



**AGREEMENT BETWEEN THE CITY OF PEMBROKE PINES  
AND BLUE MARLIN INVESTMENTS, INC. D/B/A CAYCO LANDSCAPING**

**THIS AGREEMENT** ("Agreement"), is dated \_\_\_\_\_, is entered into by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

**BLUE MARLIN INVESTMENTS, INC. D/B/A CAYCO LANDSCAPING**, a For Profit Corporation, as listed with the Florida Division of Corporations, with a business address of **3700 NW 10<sup>th</sup> Avenue, Oakland Park, FL 33309** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**W I T N E S S E T H:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1  
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **June 22, 2023**, the CITY advertised its notice to bidders of the CITY's desire to award a pool of qualified firms for the provision of **trees, plants, and other landscaping materials on as needed basis for various landscaping projects that arise throughout the CITY**, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

**Invitation for Bids (IFB) # PSPW-23-11  
"Citywide Trees, Plants, and Other Landscaping Materials"**

1.2 On **July 18, 2023**, the bids were opened at the offices of the City Clerk.



1.3 On \_\_\_\_\_, the CITY Commission approved a pool of responsive responsible firms deemed qualified for the provision of trees, plants, and other landscaping materials on as needed basis for various landscaping projects that arise throughout the CITY and authorized the negotiation of various agreements for the services herein required.

1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

1.5 CONTRACTOR is one (1) of the qualified firms willing and able to provide trees, plants, and other landscaping materials on as needed basis for various landscaping projects that arise throughout the CITY, pursuant to the basic terms and conditions set forth in this Agreement.

1.6 CITY intends and CONTRACTOR acknowledges that any services performed pursuant to this Agreement shall be non-exclusive and performed on an as needed basis, at the sole discretion of CITY, with no guarantee as to any minimum amount of work to be performed by CONTRACTOR.

## **ARTICLE 2** **SERVICES AND RESPONSIBILITIES**

2.1 CONTRACTOR agrees to provide **trees, plants, and other landscaping materials on as needed basis for various landscaping projects that arise throughout the CITY**, on an as needed basis, for specified landscaping projects as may be identified by CITY from time to time and at CITY's sole discretion ("Services"). The CONTRACTOR shall provide the Services as identified herein and more specifically described in **IFB # PSPW-23-11**, attached hereto and made a part hereof as **Exhibit "A"** and CONTRACTOR's response thereto, incorporated herein and made a part hereof as **Exhibit "B"**.

2.2 The Parties acknowledge that this Agreement is a term contract, and that CITY shall purchase and CONTRACTOR shall provide the landscaping materials and Services on an as-needed basis upon written request of the CITY. Nothing contained herein or in any exhibit or amendment hereto, shall require the CITY to purchase the quantity of landscaping materials and Services identified in **Exhibit "A"** or **Exhibit "B"**.

2.3 As needed, the CITY shall submit a purchase order to the CONTRACTOR for a specified amount of landscaping materials and Services. CONTRACTOR shall then provide the specified amount of landscaping materials and Services in accordance with the purchase order, and submit to the CITY an invoice for those landscaping materials and Services.

2.4 CITY agrees it shall submit to CONTRACTOR a purchase order for the landscaping materials and Services on an as needed basis. By acceptance of CONTRACTOR's bid, CONTRACTOR agrees that it shall provide such landscaping materials and Services upon receipt of purchase order from CITY and has the ability to fulfill such orders as CITY requires.



2.5 CONTRACTOR acknowledges that it has the capacity, ability and/or inventory to provide the landscaping materials and Services listed in **Exhibit “A”** and **Exhibit “B”** to the CITY on an as-needed basis.

2.6 All specifications and plans prepared or to be used for the landscaping materials and Services provided herein shall be certified and approved by CONTRACTOR and submitted to the CITY in a timely fashion for approval prior to advertisement or implementation as may be applicable. The CONTRACTOR acknowledges time is of the essence in performance of this Agreement.

