

RESOLUTION NO. 2009 – 053

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT WITH LUKES' LANDSCAPING, INC. FOR PROFESSIONAL NURSERY MANAGEMENT SERVICES RELATING TO THE COUNTRY ESTATES/FISHING HOLE PARK, LOCATED AT THE SOUTHEAST CORNER OF GRIFFIN ROAD AND 190TH AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 13, 2005 the Town Council approved Resolution No. 2005-033 approving an agreement with Landscape Company, Inc. for Professional Plant/Tree Nursery Management Services; and

WHEREAS, the Town's agreement with Landscape Company, Inc. expired on April 15, 2009; and

WHEREAS, the Town is still in need of Professional Plant/Tree Nursery Management Services; and

WHEREAS, on February 7, 2008 the Town Council approved Resolution No. 2008-044 approving an agreement with Lukes' Landscaping, Inc. for Parks and Right of Way Management and Maintenance Services; and

WHEREAS, Lukes' Landscaping, Inc. has agreed to fulfill the terms and honor the rates established in the agreement between the Town and Landscape Company, Inc. for Professional Plant/Tree Nursery Management Services; and

WHEREAS, this Agreement will establish a two (2) year term that may be extended for an additional two (2) year period upon mutual consent and will be cancelable by either party with a ninety (90) day termination notice; and

WHEREAS, both the Town and Lukes' Landscaping, Inc. are desirous of entering into this agreement under the terms and conditions set herein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. The above referenced recitals are true and correct and are incorporated herein by reference.

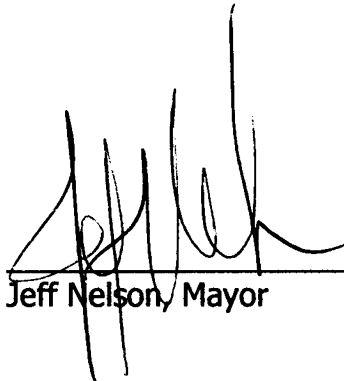
Section 2. The Town Council hereby approves an Agreement, attached hereto as Exhibit "A", between the Town of Southwest Ranches and Lukes' Landscape, Inc., to provide Professional Plant/Tree Nursery Management Services.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 4. This Resolution shall become effective immediately upon its adoption.

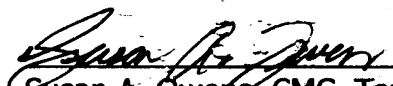
PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 16th day of April 2009, on a motion by Vice Mayor Steve Breitkreuz and seconded by Council Member Doug McKay.

Nelson	<u>Y</u>	Ayes	<u>4</u>
Breitkreuz	<u>Y</u>	Nays	<u>0</u>
Fisikelli	<u>Y</u>	Absent	<u>1</u>
Knight	<u>Absent</u>	Abstaining	<u>0</u>
McKay	<u>Y</u>		



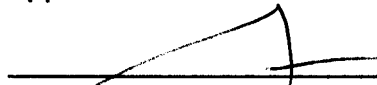
Jeff Nelson, Mayor

ATTEST:



Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:



Gary A. Poliakoff, J.D., Town Attorney
FTL_DB: 1186719_1

AGREEMENT

BETWEEN

TOWN OF SOUTHWEST RANCHES

AND LUKES' LANDSCAPING, INC.

FOR

**PROFESSIONAL PLANT/TREE NURSERY
MANAGEMENT SERVICES**

THIS IS AN AGREEMENT made and entered into on ____ day of June 2009, by and between the Town of Southwest Ranches, a municipal corporation of the State of Florida, hereinafter referred to as "Town" and Lukes' Landscaping, Inc., hereinafter referred to as "Consultant."

WHEREAS, on January 13, 2005 the Town Council approved Resolution No. 2005-033 approving an agreement with Landscape Company, Inc. for Professional Plant/Tree Nursery Management Services; and

WHEREAS, the Town's agreement with Landscape Company, Inc. expired on March 16, 2009; and

WHEREAS, the Town is still in need of Professional Plant/Tree Nursery Management Services; and

WHEREAS, on February 7, 2008, the Town Council approved Resolution No. 2008-044 approving an agreement with Lukes' Landscaping, Inc. for Parks and Right of Way Management and Maintenance Services; and

WHEREAS, Lukes' Landscaping, Inc. has agreed to fulfill the terms and honor the rates established in the agreement between the Town and Landscape Company, Inc. for Professional Plant/Tree Nursery Management Services, as modified herein, and specifically set forth below; and

