

**CITY OF NAPLES, FLORIDA**  
**AGREEMENT**  
**(SERVICES)**

**Bid/Proposal No.**                    **16-044**

**Clerk Tracking No.**

16-00099

**Project Name:**                    **Naples Preserve Vegetation Management**

THIS AGREEMENT (the "Agreement") is made and entered into this <sup>28<sup>th</sup></sup> **day of July 2016** by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **Milborne, LLC** a Florida Limited Liability Company, located at: **528 West 49<sup>th</sup> Street; Miami, Florida 33140** (the "CONTRACTOR").

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted an **(ITB) Invitation to Bid No. 16-044** for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

**ARTICLE ONE**  
**CONTRACTOR'S RESPONSIBILITY**

1.1. The Services to be performed by the CONTRACTOR are generally described as **Naples Preserve Vegetation Management** and may be more fully described in the Scope of Services, attached as **EXHIBIT A** and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, registration, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. The CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified employee to serve as the CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and

administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by the CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by the CONTRACTOR hereunder, and the CONTRACTOR shall require all of its employees, agents, sub-consultants and subcontractors to comply with the provisions of this paragraph. However, the CONTRACTOR shall comply with the Florida Public Records laws including those requirements set out in ARTICLE FIVE, below.

1.7 The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8 The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO CITY'S RESPONSIBILITIES**

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions

to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

Any such modifications or changes shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;
- (b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and
- (c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

### **ARTICLE THREE TIME**

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and **shall be performed through September 30, 2017** with the mutually agreed upon option between the CITY and CONTRACTOR of **two (2) one-year renewals**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONTRACTOR's services from any cause whatsoever, including those for which the

CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

3.5 Liquidated Damages: Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project must be completed by the contract dates specified within the Notice to Proceed for construction. Should CONTRACTOR fail to complete the project within this timeframe, daily liquidated damages in an amount of \$250.00 per day will be assessed.

**XXXX Not applicable to this Agreement.**

3.6 Bond. A Payment & Performance Bond with a surety insurer authorized to do business in this state as surety (check one)

\_\_\_\_\_ has been recorded in the public records of the County

\_\_\_\_\_ prior to commencement of work, will be recorded in the public records of the County, or

\_\_\_\_\_ is waived

**XXXX is not applicable to this Agreement.**

#### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services is not to exceed **\$50,000.00 that includes a \$5,000.00 CITY controlled Contingency** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **EXHIBIT B** and made a part of this Agreement.

#### **ARTICLE FIVE MAINTENANCE OF RECORDS**

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

**5.2 119.701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES' CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE**

If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR'S duty to provide public records relating to this contract, contact the City of Naples' Custodian of Public records, the City Clerk at Telephone: 239-213-1015, Email: PublicRecordsRequests@naplesgov.com; Address: 735 8<sup>th</sup> Street S.; Naples, Florida 34102. Mailing address: same as street address.

**5.3 The CONTRACTOR shall:**

1. Keep and maintain public records required by the CITY to perform the service.
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 this chapter 119.701 F.S. or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically 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.

**ARTICLE SIX  
INDEMNIFICATION**

6.1. The CONTRACTOR agrees to indemnify and hold harmless the CITY from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

**ARTICLE SEVEN  
INSURANCE**

7.1. The CONTRACTOR shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **EXHIBIT C** and made a part of this Agreement.

#### **ARTICLE EIGHT SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

#### **ARTICLE NINE WAIVER OF CLAIMS**

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

#### **ARTICLE TEN TERMINATION OR SUSPENSION**

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for

convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

#### **ARTICLE ELEVEN CONFLICT OF INTEREST**

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

#### **ARTICLE TWELVE MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

#### **ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples  
735 Eighth Street South; Naples, Florida 34102-3796  
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Milborne, LLC  
528 W. 49<sup>th</sup> Street; Miami Beach, Florida 33140  
Attention: **Robert B. Miller**, Executive V.P.  
FEI/EIN Number: On File

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

#### **ARTICLE FOURTEEN MISCELLANEOUS**

14.1. The CONTRACTOR assumes toward the CITY a duty of care commensurate with that which is imposed upon persons or firms in contractor's profession. CONTRACTOR will make reasonable efforts to ensure that its employees and agents maintain a professional demeanor and that the work area is compliant with CITY property maintenance and Project standards.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

14.7. The CONTRACTOR shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONTRACTOR shall execute the Certification of Compliance with Immigration Laws, attached hereto as **EXHIBIT D**.