2.7 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner. CONTRACTOR shall perform Services in accordance with the schedule provided by CITY, unless the Parties agree in writing to modify or change the schedule. CONTRACTOR’s failure to maintain the implementation schedule may warrant a full review by the CITY.

2.8 CONTRACTOR shall gain prior written approval from the CITY prior to engaging any subconsultants, subcontractors, or other professional associates to perform in connection with this Agreement. Any subcontract with a subcontractor or subconsultant shall afford to the CONTRACTOR rights against the subcontractor or subconsultant which correspond to those rights afforded to the CITY against the CONTRACTOR herein, including but not limited to those rights of termination as set forth herein. No reimbursement shall be made to the CONTRACTOR for any subconsultants that have not been previously approved by the CITY for use by the CONTRACTOR.

2.9 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor available to enforce these policies and procedures at the CONTRACTOR’s expense.

2.10 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.11 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR’s license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

### **ARTICLE 3** **TERM AND TERMINATION**



3.1 CONTRACTOR shall provide the Services as required herein and in accordance with **Exhibit "A"**, for an initial **one (1) year** period which shall commence on the effective date of this Agreement and naturally expire **one (1) year** thereafter.

3.2 This Agreement may be renewed at the expiration of the initial term, for **five (5)** additional **one (1) year** terms upon the mutual consent of the Parties, evidenced by written amendments to this Agreement extending the term thereof.

3.3 **Post Contractual Obligations**. In the event that the term of this Agreement expires and the CITY has already initiated landscaping project pursuant to this Agreement, the CONTRACTOR agrees to continue providing services, at the rate provided, on a month to month basis until the CITY establishes a new contract for services.

3.4 **Termination for Convenience**. This Agreement may be terminated by CITY for convenience, upon providing **seven (7) calendar days** of written notice to CONTRACTOR for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.5 **Termination for Cause**. In addition to all other remedies available to CITY, this Agreement shall be subject to termination by CITY for cause, in the event CONTRACTOR causes any unnecessary delay, neglect, or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of fourteen (14) days after receipt by CONTRACTOR of written notice of such unnecessary delay, neglect, or failure. In the event CONTRACTOR abandons or terminates this Agreement or causes it to be terminated by CITY for any reason, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination. For purposes of this Agreement, termination by CITY for cause includes, but is not limited to, any of the following circumstances:

3.5.1 CONTRACTOR's failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than fourteen (14) days after CITY's delivery of a written notice to CONTRACTOR's of such breach or default;

3.5.2 CONTRACTOR becomes insolvent;

3.5.3 CONTRACTOR takes the benefit of any present or future insolvency statute;

3.5.4 CONTRACTOR makes a general assignment for the benefit of creditors,

3.5.5 CONTRACTOR files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the Federal Bankruptcy laws or under any other law or statute of the United States or any state thereof;



3.5.6 CONTRACTOR consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;

3.5.7 A petition under any present or future insolvency laws or statute is filed against CONTRACTOR and such petition is not dismissed within thirty (30) days after its filing; or

3.5.8 Any assignment of this Agreement in whole or in part, or any of CONTRACTOR's rights and obligations hereunder.

#### **ARTICLE 4** **COMPENSATION AND METHOD OF PAYMENT**

4.1 Compensation paid to CONTRACTOR for the provision of landscaping materials and Services herein required shall be based on the unit pricing submitted by CONTRACTOR as more specifically described in **Exhibit "B"**. CONTRACTOR shall be paid monthly upon issuance of final inspection for work that has been performed, completed, inspected, and properly invoiced.

4.2 The total annual amount of compensation for all landscaping materials and Services performed shall not exceed **FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$500,000.00)**. The CONTRACTOR expressly recognizes that CONTRACTOR's acceptance of this Agreement does not guarantee any work or minimum fee to be paid to CONTRACTOR and that landscaping materials and Services will be assigned on an as needed basis, within the pool of qualified vendors.

