



PROFESSIONAL SERVICES AGREEMENT FOR TREE PLANTING PROGRAM

THIS AGREEMENT is entered into between the CITY of Boynton Beach, hereinafter referred to as "CITY", and **Community Greening Corp.**, hereinafter referred to as "CONTRACTOR", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the CITY of Boynton Beach solicited proposals for a non-exclusive Contract to perform professional community-based tree planting program services, and

WHEREAS, THE CITY issued a REQUEST FOR PROPOSALS FOR A **TREE PLANTING PROGRAM**, RFP No. 014-2821-21/KP; and

WHEREAS, RFP No. 014-2821-21/KP defined Scope of Services for Tree Planting Program; and

WHEREAS, the CITY determined that CONTRACTOR was qualified for appointment to perform the scope of services set forth in Request for Proposal; and

WHEREAS, the City Commission on **MAY 4, 2021**, determined that CONTRACTOR was qualified for appointment to perform the scope of services set forth in the Request for Proposal; and

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties agree as follows:

ARTICLE 1 - SERVICES

- 1.1 CONTRACTOR agrees to perform TREE PLANTING PROGRAM outlined in RFP No. 014-2821-21/KP and incorporated herein: Sections "RESPONSIBILITIES".

RESPONSIBILITIES

- a. Promote the planting events and giveaways to encourage community awareness and participation.
- b. Coordinate event logistics and staff the events, including a certified arborist to educate and manage volunteers.
- c. Provide educational materials about tree planting, care, and benefits; and have a certified arborist on site to answer attendees' questions.
- d. Select tree species and locations in collaboration with City staff, and obtain written approval of species and locations from the Project Manager prior to commencing any planting.

- e. Purchase and deliver a pre-determined number of trees of select species to the planting location or events.
- f. Furnish all labor, materials, equipment, and supervision to install trees.
- g. Obtain approval for locates (Sunshine 811) before performing any tree installations.
- h. Provide one year of tree maintenance, including distribution of water to the areas of planting during a one-year establishment period after planting.
- i. Periodically inspect trees under warranty and replace trees if needed under the terms of warranty.

The CITY's Representative during the performance of this Contract shall be **Rebecca Harvey, Sustainability Coordinator** telephone **(561) 742-6494**.

The CONTRACTOR'S Representative during the performance of the Contract shall be **Mark Cassini, Co-Director** telephone **561-927-8733**.

ARTICLE 2 - TERM

- 2.1 The initial Contract period shall be for an initial term of two (2) years, commencing on **May 5, 2021**. The City reserves the right to renew the contract for three (3) additional one (1) year periods, under the same terms, conditions. The Services to be performed during the initial two (2) year terms will be governed by this Agreement, and that there is no guarantee of future work being given to the CONTRACTOR.
- 2.2 In the event that services are scheduled to end either by contract expiration or by termination by the CITY (at the CITY's discretion), the CONTRACTOR shall continue the services, if requested by the CITY, or until task or tasks is/are completed. At no time shall this transitional period extend more than one-hundred and eighty (180) calendar days beyond the expiration date of the existing contract. The CONTRACTOR will be reimbursed for this service at the rate in effect when this transitional period clause was invoked by the CITY.

ARTICLE 3 - TIME OF PERFORMANCE

- 3.1 Work under this Contract shall commence upon the giving of written notice by the CITY to the CONTRACTOR by way of a purchase order and delivered to CONTRACTOR. CONTRACTOR shall perform all services and provide all work product required pursuant to this Agreement within the time period set forth in the purchase order.