WHEREAS, this Agreement will establish a two (2) year term that may be extended for an additional two (2) year period upon mutual consent, and will be cancelable by either party with a ninety (90) day written termination notice; and

WHEREAS, both the Town and Consultant are desirous of entering into this Agreement under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual terms and conditions herein, the Town and Consultant hereby agree as follows:

Section 1: **INCORPORATION OF RECITALS**

1.1 The above Recitals are hereby incorporated into this Agreement as if fully set forth herein.

Section 2: **SCOPE OF SERVICES**

2.1 The Scope of Services is set forth in Exhibit "A", Maintenance and Nursery Management Specifications, Exhibit "B", Nursery Maintenance Specifications, and Exhibit "C", General Specifications (hereinafter collectively referred to as "Scope of Services", "Services", or "Work"), attached hereto and incorporated herein by reference.

2.2 Upon execution of this Agreement, the Consultant shall immediately commence to providing professional plant/tree Nursery management services, through coordination with the Town Administrator, and follow up for Nursery services, pursuant to the Scope of Services.

Section 3: **COMPENSATION**

3.1 Town Relocated Materials

Town and Consultant agree that approximately 400 trees and plant materials will be tagged by the Town. In the event that the Town determines that it desires to relocate any portion of these trees and plant materials, Consultant agrees to relocate, professionally install, water the trees and plant material in accordance with the requirements of the Scope of Services for an amount not to exceed Twenty-Seven Thousand and Four Hundred (\$27,400) dollars, as specified in Exhibit "D" Compensation Proposal, attached hereto and incorporated by reference. The cost to the Town is based upon unit prices, as specified in Exhibit "D". Relocation orders will be for a minimum of 10 trees or plants. Town, in its sole discretion, will determine how many trees and plant materials, if any, will be relocated. Town shall only be obligated to compensate Consultant based upon the unit price for each tree and plant material which the Town agrees in writing prior to the Work being performed by Consultants should be relocated. Any Work performed by Consultant with respect to the relocation of trees and plant materials without the prior written authorization of Town by a written Notice to Proceed (hereinafter "NTP") issued by the Town Administrator shall be performed at Consultant's own risk at no cost to the Town.

3.2 Sale of Town Owned Trees and Plant Materials

- 3.2.1 Consultant shall make a reasonable effort to sell approximately 3,600 trees and plant materials over a two (2) year period.
- 3.2.2 Consultant and Town, through the Town Administrator, shall jointly determine, in writing, the selection of trees and plant materials to be placed for sale.
- 3.2.3 Prices of the trees and plant materials to be sold shall be defined in the wholesale monthly Plant Finder publication for the regions associated with the property.

- 3.2.4 Consultant shall deposit proceeds from the sale of the trees and plant materials in a bank as specified by the Town, as often as required by Town.
- 3.2.5 Consultant will provide monthly reports detailing the inventory, sales proceeds, deposited funds and excess funds retained. Reports will be prepared in accordance with format provided by the Town.
- 3.2.6 Town will provide monthly payments to the Consultant at the rate of 48.5% of the collected and cleared funds of the sale of Town owned trees and plant materials deposited in the bank as specified in 3.2.4 above and as contained in the monthly reports prepared by Consultant as specified in 3.2.5 above.
- 3.2.7 Consultant will accept the payment of said funds for the Consultant's professional tree/plant management services with no additional cost to the Town.

Section 4: **TERM**

4.1 Town and Consultant agree that the Term of this Agreement shall commence upon the execution of this Agreement by both parties and shall continue for a period of up to two (2) years, unless terminated earlier pursuant to Section 4.2 or 7 hereof. Based upon the mutual agreement of both parties, the Term of this Agreement may be extended or renewed.

4.2 Town or Consultant shall have the option to terminate this Agreement by providing the other party with a minimum of ninety (90) days written notice of such termination. Should the Town decide to terminate this Agreement at the end of two (2) years, as described above, the Town shall provide up to ninety days (90) days for the Consultant to vacate the property. Consultant specifically waives any and all rights to seek any additional sums or damages from Town as a result of Termination of this Agreement. If Town terminates Consultant, the Town has the immediate right to take possession of all trees and plant materials owned by the Town and not yet sold by Consultant.

