

RESOLUTION NO. R-2012-13

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO THE NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND ASPLUNDH TREE EXPERT CO., FOR TREE TRIMMING SERVICES THROUGHOUT THE CITY, AT A COST NOT TO EXCEED ONE HUNDRED NINETY-EIGHT THOUSAND DOLLARS AND NO CENTS (\$198,000.00), IN ACCORDANCE WITH IFB #18-10-11; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

WHEREAS, on March 1, 2011 the City of North Miami ("City") entered into a Non-Exclusive Professional Services Agreement with Asplundh Tree Expert Co. ("Agreement"), to provide the City with ISA Certified Arborist Tree Trimming Services ("Services"), in accordance with Invitation for Bid No. 18-10-11 Tree Trimming ("IFB"); and

WHEREAS, City Administration desires to secure the uninterrupted provision of Services at a competitive price through February 28, 2013; and

WHEREAS, the City Manager finds that the proposed Amendment with Asplundh Tree Expert Co., is necessary to maintain the availability of Services without interruption; and

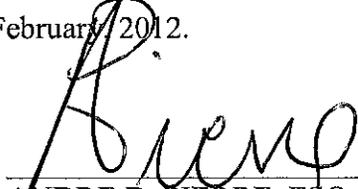
WHEREAS, the Mayor and City Council of the City of North Miami, have determined that the proposed Amendment, at a cost not to exceed One Hundred Ninety-Eight Thousand Dollars and No Cents (\$198,000.00), is in the City's best interest.

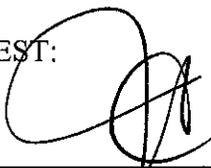
**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1. Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to enter into an amendment to the Non-Exclusive Professional Services Agreement, in substantially the attached form, between the City of North Miami and Asplundh Tree Expert Co., for tree trimming services throughout the City, at a cost not to exceed One Hundred Ninety-Eight Thousand Dollars and No Cents (\$198,000.00), in accordance with IFB #18-10-11.

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

**PASSED AND ADOPTED** by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 14 day of February 2012.

  
\_\_\_\_\_  
ANDRE D. PIERRE, ESQ.  
MAYOR

ATTEST:  
  
\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:  
  
\_\_\_\_\_  
ROLAND C. GALDOS  
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Galvin

Seconded by: Vice Mayor Marcellus

**Vote:**

Mayor Andre D. Pierre, Esq.	<u>X</u>	(Yes)	<u>        </u>	(No)
Vice Mayor Jean R. Marcellus	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilperson Michael R. Blynn, Esq.	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilperson Scott Galvin	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilperson Marie Erlande Steril	<u>X</u>	(Yes)	<u>        </u>	(No)

**CITY OF NORTH MIAMI**  
**AMENDMENT TO NON-EXCLUSIVE**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(IFB No: 18-10-11)**

**THIS AMENDMENT TO NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT** ("Amendment") is entered into this \_\_\_ day of \_\_\_\_\_, 2012, between the **City of North Miami**, a Florida municipal corporation with a principal address at 776 N.E. 125<sup>th</sup> Street, North Miami, FL 33161 ("City"), and **Asplundh Tree Expert Co.**, a foreign-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 708 Blair Mill Road, Willow Grove, PA 19090 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

**RECITALS**

**WHEREAS**, on January 6, 2011, the City advertised **Invitation for Bid No. 18-10-11 Tree Trimming** ("IFB"), to establish a contract to purchase tree trimming services from an ISA Certified Arborist, in accordance with the terms, conditions, and specifications contained in the IFB ("Services"); and

**WHEREAS**, the Contractor submitted its proposal which was evaluated by the City as the lowest responsive, responsible bidder whose bid, qualifications and references were the most advantageous to the City; and

**WHEREAS**, on March 1, 2011, the City entered into a Non-Exclusive Professional Services Agreement for the provision of Services in the amount of Ninety-Nine Thousand and No/100 Dollars (\$99,000.00), pursuant to the requirements of the IFB ("Agreement"); and

**WHEREAS**, City administration has identified the need to amend the Agreement to adjust the compensation amount to One Hundred Ninety-Eight Thousand and No/100 Dollars (\$198,000.00); and

**WHEREAS**, the City Manager finds that the proposed Amendment with Contractor, for the provision of Services, is necessary to maintain the availability of Services without interruption.

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

1. The Parties agree that this Amendment is incorporated into and made part of the Agreement executed by the Parties on March 1, 2011, attached hereto as Exhibit A.
2. The Parties hereby amend Article 4 of the Agreement to an amount not to exceed One Hundred Ninety-Eight Thousand and No/100 Dollars (\$198,000.00) for the period commencing March 1, 2011 through February 28, 2013.

3. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the Parties.

4. This Amendment shall be binding upon the Parties hereto, their successors in interest, heirs, executors, assigns and personal representatives.

5. All other terms of the Agreement which have not been modified by this Amendment, shall remain in full force and effect.