14.8. To the extent that any provision in the Specifications or any other Contract Documents pertaining to this Project conflict with any provision of this Agreement, this Agreement controls.

14.9. Dispute Resolution. Disputes under this Agreement shall be resolved through mutual consultation between the parties within 14 days after notice; and failing resolution through mutual consultation, through mediation within 30 days thereafter; and failing mediation, through Arbitration under the Florida Arbitration Code, by a single arbitrator. If the parties cannot agree on a mediator or arbitrator, within 14 days of failure of the previous method, they shall request the Chief Judge of the 20<sup>th</sup> Judicial Circuit to appoint a mediator, or an arbitrator, as the case may be. Time periods are waivable by mutual agreement of the parties, but shall not exceed 90 days for completion of the processes described herein, unless by mutual agreement. Costs of the mediator or arbitrator shall be shared equally.

14.10. Attorneys' fees. Except as otherwise provided herein, each party shall be responsible for its own attorneys' fees.

#### **ARTICLE FIFTEEN APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

**END OF ARTICLE PAGE**



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

ATTEST:

By: *Patricia L. Rambosk*  
Patricia L. Rambosk, City Clerk

Approved as to form  
and legal sufficiency:

By: *Robert D. Pritt*  
Robert D. Pritt, City Attorney

CITY:

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

By: *A. William Moss*  
A. William Moss, City Manager

CONTRACTOR:

Milborne, LLC  
528 W. 49<sup>th</sup> Street  
Miami Beach, Florida 33140  
Attention: **Robert B. Miller**, Executive V.P.

*Teresa G. Chalkley*  
Witness  
TERESA G. CHALKLEY  
Witness Printed Name

By: *Robert B. Miller*  
Printed Name: Robert B. Miller  
Title: Executive V. P.

FEI/EIN Number: On File  
A Florida Limited Liability Company (FL)

(CORPORATE SEAL)



**EXHIBIT A**

**SCOPE OF SERVICES**

**The Scope of Services to be provided under this Agreement are included in Attachment A-1 which is attached and made a part of this Agreement and those set out in the Bid, any issued Addendum(s) and Vendor's Submittal of (ITB) Invitation To Bid No.16-044, titled Naples Preserve Vegetation herein referenced and made a part of this Agreement.**

**END OF EXHIBIT A**

**THE NAPLES PRESERVE**  
**GENERAL SPECIFICATIONS – VEGETATION MANAGEMENT**

**A. SCOPE OF SERVICES**

The City of Naples' (City) Community Services Department (Department) is requesting proposals for a one-year contract with an option for two (2) one-year renewals for conservation vegetation management at the Naples Preserve (Preserve) while ensuring the site's ecological integrity is protected. The project involves reducing weedy vines, removal of exotic vegetation, and thinning the tree canopy.

**B. AWARD OF BIDS**

More than one Contractor may be utilized to accomplish the scheduled work for this project. Award shall be made to the lowest, most qualified and the most responsible bidder meeting the City's Purchasing Policy for each section of work identified. The City reserves the right to reject any and all bids/proposals or any part of any bid/proposal and to award a contract in a manner that is in the best interest of the City.

**C. CONTRACT MANAGEMENT**

Heather Shields, Contract Services Manager for the Department and/or another authorized representative will serve as the City's Contract Manager.