Section 5: **NURSERY MANAGEMENT AND IMPROVED FRONTAGE**

5.1 Town and Consultant agree that the Town will allow Consultant to utilize the front three (3) acres abutting Griffin Road for an office and for loading, unloading, parking and other mutually agreed upon activities necessary for the professional management of a Nursery. Consultant's utilization of the front three (3) acres abutting Griffin Road (hereinafter "Nursery"), in all respects, is conditional upon the Town's acceptance of the appearance, activities and operations of the Nursery. If at any time during the term of the Agreement, Town objects in writing to the manner in which Consultant operates the Nursery, in any way, Consultant shall correct all items objected

by Town within ten days of receipt of the Town's objection or cease utilizing the Nursery in any respect. No auxiliary items for sale shall be located on the Nursery.

5.2 Consultant will provide maintenance on the existing landscaping at the Nursery to provide an improved appearance, at no additional cost or expense to Town.

5.3 Consultant has the right to use the Nursery in accordance with published Nursery standards and standards specified within this Agreement. Town has the right to inspect and examine the Nursery as often as determined necessary by the Town during scheduled working hours. Consultant shall not plant trees or plant materials on the Nursery without prior written approval of the Town. Consultant may locate Consultant owned trees and plant materials not conflicting with the Town's interest within the Nursery.

5.4 Consultant shall maintain the property, including the Town's fixtures thereto, in good condition and repair. Consultant shall remove any landscape material or debris on the property when notified by the Town Administrator or designee, and shall not permit others to deposit landscape material or debris onto the property. Notwithstanding anything to the contrary contained in this Agreement, Consultant shall not be responsible to remove any debris on the property which existed prior to execution of this Agreement.

Section 6: **INDEMNIFICATION**

6.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Town and the Town's officers and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and costs at all tribunal levels, including but not limited to, the trial level and all appeals, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Consultant and persons employed or utilized by Consultant in the performance of the Services pursuant to this Agreement. The monetary limitation on the extent of indemnification provided to the Town by the Consultant shall be One Million (\$1,000,000.00) Dollars per occurrence. Town and Consultant agree that 1% of the compensation due to Consultant from Town pursuant to this Agreement is offered and accepted as sufficient separate consideration for Consultant's agreement to indemnify Town and Town's officers and employees as provided for in this paragraph.

Section 7: **TOWN'S RIGHT TO TERMINATE CONSULTANT**

7.1 If Consultant fails to timely begin the Work under this Agreement, or fails to perform the Work in a manner to ensure the proper completion of the Work, or shall perform its Work unsuitably or shall fail to perform any material term set forth this Agreement, including but not limited to, failing to perform its services in accordance with accepted standard practices, failing to properly green ground cover, failure to

properly trim, around permanent fixtures, failure to properly remove weeds, failure to properly trim and to prune plant materials, failure to properly fertilize, failure to properly communicate with Town, and failure to maintain fencing of Nursery, or if Consultant shall become insolvent or be declared bankrupt or commit any act or bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town shall give notice in writing to Consultant of any such delay, neglect or default specifying the same. If Consultant within a period of ten (10) calendar days after such notice fails to cure all of the items listed by Town, then Town may upon written notice to Consultant, terminate the services of Consultant. Consultant shall be provided up to six (6) months to vacate the Nursery, however, all of Consultant's activity related to the performance of the Work under this Agreement relating to the selling of trees and plant materials shall terminate upon the Town's written notice to Consultant of Consultant's termination. In the event that this Agreement is terminated pursuant to this provision, Consultant shall solely be paid for any Work performed up the date this Agreement is terminated, and all damages, costs, sums and charges incurred by Town as a result of Consultant's acts, neglect or default which serve as the basis of the Town's termination of Consultant for cause shall be deducted from any monies due or which may become due to Consultant. Consultant specifically waives and shall not be entitled to any additional compensation, of any kind or in any amount, from Town as a result of being terminated. If Town terminates Consultant, the Town has the immediate right to take possession of all trees and plant materials owned by the Town and not yet sold by Consultant.

Section 8: **ESTABLISHMENT OF INVENTORY**

8.1 Consultant and Town shall establish a detailed written inventory of the trees and plant materials located at the Nursery. Inventory will be updated and maintained by the Consultant. Town will periodically during each year conduct inventory counts to verify that the inventory records are being maintained accurately.