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

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

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

ATTEST:

**Corporate Secretary or Witness:**

Asplundh Tree Expert Co., a foreign profit corporation:  
"Contractor"

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name:

Print Name:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

City of North Miami, a Florida municipal corporation: "City"

By: \_\_\_\_\_

Michael A. Etienne, Esq.  
City Clerk

By: \_\_\_\_\_

Stephen E. Johnson  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Roland C. Galdos  
Interim City Attorney

**CITY OF NORTH MIAMI  
NON-EXCLUSIVE  
PROFESSIONAL SERVICES AGREEMENT  
(IFB No: 18-10-11)**

THIS NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this 1 day of March, 2011, between the City of North Miami, a Florida municipal corporation with a principal address of 776 N.E. 125<sup>th</sup> Street, North Miami, FL 33161 ("City"), and Asplundh Tree Expert Co., a foreign-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 708 Blair Mill Road, Willow Grove, PA 19090 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

**RECITALS**

WHEREAS, on January 6, 2011, the City advertised Invitation for Bid No. 18-10-11 Tree Trimming ("IFB"), to establish a contract to purchase tree trimming services from an ISA Certified Arborist, in accordance with the terms, conditions, and specifications contained in the IFB; and

WHEREAS, the Contractor submitted its proposal which was evaluated by the City as the lowest responsive, responsible bidder whose bid, qualifications and references were the most advantageous to the City; and

WHEREAS, the Contractor has expressed the capability, willingness and expertise to perform the Services pursuant to the IFB; and

WHEREAS, the City Manager finds that entering into an agreement with Contractor for the provision of Services, is in the City's best interests.

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

**ARTICLE 1 - RECITALS**

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

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 City of North Miami Invitation for Bid #18-10-11 Tree Trimming is incorporated hereto by reference;

2.1.2 Contractor's Bid Submittal Forms in response to IFB ("Bid"), is attached hereto as "Exhibit A"; and

2.1.3 The City's Tabulation of Bid Evaluations, attached hereto as "Exhibit B";

2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

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

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The IFB.

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

#### ARTICLE 3 - TERM

3.1 The Parties agree that subject to authorized adjustments, the Initial Term of this Agreement shall be for a period of two (2) years, commencing on the date of the Notice to Proceed.

3.2 Following the Initial Term, the City shall have the option to renew this Agreement for an additional period of three (3) years on a year-to-year basis, under the same terms and conditions.

#### ARTICLE 4 - COMPENSATION

4.1 The Contractor shall be paid an amount not to exceed Ninety Nine Thousand and no/100 Dollars (\$99,000.00) as full compensation for the provision of Services, for the ~~first year of the~~ Initial Term. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

4.2 After the expiration of the Initial Term, the City may consider a price adjustment in accordance with the terms of the IFB.

#### ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all required labor, supervision, materials, equipment, tools, transportation, services and expertise necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents. Contractor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

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

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

5.3 Contractor agrees and understands that: (i) any and all Subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

5.4 During performance of the Services, Contractor shall cause a minimum of inconvenience to the public and to local business activities and shall ensure that the public roadways and any improvements or appurtenants in the vicinity of a work site, remain open to the public whenever and wherever possible.

5.5 Contractor shall at all times, during the performance of Services, keep the work site free and clear of all rubbish and debris. Any material or waste generated by Contractor or its employees, agents and Subcontractors shall be removed and disposed of by the Contractor at its expense, to the satisfaction of the City.

5.6 In the event Contractor fails to remove all rubbish, debris, materials and waste from the work site, the City may employ labor and equipment necessary to clear the site and charge Contractor for the City's cost incurred cleaning the site.

5.7 Contractor shall notify the City in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any work. Failure to notify the City of any damage shall result in the Contractor's duty to repair the damage at no additional expense to the City.

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

5.9 Contractor shall maintain suitable and sufficient guards, barriers and lighting for the prevention of accidents. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

#### ARTICLE 6 – INDEPENDENT CONTRACTOR

~~6.1 Contractor and its employees and agents shall be deemed to be independent contractors and not City agents or employees. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further~~

understands that Florida workers' compensation benefits available to employees of the City are not available to Contractor, and agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering Services to the City under this Agreement.

#### ARTICLE 7 - DEFAULT

7.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within fifteen (15) business days after receiving notice of default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

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

#### ARTICLE 8 - CITY'S TERMINATION RIGHTS

8.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, without cause, upon sixty (60) days written notice to Contractor. The City shall not be liable to Contractor for any additional amounts or damages, including but not limited to, anticipated profits, or consequential or incidental damages.

#### ARTICLE 9 - CONFLICTS OF INTEREST

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

9.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

#### ARTICLE 10 - NOTICE

10.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

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To Contractor:           Asplundh Tree Expert Co.  
                                  Attn: Gene Hayden  
                                  4955 Trott Circle

North Point, FL 34287  
Telephone (941) 564-6478

To City: City Manager  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

With a copy to: City Attorney  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

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

10.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice. Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

#### ARTICLE 11 – PUBLIC RECORDS

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

#### ARTICLE 12 – INSURANCE

12.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any Subcontractor to begin work until after similar minimum insurance to cover Subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

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12.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of

Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

#### ARTICLE 13 - INDEMNIFICATION

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

13.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

#### ARTICLE 14 - FORCE MAJEURE

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

#### ARTICLE 15 - MISCELLANEOUS PROVISIONS

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

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

15.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining

terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

15.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

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

15.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

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

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

15.9 All other terms and conditions set forth in the IFB which have not been modified by this Agreement, shall remain in full force and effect.

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

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

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

*(The remainder of this page is intentionally left blank)*

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

ATTEST:

Corporate Secretary or Witness:

By: Joseph P. Dwyer

Print Name: Joseph P. Dwyer  
Secretary/Treasurer

Asplundh Tree Expert Co., a foreign profit corporation:  
"Contractor"

By: Steven G. Asplundh

Print Name: Steven G. Asplundh  
Sr. Vice President

ATTEST:

By:

Jacque Vieira  
Jacque Vieira  
Deputy City Clerk

By:

Russell Benford  
Russell Benford  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

Lynn Whitfield  
Lynn Whitfield  
City Attorney