ARTICLE 4 - PAYMENT

- 4.1 The CONTRACTOR shall be paid by the City for completed work and for services rendered under this agreement as follows:
 - a. Payment for the work provided by Professional shall be made promptly on all invoices submitted to the City properly and in accordance with ATTACHMENT A - PRICE PROPOSAL.

b. The CONTRACTOR may submit invoices to the City during the progress of the contract term. Such invoices will be reviewed by the City, and upon approval thereof, payment will be made to the CONTRACTOR in the amount approved.

c. Final payment of any balance due the CONTRACTOR of the total price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.

d. Payment as provided in this section by the CITY shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.

e. The CONTRACTOR's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and State for a period of three (3) years after the termination of the Agreement. Copies shall be made available upon request

ARTICLE 5 - OWNERSHIP AND USE OF DOCUMENTS

- 5.1 Upon completion of the project and final payment to CONTRACTOR, all documents, drawings, specifications and other materials produced by the CONTRACTOR in connection with the services rendered under this agreement shall be the property of the CITY whether the project for which they are made is executed or not. Notwithstanding the foregoing, the CONTRACTOR shall maintain the rights to reuse standard details and other design copies, including reproducible copies, of drawing and specifications for information, reference and use in connection with CONTRACTOR's endeavors. Any use of the documents for purposes other than as originally intended by this Agreement, without the written consent of CONTRACTOR, shall be at the CITY's sole risk and without liability to CONTRACTOR and CONTRACTOR'S sub-CONTRACTORS.

ARTICLE 6 - FUNDING

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

ARTICLE 7 - WARRANTIES AND REPRESENTATIONS

- 7.1 CONTRACTOR represents and warrants to the CITY that it is competent to engage in the scope of services contemplated under this Agreement and that it will retain and assign qualified CONTRACTORS to all assigned projects during the term of this Agreement. CONTRACTOR's services shall meet a standard of care for TREE PLANTING SERVICES. In submitting its response to the RFP, CONTRACTOR has represented to CITY that certain individuals employed by CONTRACTOR shall provide services to CITY pursuant to this Agreement. CITY has relied upon such representations. Therefore, CONTRACTOR shall not change the designated Project Manager for any project without the advance written approval of the CITY, which consent may be withheld in the sole and absolute discretion of the CITY.

ARTICLE 8 - COMPLIANCE WITH LAWS

- 8.1 CONTRACTOR shall, in performing the services contemplated by this service Agreement, faithfully observe and comply with all federal, state and local laws, ordinances and regulations that are applicable to the services to be rendered under this Agreement.

ARTICLE 9 - INDEMNIFICATION

- 9.1 CONTRACTOR shall indemnify and hold harmless the CITY, its offices, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to CONTRACTOR's own employees, or damage to property occasioned by a negligent act, omission of the CONTRACTOR. Neither party to this Agreement shall be liable to any third party claiming directly or through the other respective party, for any special, incidental, indirect or consequential damages of any kind, including but not limited to lost profits or use that may result from this Agreement or out of the services or goods furnished hereunder.

ARTICLE 10 - INSURANCE

- 10.1 During the performance of the services under this Contract, CONTRACTOR shall maintain the following insurance policies, and provide originals or certified copies of all policies, and shall be written by an insurance company authorized to do business in Florida.
- 10.1.1 Worker's Compensation Insurance: The CONTRACTOR shall procure and maintain for the life of this Contract, Worker's Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any sub-CONTRACTOR that does not have their own Worker's Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the CITY of Boynton Beach, executed by the insurance company.
- 10.1.2 Comprehensive General Liability: The CONTRACTOR shall procure and maintain for the life of this Contract, Comprehensive General Liability Insurance. This coverage shall be on an "Occurrence" basis. Coverage shall include Premises and Operations; Independent CONTRACTORS, Products Completed Operations and Contractual Liability with specific reference of Article 7, "Indemnification" of this Agreement. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement. CONTRACTOR shall maintain a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 aggregate for personal injury/ and \$1,000,000 per occurrence/aggregate for property damage. The general liability insurance shall include the CITY as an additional insured and shall include a provision prohibiting cancellation of the policy upon thirty (30) days prior written notice to the CITY.
- 10.1.3 Business Automobile Liability: The CONTRACTOR shall procure and maintain, for the life of this Contract, Business Automobile Liability Insurance. The CONTRACTOR shall maintain a minimum amount of \$1,000,000 combined single limit for bodily injury and property damage liability to protect the CONTRACTOR from claims for damage for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use of maintenance of owned and non-owned automobile, included rented automobiles, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