Section 9: **AUDIT RIGHT AND RETENTION OF RECORDS**

9.1 Town shall have the right to audit the books, records and accounts of Consultant that are related to this Agreement. Consultant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Consultant shall preserve and make available, at reasonable times for examination and audit by Town, all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes) if applicable, or, if the Florida Public Records Act is not applicable, of a minimum period of five (5) years after termination or expiration of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of five (5) years, whichever is longer, the books, records and accounts

shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Town to be applicable to Consultant's Records, Consultant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirements of either federal or state law shall be violated by Consultant. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for Town's disallowance and recovery of any payment upon such entry.

Section 10: **INSURANCE**

10.1 Without limiting any of the other obligations or liabilities of Consultant, Consultant shall provide, pay for, and maintain in force until all of its Work to be performed under this Agreement has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter) all insurance specified herein. The Town shall be named as an additional insured of all the insurance policies, except workers compensation, to be acquired by the Consultant for the Work and shall also be identified as the certificate holder on all certificates of insurance. The insurance required by this Contract shall be written by a company authorized in Florida and the company must reasonably be acceptable to the Town. The insurance required by this Section shall also cover all Work performed by Consultant's employees, independent contractors, subcontractors and/or subconsultants pursuant to this Agreement. This insurance shall be primary and other insurance of the Town shall not be contributory. The insurance coverages to be acquired and maintained by the Consultant are as follows:

10.2 Workers' Compensation Insurance to apply to employees in compliance with the "Worker's Compensation Law" of the State of Florida; and

10.3 Commercial General Liability Insurance: Consultant to provide Commercial general liability insurance with minimum limit of coverage of One Million (\$1,000,000.00) Dollars per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include coverage for:

- (a) Premises and/or Operations;
- (b) Independent Contractors;
- (c) Broad Form Property;
- (d) Contractual;
- (e) Personal injury; and

(f) Products/Completed.

10.4 Property Damage: Consultant to provide property damage insurance with minimum limit of coverage of Five Hundred Thousand (\$500,000.00) Dollars per occurrence. Consultant shall not be liable for property damage due to acts of god or force majeure.

10.5 Automobile Liability Insurance, Consultant to provide automobile liability insurance to cover any auto with a minimum limit of coverage of at least Five Hundred Thousand (\$500,000.00) Dollars per occurrence.

10.6 Consultant shall provide to Town a certificate of Insurance and a copy of required insurance policies as required by this Section. All certificates and endorsements required herein shall state that Town shall be given thirty (30) days notice prior to expiration or cancellation of said policy.

10.7 If the initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished at least thirty (30) days prior to the date of their expiration.

10.8 Notice of Cancellation and/or Restriction – The Policy(ies) must be endorsed to provide Town with at least thirty (30) days notice of cancellation and/or restriction.

10.9 Consultant shall furnish to the Town Administrator Certificates of Insurance or endorsements evidencing the insurance Coverage and the insurance policies specified above prior to the execution of the Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. Approval of the insurance for the coverage amounts set forth herein shall not relieve or decrease the liability of the Consultant in any way. Certificates of Insurance shall contain transcripts of the policies authenticated by the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location of the office where communications and notices to and from the insurer shall be issued. Consultant shall provide a per project endorsement acceptable to the Town.

10.10 UPON EXECUTION OF THIS AGREEMENT, CONSULTANT SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED

COVERAGES AND THE OPERATIONS OF CONSULTANT UNDER THE AGREEMENT.

10.11 Cessation of Insurance – All insurance coverage required under this section shall remain in full force and effect for, at least, five (5) years after the expiration of this Agreement.

10.12 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance documentation.

10.13 These insurance requirements shall not relieve or limit the liability of Consultant. Town does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect Consultant’s interests or liabilities but are merely minimum requirements established by the Town Administrator. Town reserves the right to require any other insurance coverages that Town deems necessary depending upon the risk of loss and exposure to liability.

10.14 All required insurance policies shall preclude any underwriter’s rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance.

10.15 Consultant shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.

10.16 The clauses “Other Insurance Provisions” and “Insured Duties in the Event of an Occurrence, Claim or Suit” as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town. Town shall use its best efforts to provide written notice of occurrence within thirty (30) working days of Town’s actual notice of such event.