**D. LICENSES AND PERMITTING**

Licenses may be required by the State of Florida, Collier County, or the City to perform all or part of this work. Contractors who submit proposals are solely responsible for investigating and determining if they hold the necessary License(s) prior to bid submittal. **All licenses and certifications must be current and in good standing at the time of the bid opening.**

**E. INSURANCE**

Successful contractor(s) shall furnish proof of insurance per the City's specifications and requirements.

**F. CONDUCT**

The contractor and his employees will conduct themselves in such a manner as to avoid embarrassment to the City of Naples, and shall at all times be courteous to the public. Although uniforms are not required, proper clothing shall be worn

at all times to include shirts, necessary safety equipment, pants, and proper footwear. Proper safety equipment shall be worn as required to complete each task and in accordance with industry safety standards (i.e., eye protection, ear protection, safety vests, helmets, harnesses, etc.).

## **G. CONTRACTORS EQUIPMENT**

As a Contractor to the City, all vehicles and equipment must be maintained in good repair, appearance and sanitary condition at all times. Vehicles must be identified with the name of the company and phone number clearly visible. In addition, the contractor shall be responsible for using the necessary safety equipment according to State DOT and OSHA standards while working on City, County, or State roads. All trucks used by the Contractor at the Preserve must display the City's certification decal which demonstrates that the contractor is in compliance with the City's Landscape Certification Ordinance.



## **H. DISPOSAL OF DEBRIS**

The contractor shall dispose of all debris and other materials gathered from the described work in compliance with contract specifications and City, County and State Laws.

## **I. SCHEDULING OF WORK**

All work shall be performed from Monday to Friday between the hours of 7:00am to 5:00pm and Saturday between the hours of 8:00am to 5:00pm unless prior approval has been obtained from the Contract Manager. No work may be performed on Sundays or legal holidays. Any work performed during the summer months must be carefully coordinated and approved by the Contract Manager to prevent conflicts with summer camps and organized events.

Work for Phase 1 to begin within 5 business days after receipt of purchase order and must be completed within 10 business days after start of work. Phase 2 is to begin after a 30 day period from the completion of Phase 1 and must be completed within 10 business days after start of work. Phase 3 is to begin after a 30 day period from the completion of Phase 2 and must be completed within 10 business days after start of work.

Work performance deficiencies and associated problems identified by the City must be corrected by the Contractor within a minimum of three-working days of notification by the Contract Manager. The City has the sole authority to determine if a performance deficiency or problems exists that the Contractor must correct.

#### **J. PAYMENT REQUESTS, INVOICES AND WORK REPORTS**

Payment requests shall be submitted at the completion of each phase of work to the Contract Manager. The Contract Manager shall only approve payment requests for actual work completed by the Contractor and approved by the City. Should performance deficiencies exist, the City shall withhold payment for the work in question until the Contractor completes the work to the satisfaction of the Contract Managers. Please see "**FINAL INSPECTION AND APPROVAL**" for additional payment details.

#### **K. NON-PERFORMANCE**

The City reserves the right to cancel the contract with a seven (7) day notice should the Contractor fail to perform up to the specified work in accordance with the requirements and standards identified in the City's specifications. The City may withhold part or all payments due to the Contractor until work deficiencies are corrected.

#### **L. QUALIFICATIONS**

The Contractor shall be licensed with a minimum of three (3) years' experience in exotic removal and/or environmental work. The Contractor shall be required to have at least one supervisor plus 10% of field staff complete the required Landscape Certification Program – Green Industries Best Management Practices (GI-BMP) course and have at least one GI-BMP certified employee at the Preserve at all times while work is being performed. Certificates for employees but be submitted with the bid proposal. All proposals shall include a list of at least three (3) commercial references. The City will contact references to determine the competency of the Contractor.

#### **N. REJECTING DEFECTIVE WORK**

The City through its Contract Manager shall have the sole authority to disapprove or reject work, which she/he believes to be unacceptable work and not in accordance with Contract Documents. City will notify the contractor, in writing, of unacceptable work. If work has been rejected, contractor shall correct all

defective work within three-working days and bear all costs to correct the defective work. The contractor will contact the Contract Manager to advise when staff shall be on site to correct the rejected work. If the contractor fails to correct the defective work, or if the contractor fails to perform the work in accordance with the Contract Documents, within three-working days after the written notice is issued, the City will withhold payment due to the Contractor for the portion of service not rendered.

