; or
- (iii) Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the Town Manager's determination of the claim or dispute under this Article is unacceptable to the Contractor, the Contractor must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Time, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator shall be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

3.28 CONTINUING THE WORK

Contractor shall continue to perform all Work required under the Contract Documents during all disputes, claims, or disagreements with Town, including disputes or disagreements concerning a request for a Change Order. No Work shall not be delayed or postponed pending resolution of any disputes, claim or disagreements.

3.29 FRAUD AND MISREPRESENTATION

The Town may terminate this Contract or any other contracts with the Contractor or with any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the Town through fraud, misrepresentation or material misstatement. Such person, individual, corporation, entity, or affiliate shall be responsible for all direct or indirect costs associated with termination or cancellation.

3.30 STOP WORK ORDER

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90)

days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town shall either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 3.42, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time to complete any Work under the Contract or extending the Contract Term to the extent that, in the opinion of the Town Manager or designee, the Contractor may have been delayed by such suspension. In the event the Town Manager or designee determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor, or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time or Contract Term or (Time) as a result of the issuance of a Stop Work Order.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

3.31 HURRICANE PREPAREDNESS

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, shall take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor has given notice of same.

Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

3.32 CLEANING UP; TOWN'S RIGHT TO CLEAN UP

Contractor shall at all times keep the Work site free from accumulation of waste materials or rubbish caused by its operations. At the completion of a Work Contractor shall remove all its waste materials and rubbish from and about the Project site as well as any tools, equipment, machinery and surplus materials or supplies. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Town may do so and the cost incurred shall be charged to Contractor. Any combustible waste materials must be removed from the work site(s) at the end of each day.

3.33 SET-OFFS, WITHHOLDING, AND DEDUCTIONS

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

-
- Any amount of any claim by a third party;
 - Any Liquidated Damages, and/or;
 - Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town shall notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act

3.34 CONTRACTOR DEFAULT

a. Event of Default

An event of default shall mean a breach of the Contract by the 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 but not limited to, the following:

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services or materials, or supplies they have provided;
- The Contractor has become insolvent 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;
- The Contractor has failed to obtain the approval of the Town where required by the Contract Documents;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work.

b. Notice of Default-Opportunity to Cure

Where an Event of Default ("Default") occur under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town or the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Town Manager or designee may also suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved.

c. Termination for Default

Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Contract. Contractor understands and agrees that

termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination.

In the event of termination by the Town Manager or designee, the Town Manager or designee may immediately take possession of all applicable documentation and data, material, equipment, and supplies to which it is entitled to under the Contract or by law.

Where the Town erroneously terminates the Contract for default, the terminations shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

3.35 TERMINATION FOR CONVENIENCE

In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice shall state the date upon which Contractor shall cease all Work under the Contract, and if applicable vacate the Project site.

The Contractor shall, upon receipt of such notice, unless otherwise directed by the Town:

- Stop all Work on the date specified in the notice (“the Effective Date”);
 - Take such action as may be necessary for the protection and preservation of the Town’s materials and property;
 - Cancel all cancelable orders for materials and equipment; and assign to the Town and deliver to the Town, at a site(s) specified by the Town, any non-cancelable orders for materials and equipment that can not otherwise be used by the Contractor on other work;
 - Take no action that shall increase the amounts payable by the Town under the Contract Documents; and take reasonable measures to mitigate the Town’s liability under the Contract Documents; and
 - All documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Contractor:

- For the actual cost or the fair and reasonable value, whichever of any non-cancelable material(s) and equipment than cannot be used elsewhere by the Contractor in the performance of its work.
- In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the Contractor.
- Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

3.36 TOWN MAY AVAIL ITSELF OF ALL REMEDIES

The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy shall

not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

3.37 COMPLIANCE WITH APPLICABLE LAWS

The Contractor shall comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

3.38 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

Contractor shall not unlawfully discriminate against any person, shall provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contact. Contractor shall comply with all applicable federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

3.39. INDEPENDENT CONTRACTOR

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

3.40 THIRD PARTY BENEFICIARIES

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.