- 10.1.4 Professional Liability (Errors and Omissions) Insurance: The CONTRACTOR shall procure and maintain for the life of this Contract in the minimum amount of \$1,000,000 per occurrence.
- 10.2 It shall be the responsibility of the CONTRACTOR to ensure that all sub-CONTRACTORS comply with the same insurance requirements referenced above.
- 10.3 In the judgment of the CITY, prevailing conditions warrant the provision by the CONTRACTOR of additional liability insurance coverage or coverage which is different in kind, the CITY reserves the right to require the provision by CONTRACTOR of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the CONTRACTOR fail or refuse to satisfy the requirement of changed coverage within the thirty (30) days following the CITY's written notice, the CITY, at its sole option, may terminate the Contract upon written notice to the CONTRACTOR, said termination taking effect on the date that the required change in policy coverage would otherwise take effect.
- 10.4 CONTRACTOR shall, for a period of two (2) years following the termination of the Agreement, maintain a "tail coverage" in an amount equal to that described above for Comprehensive Liability Insurance on a claims-made policy only

ARTICLE 11 - INDEPENDENT CONTRACTOR

- 11.1 CONTRACTOR is an independent CONTRACTOR with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither CONTRACTOR nor any employee of CONTRACTOR shall be entitled to any benefits accorded CITY employees by virtue of the services provided under this Agreement. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to CONTRACTOR, or any employee of CONTRACTOR.

ARTICLE 12 - COVENANT AGAINST CONTINGENT FEES

- 12.1 The CONTRACTOR warrants that he has not employed or retained any company or person, other than a *bonafide* employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a *bonafide* employee working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 13 - TRUTH-IN-NEGOTIATION CERTIFICATE

- 13.1 Execution of this Agreement by the CONTRACTOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the

date of the Agreement and no higher than those charged the CONTRACTOR's most favored customer for the same or substantially similar service.

- 13.2 The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside CONTRACTORS. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 14 - DISCRIMINATION PROHIBITED

- 14.1 The CONTRACTOR, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

ARTICLE 15 - ASSIGNMENT

- 15.1 The CONTRACTOR shall not sublet or assign any of the services covered by this Agreement without the express written consent of the CITY.

ARTICLE 16 - NON-WAIVER

- 16.1 A waiver by either CITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

ARTICLE 17 - TERMINATION

- 17.1 Termination for Convenience: This Agreement may be terminated by the CITY for convenience, upon ten (10) days of written notice by the terminating party to the other party for such termination in which event the CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the CONTRACTOR abandons the Agreement or causes it to be terminated, CONTRACTOR shall indemnify the CITY against loss pertaining to this termination.

ARTICLE 18 - DISPUTES

- 18.1 Any dispute arising out of the terms or conditions of this Agreement shall be adjudicated within the courts of Florida. Further, this Agreement shall be construed under Florida Law.

ARTICLE 19 - UNCONTROLLABLE FORCES

- 19.1 Neither the 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 non-performing party. It includes, but is not

limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

- 19.2 Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing 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 20 - NOTICES

Notices to the CITY of Boynton Beach shall be sent to the following address:

City of Boynton Beach
Attn: Lori LaVerriere, City Manager
100 E. Ocean Avenue
Boynton Beach, FL 33435

Notices to CONTRACTOR shall be sent to the following address:

CONTRACTOR: Community Greening Corp
ADDRESS: 50 NW 1 st Street
CITY/STATE/ZIP: Delray Beach, FL 33444
Attn: Mark Cassini
Tel: 561-927-8733
Email: mcassini@communitygreening.org