#### **O. PROTECTION OF PUBLIC AND PRIVATE PROPERTY**

1. Contractor shall assume full responsibility for any damage to any property including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities, resulting from the performance of the work.
2. The contractor upon receipt of written notice to discontinue such practice shall immediately discontinue any practice obviously hazardous in the opinion of the Contract Manager. The contractor shall comply with all OSHA and other Federal and State safety standards.
3. Blocking of the public street, except under extreme emergency conditions, shall not be permitted unless prior arrangements have been made with the Contract Manager and the City Police and Fire Departments and other agencies having jurisdiction over the street to be closed.

#### **P. PROTECTION OF OVERHEAD UTILITIES**

The work required under this contract may be conducted in areas where overhead electric, telephone, and cable television facilities exist. The contractor shall protect all utilities from damage, shall immediately contact the appropriate utility if damage has occurred, and shall be responsible for all claims for damage, injuries and fatalities related to any work performed in connection with this contract. The contractor shall make arrangements with the utility company for the removal of necessary limbs and branches, which may conflict with, or create a personal injury hazard. Delays encountered by the contractor in waiting for the utility to complete its work shall not be the responsibility of the contractor, provided said delays are documented in writing and the Contract Manager is promptly informed of potential delays caused by utility companies.

#### **Q. PROTECTION OF UNDERGROUND UTILITIES**

The Contractor shall be responsible for following the Florida Underground Facility Damage Prevention & Safety Act (556), OSHA Standard 1926.651, Florida Trench and Safety Act (Chapter 90-96) and obtaining utility locations by calling Sunshine State One-Call of Florida Inc. Contractor shall have full responsibility for

reviewing and checking all information and data for locating all underground facilities and shall be responsible for all claims for damage, injuries and fatalities related to any work performed in connection with this contract.

**R. TRAFFIC CONTROL**

1. Contractor shall be required to furnish traffic control and/or barricades as needed or as required by the State of Florida. Barricading and detouring of the traffic shall be accomplished in conformance with the State of Florida Manual of Uniform Traffic Control Devices for Highway Construction and Maintenance Operations, latest edition. A flagman is required when two-way traffic is obstructed by the removal operation.
2. Contractor shall be responsible for adequate barricades, warning devices, and the necessary safety equipment according to State DOT standards while working on City, County or State roads as a sub-Contractor of the City.

## SPECIFICATIONS

The City of Naples' (City) Community Services Department (Department) is requesting proposals for a one-year contract with an option for two (2) one-year renewals for conservation vegetation management at the Naples Preserve (Preserve) while ensuring the site's ecological integrity is protected. The project involves reducing weedy vines, removal of exotic vegetation, and thinning the tree canopy.

### **A. General Objective**

The objective of this project is to remove selected vegetation at the natural areas as well as from disturbed areas at the Naples Preserve, 1690 Tamiami Trail North.

### **B. Scope of Work**

Work shall include, but not be limited to, reducing weedy vines, removal of exotic vegetation, thinning of tree canopy and site cleanup. **ALL WORK SHALL BE COMPLETED BY HAND. NO MACHINERY SHALL BE USED.**

The Contractor shall be permitted to use chemicals for eradication provided the chemicals are approved by the Project Manager and the chemicals are applied by an applicator licensed by the State of Florida. The list of chemicals must be included in the proposal. Also to be included is the method of removal and the retreatment process.