3.41. ASSIGNMENT OR SALE OF CONTRACT

The performance of this Contract shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Contract.

Any transference without Town approval shall be cause for the Town to terminate this Contract for default and the Contractor shall have no recourse from such termination.

Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

3.42. MATERIALITY AND WAIVER OF BREACH

Town and Contractor agree that each requirement, duty, and obligation set forth in the Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

3.43 DEFENSE OF CLAIMS

Should any claim be made or any legal action brought in any way relating to the Work under the Contract, the Contractor shall diligently render to the Town any and all assistance which the Town may require of the Contractor.

3.44 FUNDS AVAILABILITY

Funding for this Contract is contingent on the availability of funds and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

3.45 ACCESS TO AND REVIEW OF RECORDS

Town shall have the right to inspect and copy, at Town's expense, the books and records and accounts of Contractor which relate in any way to the Contract. The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes and Town shall have the right to immediately terminate this Contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of termination.

3.46 ROYALTIES AND PATENTS

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

3.47 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN

In the event the Contractor may be deemed to have a cause of action against the Town, no action shall lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Town or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if the Contract is terminated under the provisions of the Contract unless such action is commenced within six (6) months after the date of such termination by the Town.

3.48 CONTRACT EXTENSION

The Town reserves the right to exercise its option to extend the Contract for up to ninety (90) calendar days beyond the original Contract period, inclusive of any Options to Renew exercised by the Town. In such event, the Town will notify the Contractor in writing of such extensions.

3.49 APPLICABLE LAW AND VENUE OF LITIGATION

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions the sole venue shall be Miami-Dade County, Florida.

3.50 NON-EXCLUSIVE CONTRACT

It is the intent of the Town to enter into a Contract with the successful Bidder(s) that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, as it sees fit, including but not limited to: award of other contracts, use of another contractor, or perform the Work with its own employees.

3.51 SEVERABILITY

In the event any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

3.52 CONTRACT DOCUMENTS CONTAINS ALL TERMS

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

3.53 ENTIRE AGREEMENT

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

END OF SECTION

SECTION 4
SPECIAL TERMS AND CONDITIONS

4.1 SCOPE OF WORK

The Town of Miami Lakes (Town) is looking to update the Town's Tree inventory including but not limited to; Tree location, Tree attributes, site conditions, the presence of overhead utilities, for all Trees to be inventoried.

4.2 TIME FOR COMPLETION OF THE WORK

This Contractor shall have ninety (90) calendar days for completion of the Work from the date a Notice to Proceed is issued.

A Notice to proceed will only be issued after receipt of all documents required prior to commencement of the Work.

4.3 HOURS FOR PERFORMING WORK

All Work shall be performed Monday through Friday between the hours of 8:00 am and 5:00 pm.

Any Work to be performed outside these hours will require the prior written approval of the Town Manager. A Work Order may establish different working hours than those stated herein.

4.4 COMPENSATION

Compensation shall be on a unit price basis (price per Tree or vacant site). Compensation includes full compensation for all travel, mileage, instrumentation/equipment, labor, deliverables, overhead, profit, and any other expenses incurred by the Contractor that are necessary to perform the Work as described within the Contract Documents.

The Town shall only issue payment for an Area when the Work has been completed, the data files for the Area(s) are delivered to the Town, and the Town has reviewed and accepted the data files for the Area(s).

4.5 INVOICES

Contractor shall provide the Town with one invoice per month for Work completed and accepted by the Town as stated in Article 4.4. At a minimum the invoice must contain the following information: Multiple invoices will not be accepted and the Town will not make payment based on statements of accounts.

- Name and address of the Contractor
- Contract number
- Date of invoice
- Invoice number (Invoice numbers cannot be repeated)
- Work performed, including location(s) where the Work was performed
- Unit prices of Work performed

- Quantities of Work Performed
- Extended prices
- Total value of the invoice

Failure to include the above information will delay payment. Payments will not be made based on statements of accounts.