ARTICLE 21 - INTEGRATED AGREEMENT

- 21.1 This Agreement, together with the RFP/RFP and any addenda and/or attachments, represents the entire and integrated agreement between the CITY and the CONTRACTOR and supersedes all prior negotiations, representations, or agreements written or oral. This Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

ARTICLE 22 - SOVEREIGN IMMUNITY

- 22.1 CITY is a political subdivision of the State of Florida and enjoys sovereign immunity. Nothing in the Agreement is intended, nor shall be construed or interpreted, to waive or modify the immunities and limitations on liability provided for in Section 768.28, Florida Statute, as may be emended from time to time, or any successor statute thereof. To the contrary, all terms and provisions contained in the Agreement, or any disagreement or dispute concerning it, shall be construed or resolved so as to insure CITY of the limitation from liability provided to any successor statute thereof. To the contrary, all terms and provision contained in the Agreement, or any disagreement or dispute concerning it, shall be construed or resolved so as to insure CITY of the limitation from liability provided to the State's subdivisions by state law.

22.2 In connection with any litigation or other proceeding arising out of the Agreement, each party shall be entitled to recover its own costs and attorney fees through and including any appeals and any post-judgment proceedings. CITY's liability for costs and attorney's fees, however, shall not alter or waive CITY's entitlement to sovereign immunity, or extend CITY's liability beyond the limits established in Section 768.28, Florida Statutes, as amended.

1. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement shall be in a court of law. The CITY does not consent to mediation or arbitration for any matter connected to this Agreement.
2. The parties agree that any action arising out of this Agreement shall take place in Palm Beach County, Florida.

ARTICLE 23 – PUBLIC RECORDS

23.1 Sealed documents received by the CITY in response to an invitation are exempt from public records disclosure until thirty (30) days after the opening of the Bid unless the CITY announces intent to award sooner, in accordance with Florida Statutes 119.07.

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

- A. Keep and maintain public records required by the CITY to perform the service;
- B. 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, Fla. Stat. or as otherwise provided by law;
- C. 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 maintain in a secured manner all copies of such confidential and exempt records remaining in its possession once the CONTRACTOR transfers the records in its possession to the CITY; and
- D. 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 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.

E. 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 CUSTODIAN OF PUBLIC RECORDS:

**CRYSTAL GIBSON, CITY CLERK
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
TELEPHONE: 561-742-6061
GIBSONC@BBFL.US**

ARTICLE 24 – SCRUTINIZED COMPANIES 287.135 and 215.473

- 24.1 By submission of this Bid, Proposer certifies that Proposer is not participating in a boycott of Israel. Proposer further certifies that Proposer is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has CONTRACTOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the CITY will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The CITY shall provide notice, in writing, to CONTRACTOR of the CITY's determination concerning the false certification. CONTRACTOR shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, CONTRACTOR shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If CONTRACTOR does not demonstrate that the CITY's determination of false certification was made in error then the CITY shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

ARTICLE 25 – E-VERIFY

- 25.1 Contractor certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.
- 1) Definitions for this Section:

“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. “Contractor” includes, but is not limited to, a vendor or CONTRACTOR.

“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.

“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.
 - 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:

- a) All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including sub-vendors/sub-CONTRACTORS/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. 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 Boynton Beach; and
- c) 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.

"This Agreement may be signed by the parties in counterparts which together shall constitute one and the same agreement among the parties. A facsimile signature shall constitute an original signature for all purposes."

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in multiple copies, each of which shall be considered an original on the following dates:

DATED this _____ day of _____, 2021.

CITY OF BOYNTON BEACH

City Manager
Attest/Authenticated:

COMMUNITY GREENING CORP.



CONTRACTOR

CO-DIRECTOR

Title

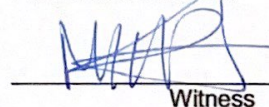
City Clerk

(Corporate Seal)

Approved as to Form:

Office of the City Attorney

Attest/Authenticated:

 - Maria A. Peralta
Witness