Section 11: **NOTICES**

11.1 All written correspondences shall be addressed as follows, unless a party otherwise gives notice to the other party of such other address:

If to Town:

Charles H. Lynn, Town Administrator
6589 S.W. 160th Avenue
Southwest Ranches, FL 33331

- and -

Keith Poliakoff, Deputy Town Attorney
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312

If to Consultant:

Luke Facarazzo, CEO
Lukes' Landscaping, Inc.
2200 N. 30th Road
Hollywood, FL 33021

Section 12: **RELATIONSHIP**

12.1 The Consultant shall perform all of the Services enumerated in this Agreement solely as an independent contractor, and not as an employee of the Town. The Consultant shall be responsible for directing its efforts to the manner and means of accomplishing the Work to be performed hereunder by Consultant, in accordance with the standard of care for commercial nursery operators in the State of Florida and Broward County, Florida.

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

Section 13: **SUBCONTRACTING**

13.1 All substantive work to be performed pursuant to the terms of this Agreement shall be performed by Consultant, and no work shall be subcontracted to other parties or firms by Consultant without the prior written consent of the Town.

Section 14: **ENTIRE AGREEMENT**

14.1 This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and Agreement between the parties and supersedes previous agreements and representations whether written or oral.

Section 15: **CONSTRUCTION**

15.1 This Agreement has been a joint effort of the parties, and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The headings used in this Agreement are for convenience only and shall not be considered as part of this Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Agreement.

Section 16: **FURTHER ASSURANCES**

16.1 Town and Consultant agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without, in any manner, limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

Section 17: **COUNTERPARTS**

17.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.

Section 18: **NO AMENDMENT OR WAIVER**

18.1 This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement, prior to the initiation of any Work reflecting such change.

Section 19: **SEVERABILITY**

19.1 In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

Section 20: **APPLICABLE LAW AND VENUE; WAIVER OF JURY TRIAL**

20.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction and exclusive venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit of Broward County, Florida.

BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 21: **ENFORCEMENT; ATTORNEY'S FEES**

21.1 The Town and Consultant are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the Town and Consultant resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

Section 22: **MEDIATION**

22.1 The parties shall endeavor to resolve any and all claims arising from this Agreement by Mediation which, unless the parties agree otherwise, shall be conducted pursuant to the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. A request for Mediation shall be in writing and shall be provided to the other party to the Agreement at the address indicated in Section 11 (Notices) of this Agreement. To the extent litigation is permitted under this Agreement, the request for Mediation may be made concurrently with the filing of a legal or equitable proceeding, which shall be stayed pending the outcome of a Mediation which will be completed within sixty (60) days from the date a request for Mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claims shall be tolled from the date Mediation is requested until completed. To the extent the parties cannot mutually select a Mediator, within fifteen (15) days from the date a request for Mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with landscaping experience to serve as the mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The Mediation shall be conducted in Broward County, Florida.

Section 23: **REPRESENTATION OF AUTHORITY**

23.1 The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

Section 24: **SURVIVABILITY**

24.1 Section 6 of this Agreement entitled "INDEMNIFICATION"; Section 9 of this Agreement entitled "AUDIT RIGHT AND RETENTION OF RECORDS"; Section 10 of this Agreement entitled "INSURANCE"; Section 16 of this Agreement entitled "FURTHER ASSURANCES"; Section 20 of this Agreement entitled "APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL"; Section 21 of this Agreement entitled "ENFORCEMENT; ATTORNEY'S FEES" and Section 22 of this Agreement entitled "MEDIATION" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

Section 25: **NONDISCRIMINATION**

25.1 Consultant shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

25.2 Consultant's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin.


Section 26: **COMPLIANCE WITH LAWS**

26.1 Consultant shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.



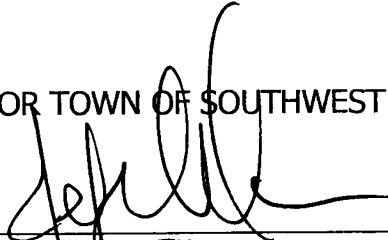
IN WITNESS WHEREOF, this Agreement is accepted and executed on the 22nd day of June, 2009.

FOR LUKES' LANDSCAPING, INC.