The Town will take action to pay, reject or make partial payment on an invoice in accordance with the Florida Local Government Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished or where the Work has not been accepted by the Town. If there is a dispute with regard to an invoice, the Town will pay the amount not in dispute and reject the remainder that is in dispute.

4.6 PAYMENTS

Payment for the Project shall be paid in accordance with the State of Florida Local Government Prompt Payment Act, upon Final Completion of a Project.

4.7 LIQUIDATED DAMAGES

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract or any approved extension of time the Contractor may be granted by the Town. In the event of a delay in completion beyond the timeframe set forth in the Contract the Contractor shall pay to the Town two hundred fifty dollars (\$250.00) for each and every calendar day of unexcused delay, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified in writing of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the Project.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the Town, the Contractor shall pay the difference upon demand by the Town. Should the Contractor fail to compensate the Town for any liquidated damages, the Town shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

The Town shall notify the Contractor that it is incurring liquidated damages.

4.8 REQUESTS FOR INFORMATION

The Contractor shall submit a Request for Information (RFI) where the Contractor believes that the Contract Documents are unclear or conflict. All requests must be submitted, to the Project Manager, in a manner that clearly identifies the specification section or drawing detail, if furnished, where clarification or interpretation is being requested. As part of the RFI, Contractor shall include its recommendation for resolution. The Town shall respond in writing.

4.9 WARRANTY

Contractor shall guarantee the accuracy of the data provided to the Town for a period of one year from completion of the Work and final payment is issued by the Town. The warranty includes but is not limited the accuracy of the GIS data, type of Tree and dimensions. Should the Town determine that the error rate for a category of the data provided for an Area exceeds 10% then the Contractor may be required by the Town to re-inventory the data for the category for the entire Area and provide the Town with the updated data files for download into the ArborPro software within ten (10) days of notification by the Project Manager. For example: If the data in Area 1 exceeds the error rate threshold for the x/y coordinates of the Trees the Contractor shall re-inventory all of the Trees in Area 1.

4.10 PROGRESS MEETINGS

Contractor and the Project Manager shall meet at a minimum on a weekly basis, or as otherwise determined by the Project Manager, to address the status any issues related to the Work.

Contractor shall prepare and submit a written agenda for each meeting at least two business days prior and draft and submit meeting minutes within three business days following each scheduled meeting.

The Project Manager shall schedule kick-off meeting, which will be held prior to the commencement of the Work. Contractor's GIS/IT staff shall attend in addition to the Field Supervisor and any other staff deemed appropriate by the Contractor.

4.11 SCHEDULING

Contractor shall submit to the Project Manager a written schedule in .pdf format and a plan identifying the systematic approach to inventorying the Town Trees by Area (see Town Area Map, Exhibit #2), with identifiable starting and completion points within ten (10) business days of the execution of the Contract. The Contractor and Project Manager shall agree on the Area in which the Work will commence. Contractor shall complete one Area before commencing the Work in another Area.

Contractor shall provide an updated schedule, in .pdf format, on Thursday of each following week that reflects the Work performed to date and the Work to be performed during the coming week.

END OF SECTION

SECTION 5

SCOPE OF SERVICES

5.1 OVERVIEW

The Town's existing inventory/work order system is ArborPro Urban Forest Management Version 3.4. Presently, all Town park Trees and approximately 1,000 Right-Of-Way ("ROW") Trees have been compiled and are part of the inventory system. The Town is seeking a Contractor to conduct a Tree Inventory of all of the Trees in the ROW, which the Town anticipates consists of approximately 6,000 Trees, Trees in parks recently added to the Town's inventory of parks and recently planted Trees. A list of the parks recently added and the Trees recently planted are included as Exhibit #3.