#### 1 Phase One:

- a. Remove weedy vine coverage across the site by 50%; including but not limited to Muscadine (*Vitis rotundifolia*), Virginia creeper (*Parthenocissus quinquefolia*), Poison Ivy (*Toxicodendron radicans*) and some greenbriar species (*Smilax* sp.). Vines are to be cut, removed and the stumps treated. Efforts to reduce the growth of vines should be focused along the boundaries of the property where the edge effect promotes their vigorous growth as well as vines that have climbed into the tree canopies.
- b. Remove all exotic plants from the site, flush cut to grade and treat; including but not limited to Ear leaf Acacia, Melaleuca, Carrotwood, Schefflera, Brazilian Pepper, Rosary Pea and Downy Rose Myrtle.
- c. Reduce growth of vegetation around the large iconic oak trees on the central and southern portions of the site.

#### 2 Phase Two:



- a. Reduce the number of cabbage palms (*Sabal palmetto*); the palms shall be marked for removal after phase one is complete. It is estimated that 50 palms shall be removed. Chain saws may be used in the removal efforts; removals shall be done in a manner that causes the least damage to the site.
  - b. Thin clumps of overstory slash pines (*Pinus elliottii* var. *densa*) on the northern end of the property; the pines shall be marked for removal after phase one is complete. It is estimated that 40 trees shall be removed. Chain saws may be used in the removal efforts; removals shall be done in a manner that causes the least damage to the site.
- 3 Phase Three:
- a. Complete the reduction weedy vine coverage across the site; including but not limited to Muscadine (*Vitis rotundifolia*), Virginia creeper (*Parthenocissus quinquefolia*) and some greenbriar species (*Smilax* sp.).
  - b. Roller-chopping of the site to mimic fire, reducing fuel load and improving forage for gopher tortoises.
- 4 Phase Four:
- a. Continue to remove or reduce the pine duff layer by hand to promote understory growth. Scattering collected native wildflower and grass seeds in sandy areas and managing against weeds will speed up restoration of herbaceous groundcovers.

### C. FINAL INSPECTION AND APPROVAL

All work scheduled for completion under this contract shall be completed according to the requirements. Final acceptance by the City shall be after a two (2) month mortality period from the substantial completion date. At final acceptance, the Contractor shall demonstrate to the City that all exotic vegetation on site has been exterminated to the City's complete satisfaction. The Contractor at no additional cost to the City shall properly remove any re-growth of stumps, cut limbs, or newly discovered exotic plants. Following any re-treatment, there shall be a four (4) month mortality re-evaluation period to determine effectiveness. Final project approval is contingent upon the Project Manager. Payment shall be made for the work completed and accepted upon inspection by the Project Manager. As a method to assure completion of the total project, **retainage in the amount of (20%) of all work completed shall be withheld from the payment. The twenty percent (20%) will not be**

**released until all work; including follow-up treatment of re-growth has been completed, inspected, and accepted by the City.**

#### **D. SENSITIVE ENVIRONMENTAL HABITAT**

All work scheduled for completion under this contract is being completed on land that is considered to be environmentally sensitive. Gopher tortoises are present throughout the site and the Contractor must be vigilant while performing work under this contract to ensure no tortoise is injured while work is being performed. Preserve staff will be present to relocate any tortoise in work zones.

The site also includes vegetation important and unique to the Preserve. The Contractor shall not remove any vegetation identified by the Contract Manager as special or unique to the Preserve.

#### **E. CERTIFICATIONS**

Copies of the following Certifications must be included in the Contractor's bid proposal:

1. State Pesticide Applicator's License – Contractor must submit a copy of the Commercial Applicator Licenses issued by the Florida Department of Agriculture and Consumer Services for all employees who may work at the Preserve.
2. Landscape Certification – Contractor must submit a copy of the Landscape Certifications – Green Industries Best Management Practices (GI-BMP for all employees who may work at the Preserve.