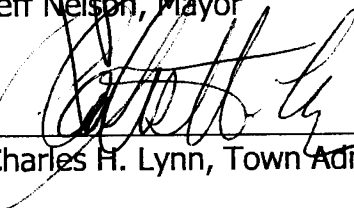


Luke Facarazzo, CEO

FOR TOWN OF SOUTHWEST RANCHES

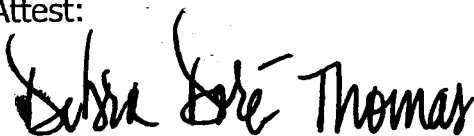


Jeff Nelson, Mayor



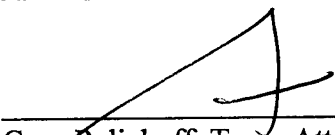
Charles H. Lynn, Town Administrator

Attest:



Debra Doré -Thomas, Interim Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:



Gary Poliakoff, Town Attorney
ACTIVE: 1514542_1



EXHIBIT "A"

MAINTENANCE AND NURSERY MANAGEMENT SPECIFICATIONS

General Standards:

1. The Consultant shall be familiar with the project premises and how the existing conditions will affect his or her work during the Agreement.
2. Throughout the term of the agreement, Consultant shall maintain at their sole expense Commercial general liability insurance with a minimum coverage limit of \$1,000,000.00, \$500,000.00 minimum limit of coverage for automobile liability coverage, and \$500,000.00 minimum limit of property damage covering Consultant's activities on the Nursery. Prior to performing any work under this Agreement, Consultant shall furnish to the Town a certificate of insurance evidencing the required coverage and naming the Town, its Members, guests, invitees, and agents as additional insureds.
3. The Consultant shall maintain at his or her sole expense workers compensation insurance coverage secured from a company licensed to do business in the locale of the project. A certificate of insurance shall be provided to the Town.
4. Except as otherwise stipulated herein, the Consultant shall furnish all materials, tools, equipment and labor necessary to complete the work described in this Agreement. Further, it shall be the Consultant's sole responsibility to make all arrangements for all required material procurement, transportation, site storage, care of the inventory and preparations.
5. All Work performed by Consultant shall be performed to the highest standards and shall be in accordance with accepted standard practices. All Work shall be performed in accordance with all applicable laws, codes, ordinances, and regulations of all local, city, county, state and federal agencies. All materials and hardware to be supplied by Consultant, that are not specifically described herein, shall be of suitable construction, composition, and quality to achieve their intended function.
6. All Consultant's personnel shall conduct their work in a professional manner.

7. All personnel, while on the project premises, shall wear the Consultant issued uniform or shirt. The Consultant's logo or name will appear on the uniform/shirt, vehicles and be easily identifiable.
8. Consultant will provide monthly reports to the Town relating to the condition of the Nursery. Consultant will make recommendations concerning maintenance, as well as, necessary treatments to avoid potential hazards. Consultant will be proactive in maintaining the Nursery.
9. The Town will periodically conduct inspections of the care and maintenance of the Nursery.

EXHIBIT "B"

NURSERY MAINTENANCE SPECIFICATIONS

Mowing:

Green ground cover surface to be cut at least 16 times per year.

Line trimming:

Trimming around permanent fixtures, including exterior fence lines, to follow each mowing. Industry acceptable mechanical or chemical methods may be utilized.

Weed Removal:

All Nursery potted material will be weeded as needed to maintain quality and appearance of material.

Trimming / Pruning:

Trees and plant materials will be limbed up as necessary to maintaining grade, health and quality. All tree rows to be sprayed with herbicide, not line cut, as needed.

Fertilization:

- Fertilize Shrubs: Shrubs will be fertilized with products such as Lesco Tree and Shrub four (4) times per year, slow release granular fertilizer.
- Fertilize Trees / Palms: Trees/Palms, based on size and deficiency will be fertilized with products such as Lesco Palm four (4) times a year with slow release granular fertilizer, ½ lb. per inch of caliper.

Communication:

Consultant will immediately notify the Town of any problems identified that could cause damage to land and plant material, etc., that is beyond the control of Consultant.

Fence Maintenance:

- Fencing shall be maintained by Consultant. Damage to fences will be the responsibility of Consultant.
- Incidence of damage/vandalism will be reported immediately. Repair due to damage from vandalism is not included in this contract.