The Town covers approximately 6.5 square miles of the flat, urbanized neighborhoods and commercial districts bounded by the Palmetto Expressway (826) on the north, Interstate 75 on the west, Red Road (NW 57 Avenue) on the east, and by Gratigny Parkway (SR-924) on the south (see Town Area Map, Exhibit #2). There are approximately 10,000 Town street Trees and 25 vacant Tree sites within the Town. Exhibit #6, which is provided solely for information purposes, provides an overview of the locations of the Town's ROW Trees and the Trees previously inventoried in the Town's parks. In commercial districts, the Trees may also be in Tree wells. The majority of the Trees to be surveyed are located in ROW medians on arterial streets. Trees along the canals in the Town ROW are also included in the Work.

Exhibit #2 also provides the following details:

- Public roadways are shown in blue
- Private roadways are shown in red
- Roadways highlighted in green have been previously inventoried

5.2 BASIC SERVICES

All Work shall follow and comply with ISA guidelines and standards for Tree inventory, Tree health and Tree hazard assessments.

a. Data Collection

- All data will be collected and provided to the Town in a .shp ESRI shapefiles format that is compatible with ArborPro's Urban Forest Management Version 3.4 software.
- Provide the Town two (2) digital color pictures in .jpeg format. One picture shall be of the front of the Tree and the other shall be of the back of the Tree.
- GIS positioning for all inventoried Town Trees in both UTM and longitude and latitude coordinates.

b. Task 1 – Field Assessment of Trees and GIS Position Data

Contractor shall perform field assessments of Town Trees and their sites in addition to assessing twenty five (25) vacant (to be identified by the Contractor) planting sites.

Tree assessment shall include an evaluation of Tree size and health, Tree site location, identification of structural defects, pruning needs and pests. Contractor shall collect all attribute information as outlined in Exhibit #1, Tree Inventory Categories and the required photographs of each Tree. Exhibit #4 provides a screenshot from the ArborPro database software. For the vacant Tree sites the Contractor shall recommend the type of Tree to be planted, and provide any information required for the maintenance of the Tree at the proposed site.

All data collected shall meet the following requirements and must include the following information in addition to the categories included in Exhibit #1:

- GIS positioning shall be provided to sub-meter accuracy of the Tree's location.
- GIS positioning
- Contractor shall identify height of tree to 3 ft. accuracy, and shall identify average crown spread to 3 ft. accuracy.
- Contractor shall indicate if tree well is present. If present, contractor shall indicate its size to 0.5 ft. accuracy.
- Contractor shall correctly identify the genus, species, cultivar (when apparent), and common name of each tree.
- Contractor shall identify Tree location inclusive of:
 - Street number
 - Street name
 - Intersecting Street (if applicable)
 - Tree is located in a median, in an unimproved area or monolithic
 - Identify if the Street has a curb and gutter
 - Name of Park or Park number
 - Does the tree have a tree well & does it include a grate or pan lid
- Contractor shall indicate whether root barrier is present, and if tree has trunk-to-sidewalk contact and if there is any damage to the hardscape, including but not limited to; sidewalk, curb and gutter.
- Contractor shall determine whether the tree is in need of any of the following:
 - Maintenance pruning due to obstruction of sidewalk
 - Maintenance pruning due to obstruction of roadway
 - Maintenance pruning due to obstruction of street sign
 - Maintenance pruning due to obstruction of street light
 - Maintenance pruning to correct a hazard
 - Removal
 - Stump Removal

For Vacant Sites Contractor shall assign X,Y coordinate to and identify vacant tree planting sites, and indicate whether they are ideally suited for small (less than 20' in eventual height), medium (between 20' and 40' in eventual height), or large (greater than 40' in eventual size) trees, taking into consideration presence of utilities and avoiding locations close to property lines or within 55' of street intersections. A site that has insufficient clearance from underground utilities, regulatory signs, driveways,

intersections or where the public right of way (ROW) appears to be 15.5' in width or less for up to 40mph roadways; 19.5' in width or less for 45mph-55mph roadways; 22' in width or less for 55mph roadways shall be designated as "non-plantable" for trees and noted as such.

c. Task 2

Contractor shall prepare and deliver a geodatabase in the .shp ESRI shapefiles format compatible with the ArborPro software that contains the data collected as required by the Work. Within ten (10) business days of execution of the Contract, the Contractor shall provide a test file to ensure that the data can be uploaded. Contractor shall be responsible and no additional cost to make any revisions to the test data to ensure that the data file is compatible with the existing ArborPro software.