4.3 Upon completion of the Services identified for each landscaping project, the CITY shall make a final inspection of the Services rendered by CONTRACTOR within a reasonable time. Final payment due to the CONTRACTOR shall be withheld until inspection is made by the CITY and merits of performance evaluated. If the CITY's inspection shows that the Services have been delivered in a satisfactory manner and in accordance with the specifications of this Agreement and purchase order(s) submitted by the CITY for such landscaping project, the CITY shall receive the same. Upon acceptance, CONTRACTOR shall submit to CITY an invoice for the Services, upon approval of the invoice, CITY shall pay the same within thirty (30) days.

4.4 If any of the required Services are rejected for any reason, the CONTRACTOR shall be required to perform the Services to the satisfaction of the CITY. Additionally, payment may be withheld by the City Manager, for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

4.5 **Method of Billing and Payment.** All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. Invoices submitted by CONTRACTOR shall include the date of service, service performed, hours spent, location of services, description of the landscaping project, and any other information reasonable required by the CITY. The CITY shall within thirty (30) days, from the date the City's Public Services Director approves the Application for Payment, pay the CONTRACTOR the amount



approved by the CITY's Public Services Director or his or her assignees. Payment will be made to CONTRACTOR at:

**Blue Marlin Investments, Inc. d/b/a Cayco Landscaping**  
**3700 NW 10<sup>th</sup> Avenue**  
**Oakland Park, FL 33309**

**ARTICLE 5**  
**INDEMNIFICATION**

5.1 CONTRACTOR shall indemnify and hold harmless the CITY, its elected and appointed officials, agents, and employees from and against any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, sustained by CITY, its elected and appointed officials, agents, or employees, to the extent such claims are arising out of, or by reason of, or resulting from the negligence, recklessness, or intentional wrongful conduct of CONTRACTOR and the agents, officers, or employees utilized by CONTRACTOR during performance of the services required by this Agreement. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

5.2 CONTRACTOR's aggregate liability resulting from this Agreement shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONTRACTOR.

5.3 Parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Party's responsibility to indemnify.

5.4 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

**ARTICLE 6**  
**INSURANCE**

6.1 The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

6.2 CONTRACTOR AND ALL SUBCONTRACTORS, SHALL NOT BE ALLOWED TO commence work under this AGREEMENT until the CONTRACTOR has obtained all insurance required by this Insurance Section, including the purchase of a Policy of Insurance naming the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms



must be agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines, nor shall any SUBCONTRACTOR be allowed to commence work under this AGREEMENT until the SUBCONTRACTOR complies with the Insurance requirements required by this Insurance Section, including the duty to purchase a Policy of Insurance which names the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines.

6.3 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

6.4 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

6.5 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

6.6 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

6.7 REQUIRED INSURANCE. CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓  6.7.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:



1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of ten (10) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

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6.7.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation:	Coverage A – Statutory
2. Employers Liability:	Coverage B
	\$500,000 Each Accident
	\$500,000 Disease – Policy Limit
	\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No

6.7.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.



Yes No

6.7.4 Umbrella/Excess Liability Insurance in the amount of **\$2,000,000.00** as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

#### 6.8 REQUIRED ENDORSEMENTS

- 6.8.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 6.8.2 Waiver of all Rights of Subrogation against the CITY.
- 6.8.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 6.8.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 6.8.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 6.8.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property Policies as their interest may appear.

6.9 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

6.10 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

6.11 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

### **ARTICLE 7** **NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion,



color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## **ARTICLE 8** **INDEPENDENT CONTRACTOR**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, Federal, or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

## **ARTICLE 9** **AGREEMENT SUBJECT TO FUNDING**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

## **ARTICLE 10** **UNCONTROLLABLE FORCES**

Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term



"Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

### **ARTICLE 11** **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

### **ARTICLE 12** **SIGNATORY AUTHORITY**

CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

### **ARTICLE 13** **DEFAULT OF CONTRACT & REMEDIES**

CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement, or for losses sustained by CITY resultant from CONTRACTOR's failure to perform in accordance with the requirements of this Agreement.