Plant Material Replacement:

- Normal loss of plant material is expected to be no more than 10% of total inventory.
- Consultant shall only be responsible for the loss of plant material to the extent that such loss was caused by the sole negligence of Consultant. Under no circumstance shall Consultant be responsible for any loss of plant material caused by hurricane, act of God, or other causes beyond Consultant's control.
- Consultant can prepare a statement of loss that will be considered by the Town, although Town will not be required to approve or pay sums requested in statement of loss.
- Consultant will be responsible for filling in holes due to removal of plant material, holes will be filled to natural grade. Fill to be provided by Consultant.
- Consultant will be responsible for filling in holes due to removal of plant material, excluding holes resulting from sales to third parties who will be responsible for providing the dirt and filling their own holes. All_holes will be filled to natural grade. Fill to be provided by Consultant.

Security:

- Consultant shall ensure that at all times, any outside contractors utilizing the property must have security, such as fencing, locks, gates, etc., to prevent theft or damage to the nursery facilities.



EXHIBIT "C"

GENERAL SPECIFICATIONS

General Maintenance:

1. Consultant shall police all Nursery grounds for and will dispose of all trash / debris on a weekly basis and removed to a proper location.
2. Normal loss of plant material is expected to be no more than 10%, except if caused by hurricane, act of God, or other causes beyond Consultant's control. Notwithstanding anything to the contrary contained in this agreement, Consultant shall only be responsible for the loss of plant material to the extent that such loss was caused by the sole negligence of Consultant. Under no circumstance shall Consultant be responsible for any loss of plant material caused by hurricane, act of God, or other causes beyond Consultant's control.

Digging and Loading of Plant Material:

1. Consultant shall be responsible for the loading of all trees and plant material to be used for Town, estimated at 400 trees and plants.
2. Consultant may provide loading services to others based upon their work program.
3. U-Dig program if used by the Consultant must be reviewed and approval by Town prior to implementation.

Nursery Opening / Closing:

1. Consultant shall be responsible for daily opening/lock up the Nursery gates, Monday through Friday 7:00 a.m. to 4:00 p.m.
2. Consultant shall determine with Town the operating hours of the Nursery and such operating hours shall only be from Monday through Friday 7:00 a.m. to 4:00 p.m.

Sale of Plant Material:

1. Consultant shall be responsible for the sale of approximately 400 trees and plants.
2. Consultant and Town shall jointly determine, in writing, the selection of trees and plant materials to be placed for sale.
3. Price of the sales is defined in the wholesale Plant Finder publication. Sales price will be determined by the proposers discount specified, from the price listed in the wholesale Plant Finder Publication.
4. Consultant will deposit proceeds from sale, each work day, in a bank account as specified by the Town.
5. Consultant will provide monthly report detailing the inventory, sales proceeds, deposited funds and excess funds retained. Report will be prepared in accordance a format provided by the Town.

6. Cash or check sales will be normal collection methods used by Consultant. Credit cards may be considered after full details and security plans are clearly defined and presented for review and written approval by Town.



EXHIBIT "D"

COMPENSATION

Price to properly plant approximately 400 trees and plants material for Town:

	unit price*	quantity	total
Trees	\$68.49	400	\$27,400.00
Plants			
Material	\$ 3.98	TBD	\$ 0
Total			\$27,400.00**

**includes- stake & guy, amended soil, fertilization and initial watering (2 weeks)

*unit price shall be used to during actual planting

All work by Consultant shall be provide as specifically delineated in writing by the Town Administrator in a project description order (a "work order"), pursuant to the terms and conditions of this Agreement. Said order shall also specify a not to exceed fee for the specified project. The not to exceed fee may only be exceeded if approved in writing by the Town Administrator.

- Consultant shall receive a minimum fee of \$50.00 per tree for all trees sold for less than \$100 if Consultant is responsible for digging, root pruning, loading, including filling of the hole, etc.
- If a tree is sold for \$100 or more, 48.50% shall go to Consultant and 51.5% shall go to Town when Consultant is responsible for digging, root pruning, loading, etc.
- In the event the buyer provides its own labor and equipment for digging, root pruning, loading, delivering, etc., the compensation to Consultant for the sale of trees shall be as follows:
 - If bulk sales are equal to or greater than 20 trees and less than 100 trees, then Consultant shall receive 20% of total sale price.
 - If bulk sales are equal to or greater than 100 and less than 250 trees, then Consultant shall receive 10% of the total sale price.
 - If bulk sales are equal to or greater than 250 trees, then Consultant shall receive 5% of the total sale price.

All buyers providing their own labor and equipment must provide the Town and Consultant with a certificate of insurance prior to working on the Town property.

- The Town Administrator has the sole authority to establish a tree price less than the required price set forth herein.

ACTIVE: 1514542_1