The geodatabase deliver to the Town shall not adversely impact, duplicate, or revise the existing Tree ID numbers of the Trees in the existing database.

Exhibit #5, existing Tree Inventory, provides a spreadsheet of the data on the Trees currently in the existing ArborPro database. This information is provided for informational purposes only and for use in ensuring that the Contractor does not duplicate Tree id numbers.

SECTION 6

BID FORM

Bid submittal of ArborPro, Inc.
(Name of Bidder)

22605 La Palma Ave #509 Yorba Linda, CA 92887
(Address)

Submitted on: 02/27/2012
(Date)

to furnish all Work as stated in the ITB and Contract Documents for the

**Tree Inventory Services
Bid No: 2012-07**

To: Town of Miami Lakes, Florida
Attn: Town Clerk
Town Hall
15150 NW 79th Court
Miami Lakes, Florida 33016

The undersigned, as Bidder, hereby declares that the only person or persons interested in this Bid, as principal(s) are named herein and that no other person than herein mentioned has any interest in this Bid or in the Contract to be entered into or which the Work pertains; that this Bid is made without connection with any other person, company, firm, or parties making a Bid; and that the Bid is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the location of the Work, performed sufficient investigations, and informed itself fully of the suitability of the Work and all conditions pertaining to the place where the Work is to be done; that it has examined the ITB and all of the Contract Documents and all addenda thereto issued prior to Bid opening, as acknowledged in its Bid; and that it has satisfied itself about the Work to be performed; and that it has submitted the Bid Guaranty, if required; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

The Bidder had determined based on its business and profession expertise that the Work can be performed and completed in accordance with the Contract Documents.

The Bidder agrees, if this Bid is accepted, to timely execute a contract with the Town, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to complete the Work.

The Bidder also agrees to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid guaranty, if required, accompanying the Bid shall be forfeited if Bidder fails to execute said Contract, or fails to furnish the required Performance Bond, if required by the Contract Documents, or fails to furnish the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

In the event of arithmetical errors, the Bidder agrees that these errors are errors which may be corrected by the Town.

Note: Bidders are bidding on a Total Bid Price basis for the purpose of determining the lowest responsive and responsible Bidders. However, Bidders shall be paid based on actual work performed.

Task	Unit of Measure	Unit Price	Quantity	Extended Price
Tree Inventory	Per Tree	\$ 6.50	6,000	\$ 39,000.00
Vacant Space Inventory	Per Space	\$ 6.50	25	\$ 162.50
Total Bid Price				\$ 39,162.50

Firm's Name: ArborPro, Inc.

Signature: 

Printed Name/Title: Keith Hennig / President

Town/State/Zip: Yorba Linda, CA 92887

Telephone No.: 714-694-1924

Facsimile No.: 714-694-1981 E-Mail Address: khennig@arborprousa.com

Social Security No. or Federal I.D.No.: 30-0223853 Dun and Bradstreet No.: 155511913
(if applicable)

END OF SECTION


ADDENDUM ACKNOWLEDGEMENT FORM

Part I: Listed below are the dates of issue for each Addendum received in connection with this Bid:

Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____

No Addendum issued for this ITB

Firm's Name: ArborPro, Inc.


Signature: 

Printed Name/Title: Keith Hennig / President

**CERTIFICATE OF AUTHORITY
(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of ArborPro, Inc., a corporation organized and existing under the laws of the State of California, held on the 4th day of March, 2003, a resolution was duly passed and adopted authorizing (Name) Keith Hennig as (Title) President of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation. I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 24, day of February, 2012.

Secretary: 
Print: Keith L Isbister

**CERTIFICATE OF AUTHORITY
(IF PARTNERSHIP)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of _____, a partnership organized and existing under the laws of the State of _____, held on the ___ day of _____, _____, a resolution was duly passed and adopted authorizing (Name) _____ as (Title) _____ of the to execute bids on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20 _____.