**EXHIBIT B**

**BASIS OF COMPENSATION**

**As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as indicated in Attachment B-1 which is attached and made a part of this Agreement. The CITY is adding a separate \$5,000.00 CITY controlled Contingency to the issuance of this Agreement making the total amount of the Agreement at \$50,000.00.**

**Retainage of (20%) ten percent will be a part of said agreement and future payments.**

**END OF EXHIBIT B**

ITB 16-044 Naples Preserve Vegetation Management				
Budget		\$	50,000.00	Milborne LLC Submittal
Reduce weedy vine coverage across the site	25% reduction	\$	10,432.82	\$10,432.82
Reduce weedy vine coverage across the site	50% reduction	\$	10,432.82	\$10,432.82
Remove all exotic plants from the site		\$	7,000.94	\$7,000.94
Reduce growth of vegetation around the large iconic oak trees		\$	3,106.17	\$3,106.17
Reduce the number of cabbage palms	Price per Palm	\$	9,410.12	\$5,448.70
Thin clumps of overstory slash pines	Price per Tree			\$19,984.58
Reduce weedy vine coverage across the site	75% reduction	\$	-	\$10,432.82
Reduce weedy vine coverage across the site	100% reduction	\$	-	\$10,432.82
Roller-Chop Site		\$	-	\$4,122.22
Miscellaneous	Dead Removal	\$	-	\$3,180.61
Miscellaneous	Trash Removal	\$	-	\$3,180.61
				\$87,755.11
				Total
Annual Exotic Maintenance To be performed quarterly (Every 3 months)		\$	4,617.13	\$4,617.13
City Controlled Contingency		\$	5,000.00	
Agreement's Total		\$	50,000.00	

**THE NAPLES PRESERVE VEGETATION MANAGEMENT  
BID SCHEDULE**

Item		Cost
Reduce weedy vine coverage across the site	25% reduction	\$ 10,432.82
Reduce weedy vine coverage across the site	50% reduction	\$ 10,432.82
Remove all exotic plants from the site		\$ 7,000.94
Reduce growth of vegetation around the large iconic oak trees		\$ 3,106.17
Reduce the number of cabbage palms	Price Per Palm	\$ 5,448.70
Thin clumps of overstory slash pines	Price Per Tree	\$ 19,984.58
Reduce weedy vine coverage across the site	75% reduction	\$ 10,432.82
Reduce weedy vine coverage across the site	100% reduction	\$ 10,432.82
Roller-Chop Site		\$ 4,122.22
Miscellaneous	Dead Removal	\$ 3,180.61
	Trash Removal	\$ 3,180.61

<b>TOTAL BID</b>	<b>\$ 87,755.14</b>
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ANNUAL EXOTIC MAINTENANCE:  
 To be performed quarterly (Every 3 months)

\$ 4,617.13 /quarterly

Company Name Milborne, LLC PH 786-231-6621

Email rmiller@milbornellc.com

Name and Title of individual completing this schedule:

Robert B. Miller Executive V.P.  
 (Printed Name) (Title)

 5/26/2016  
 (Signature) (Date)

## EXHIBIT C

### GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly authorized to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples must be named as Additional Insured on the insurance certificate and the following must also be stated on the certificate. "These coverage's are primary to all other coverage's the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. The Certificate Holder shall read as follows:

The City of Naples  
735 Eighth Street South  
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.  
No other format will be acceptable.

The Certificate must state the bid number and title.

When using the ACORD 25 – Certificate of Insurance only the most current version will be accepted.

The City of Naples requires a copy of a cancellation notice in the event the policy is cancelled. The City of Naples shall be expressly endorsed onto the policy as a cancellation notice recipient.

*[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1 through C-\_\_ ]*

## EXHIBIT D

### CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS

The undersigned is the **Executive Vice President of the Milborne LLC** company ("the CONTRACTOR"), and hereby certifies to the following:

1. The CONTRACTOR is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONTRACTOR has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONTRACTOR in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONTRACTOR in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONTRACTOR to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONTRACTOR's files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONTRACTOR will have its contractors, subcontractors, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONTRACTOR being liable for any violation of the law by such third parties.


4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONTRACTOR, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONTRACTOR has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONTRACTOR will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONTRACTOR acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours' notice, to examine the CONTRACTOR's books and records to confirm that the CONTRACTOR is in compliance with the terms of this certification.

Executed this 22<sup>nd</sup> day of July, 2016.

By:  Robert B. Miller