### **ARTICLE 14** **BANKRUPTCY**

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

### **ARTICLE 15** **MERGER; AMENDMENT**

This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement



can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

## **ARTICLE 16** **DISPUTE RESOLUTION**

In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONTRACTOR expressly agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

## **ARTICLE 17** **PUBLIC RECORDS**

17.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

17.1.1 Keep and maintain public records required by the CITY to perform the service;

17.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

17.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

17.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

17.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth herein.



**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**ARTICLE 18  
SCRUTINIZED COMPANIES**

18.1 CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

18.1.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

18.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

18.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

18.1.2.2 Is engaged in business operations in Syria.

**ARTICLE 19  
EQUAL BENEFITS FOR EMPLOYEES**

19.1 CONTRACTOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that CONTRACTOR will comply with the requirements of Section 35.39 of the CITY's Code of Ordinances at the time of contract award.



19.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

19.3 CONTRACTOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONTRACTOR is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONTRACTOR may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONTRACTOR's records pertaining to its benefits policies and its employment policies and practices.

19.4 CONTRACTOR must conspicuously make available to all employees and applicants for employment the following statement:

**"During the performance of a contract with the City of Pembroke Pines, Florida, the CONTRACTOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples".**

If CONTRACTOR has questions regarding the application of Section 35.39 of the City of Pembroke Pines Code of Ordinances to CONTRACTOR's duties pursuant to this Agreement, contact Human Resources at (954) 392-2092 or [drotstein@ppines.com](mailto:drotstein@ppines.com).

19.5 By executing this Agreement, CONTRACTOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

## **ARTICLE 20** **EMPLOYMENT ELIGIBILITY**

20.1 **E-Verify.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statues, as may be amended from time to time and briefly described herein below.

### **20.1.1 Definitions for this Section.**

20.1.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.



- 20.1.1.2 "Contractor" includes, but is not limited to, a vendor or consultant.
- 20.1.1.3 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
- 20.1.1.4 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

**20.2 Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- 20.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
- 20.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and
- 20.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

## **ARTICLE 21** **MISCELLANEOUS**



21.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

21.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

21.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

21.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

21.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

21.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:



CITY: Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way, 4<sup>th</sup> Floor  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney  
Goren, Chero, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923

CONTRACTOR: **Daniel Gonzalez – President**  
**Blue Marlin Investments, Inc. d/b/a Cayco Landscaping**  
**3700 NW 10<sup>th</sup> Avenue,**  
**Oakland Park, FL 33309**  
E-mail: [dgonzalez@caycolandscaping.com](mailto:dgonzalez@caycolandscaping.com)  
Telephone No: (866) 203-2292

21.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

21.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

21.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

21.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21.11 **Entire Agreement; Conflicts.** This Agreement represents the entire and integrated agreement between the CITY and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of any conflict or ambiguity by and between this Agreement, **Exhibit “A”**, and **Exhibit “B”**, this Agreement shall govern and prevail, followed by **Exhibit “A”**, and **Exhibit “B”**.



21.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

21.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

21.14 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

21.14 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

21.15 **Compliance with Statutes.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

**SIGNATURE PAGE FOLLOWS**



*City of Pembroke Pines*

**IN WITNESS OF THE FOREGOING**, the Parties have set their hands and seals the day and year first written above.

**CITY:**

APPROVED AS TO FORM:

CITY OF PEMBROKE PINES, FLORIDA

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

MAYOR FRANK C. ORTIS

ATTEST:

BY: \_\_\_\_\_

MARLENE D. GRAHAM, CITY CLERK

CHARLES F. DODGE, CITY MANAGER

**CONTRACTOR:**

BLUE MARLIN INVESTMENTS, INC. D/B/A  
CAYCO LANDSCAPING

Signed By: 

Printed Name: Juan Gonzalez

Title: President