Partner: _____
Print: _____

**CERTIFICATE OF AUTHORITY
IF JOINT VENTURE)**

Joint ventures must submit their joint venture agreement indicating that the person signing this Bid is authorized to sign Bid documents on behalf of the joint venture and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

**CERTIFICATE OF AUTHORITY
(IF INDIVIDUAL)**

I HEREBY CERTIFY that, I (Name) _____, individually and doing business as (d/b/a) _____ (If Applicable) have executed and am bound by the terms of the Bid to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this _____, day of _____, 20 _____.

Signed: _____

Print: _____

ACKNOWLEDGMENT

State of California
County of Orange)

On February 24, 2012 before me, Keri L. Isbister, Notary
(insert name and title of the officer)

personally appeared Keith Hennig
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her their authorized capacity(ies), and that by his/her their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Keri L. Isbister (Seal)



Section 6- Attachments

QUESTIONNAIRE

This Completed Form Must Be Submitted With The Bid, The Town May, At Its Sole Discretion, Require That The Bidder Submit Additional Information Not Included In The Submitted Form. Such Information Must Be Submitted Within Seven (7) Calendar Days of the Town's Request. Failure To Submit The Form Or Additional Information Upon Request By The Town Shall Result In The Rejection Of The Bid As Non-Responsive. Additional Pages May Be Used Following The Same Format And Numbering. Some Information May Not Be Applicable Apply. In Such Instances Insert "N/A".

By submitting its Bid the Bidder certifies the truth and accuracy of all information contained herein.

A. Business Information

1. How many years has your company been in business under its current name and ownership? 9 years

a. Professional Licenses/Certifications (include name and number)* Issuance Date

N/A

(*include active certifications of small or disadvantage business & name of certifying entity)

b. Date company licensed by the State of Florida or Miami-Dade County: _____

c. State and Date of Incorporation: California - 03/04/2003 / Florida 06/27/2007

c. What is your primary business? Tree inventory software and tree inventory services
(This answer should be specific
including data collection, tree reports, software installation and training.

d. Name of Qualifier, license number, and relationship to company:

e. Names of previous Qualifiers during the past five (5) years including, license numbers, relationship to company and years as qualifier for the company

2. Name and Licenses of any prior companies

Name of Company	License No.	Issuance Date
N/A		

3. Type of Company:

Corporation "S" Corporation LLC Sole Proprietorship Other: _____

(Corporations will be required to provide a copy of their corporate resolution prior to executing a contract)

4. Company Ownership

a. identify all owners of the company

Name	Title	% of ownership
Keith Hennig	President	100

**b. Is any owner identified above an owner in another company? Yes No
If yes, identify the name of the owner, other company names, and % ownership**

Keith Hennig - Tree Elements, Inc	100 percent
Keith Hennig - UPE Resources, Inc	49 percent

c. Identify all individuals authorized to sign for the company, indicating the level of their authority (check applicable boxes and for others provide specific levels of authority)

Name	Title	Signatory Authority			
		All	Cost	No-Cost	Other
Keith Hennig	President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Eckersall	Vice President	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation for Other: N/A

5. Employee Information

Total No. of Employees: 6 Number of Managerial/Admin. Employees: 2

Number of Trades Personnel and total number per classification:

(Apprentices must be listed separately for each classification)

N/A

6. Has any owner or employee of the company ever been convicted of a federal offense or moral turpitude: If yes, please explain:

No

7. Insurance & Bond Information

a. Insurance Carrier name & address: Travelers 1 Tower Square, Hartford CT 06183 / Golden Eagle 525 B St.

San Diego, CA 92101 / State Fund 333 Bush Street, 8th floor, San Francisco, CA 94104

b. Insurance Contact Name, telephone, & e-mail: Lisa Taylor - ISU Derby -

Phone - 626-963-8581 / Lisa@isuderby.com

c. Insurance Experience Modification Rating (EMR): 2.05
(if no EMR rating please explain why)

d. Number of Insurance Claims paid out in last 5 years & value: 0 for ArborPro

8. Have any claims lawsuits been file against your company in the past 5 years, If yes, identify all where your company has either settle or an adverse judgment has been issued against your company. Identify the year basis for the claim or judgment & settlement unless the value of the settlement is covered by a written confidentiality agreement.

No

9. To the best of your knowledge is your company or any officers of your company currently under investigation by any law enforcement agency or public entity. If yes, provide details:

No

10. Has your company been assessed liquidated damages or defaulted on a project in the past five (5) years? Yes No (If yes, provide an attachment that provides an explanation of the project and an explanation.

11. Has your company been cited for any OSHA violations in the past five (5) years? If yes, please provide an attachment including all details on each citation, Yes No

12. Provide an attachment listing all of the equipment, with a value of \$3,000 or greater, owned by your company.

13. Provide an attachment listing of all equipment that your company does not own but plans to rent, lease, or borrow for the performance of the Work

B. Project Management & Supervisor Details

1. Project Manager for this Project:

a. Name: Scot Watkins

b. Years with Company: 5

c Licenses/Certifications: ISA Certified Arborist / Board Certified Master Arborist (IL-0919B)

d. Last 3 projects with the company including role, scope of work, & value of project:

Town of Miami Lakes, FL - Tree Inventory software and data collection - \$10,000.00

City of Largo, FL - Tree inventory software and data collection \$19,000.00

City of Punta Gorda, FL - Tree inventory software and data collection - \$26,000.00

2. **Arborist for this Contract:**

a. Name: Kenneth Greby

b. Years with Company: 7

c Licenses/Certifications: Certified Arborist (WC+0550)

d. List 3 contracts with the company including role, scope of work, & value of the contracts:

Town of Miami Lakes - Tree Inventeory software and data collection - \$10,000.00

City of Largo, FL - Tree Inventory software and data collection - \$19,000.00

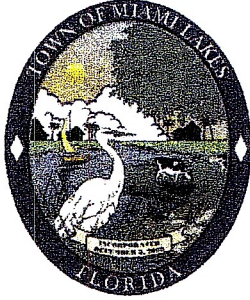
City of Punta Gorda, FL - Tree Inventory software and data collection - \$26,000.00

C. Current and Prior Experience:

1. **Current Experience including current under projects or contracts, recently awarded, or pending award (Provide an attachment to this questionnaire that lists all such contracts or projects, including the owner's name, title and value of project, scope of work, projected or actual start date, projected completion date.**
2. **Prior contracts or projects of a similar size, scope, and complexity: Provide an attachment to this Questionnaire that includes contracts or projects the Bidder considers of a similar, size, scope and complexity that the Town should consider in determining the Bidders responsiveness and responsibility. This attachment must include the contracts or projects that meet the minimum number of contracts or projects identified by the bid solicitation. Information provided must include the owner's name , address and contract person, including telephone & e-mail, title of contract or project, location of project, scope, initial value and final cost of the contract or project, projected and final timeframes for completion in calendar days. A reference letter is to be completed by the owner of the Project and submitted as part of the Bid submission.**

D. Bidder's References

Bidders are to include a minimum of five (5) references from contracts or projects listed in C.2 above. The attached form is to be used and is to be included with the Bid submission. The Town, at its sole discretion may allow the Bidder to submit the references after the specified date for Bid submission.



Town of Miami Lakes

To Whom it May Concern

Subject: Reference Letter

Name of Bidder: See Attachment

The above referenced contractor is submitting on a bid solicitation that has been issued by the Town. We require that the Bidder provide written references with their Bid submission and by providing you with this document the Contractor is requesting that you provide the following reference information. We would appreciate you providing the information requested below as well as any other information your feel is pertinent:

Name of Project:

Scope of work: _____

Value of Contract \$ _____ Is contract active or expired? Active Expired

Was the work performed timely: Yes No

Was the work performed to acceptable quality standards? Yes No

Would you enter into a contract with the Contractor in the future? Yes No

If not to either of the above please provide details:

Comments:

Thank you for your assistance in helping us in evaluating our bid solicitation.

Name of individual completing this form: _____ Date: _____

Signature: _____ Title: _____

Telephone: _____ E-mail: _____

Sincerely,

Gary Fabrikant
Procurement Manager

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this 24th
day of February, 2012, by Keith Hennig, President

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Keith Hennig

NON-COLLUSIVE AFFIDAVIT (CONTINUED)

ACKNOWLEDGMENT

State of California)
) SS:
County of Orange)

BEFORE ME, the undersigned authority, personally appeared Keith Henning to me well known and known by me to be the person described herein and who executed the foregoing Affidavit and acknowledged to and before me that he executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this 24 day of February 2012

My Commission Expires: 10/4/2013



Notary Public State of ~~Florida~~ at Large

California - See acknowledgement



ACKNOWLEDGMENT

State of California
County of Orange)

On February 24, 2012 before me, Keri L. Isbister, Notary
(insert name and title of the officer)

personally appeared Keith Hennig,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Keri L. Isbister (Seal)



SWORN STATEMENT ON PUBLIC ENTITY CRIMES

SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Miami Lakes

by Keith Hennig
[print individual's name and title]

for ArborPro, Inc
[print name of entity submitting sworn statement]

whose business address is

22605 La Palma Ave #509, Yorba Linda, CA 92887

and (if applicable) its Federal Employer Identification Number (FEIN) is 30-0223853

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: Keith Hennig)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate.

The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. [Indicate which statement applies.]

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO

UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017,

FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.



Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this 24th day of February, 2012.

Personally known _____

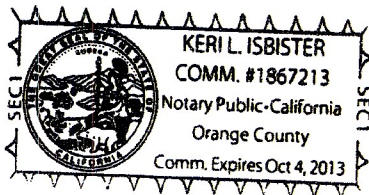
OR produced identification _____


Notary Public – State of California

Driver's License

My commission expires 10/4/2013

(type of identification)



Keri L. Isbister 

(Printed, typed or stamped commissioned name notary public)

END OF SECTION

CORPORATE RESOLUTION

WHEREAS, ArborPro, Inc, Inc. desires to enter into a contract with the Town of Miami Lakes for the purpose of performing the work described in the contract to which this resolution is attached; and

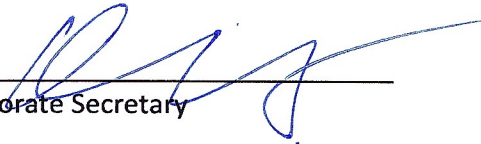
WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the President,
(type title of officer)

Keith Hennig, is hereby authorized
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the Town of Miami Lakes upon the terms contained in the proposed contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this 19 day of March, 2012.



Corporate Secretary

(Corporate Seal)



SECTION 6

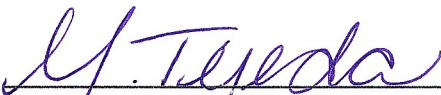
CONTRACT EXECUTION FORM

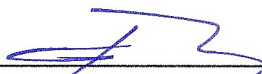

This Contract 2012-07 made this 20th day of March in the year 2012 in the amount of \$39,162.50 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and **ArborPro, Inc.**

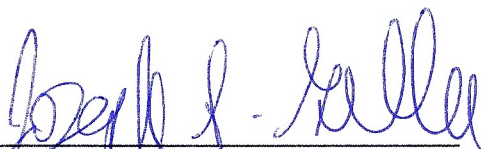
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By: 
Marjorie Tejada, Town Clerk

By: 
 Alex Rey, Town Manager

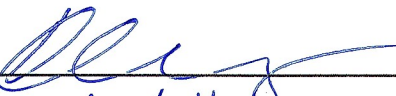
By: 
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

ArborPro, Inc.

By: _____

By: 
Name: Keith Henning
Title: President

(*) In the event that the Contractor is a corporation, there shall be attached the original of the corporate resolution in the form contained in this Section, of the board of the corporation, authorizing the officer who signs the Contract to do so in its behalf.