

Contract No. **CM1453**
Bid/RFP No. NC09-014

AGREEMENT FOR THE
AMELIA CONCOURSE MSBU
LANDSCAPE MAINTENANCE ANNUAL CONTRACT

THIS AGREEMENT entered into this 27th day of July, 2009, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **Trim All Lawn Service, Inc.**, located at 97030 Elk Creek Court, Fernandina Beach, Florida 32034, hereinafter referred to as "Contractor".

WHEREAS, the landscape maintenance work to be performed includes lawn and garden maintenance along Amelia Concourse for a distance of 3.8 miles; and

WHEREAS, the Board of County Commissioners is the governing board for the Amelia Concourse MSBU; and

WHEREAS, the Board of County Commissioners of Nassau County, Florida received sealed bids for the Amelia Concourse MSBU Landscape Maintenance Annual Contract, Bid No. NC09-014, on June 4, 2009 at 2:00 p.m.; and

WHEREAS, Contractor desires to render certain services as described in the Scope of Work, and has the qualifications, experience, staff and resources to perform those services; and

WHEREAS, the County, through a selection process conducted in accordance with the requirements of law and County policy, has determined that it would be in the best interest of the County to award a contract to Contractor to provide the services described in the Scope of Work.

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

SECTION 1. SERVICES

Contractor shall provide for the County, intensive lawn and garden maintenance along Amelia Concourse from SR A1A to CR107, as set forth in the Scope of Work attached hereto as Attachment "A" and made a part hereof.

SECTION 2. TERM

This Agreement is for a term of two (2) years commencing on August 1, 2009 and terminating on July 31, 2011. This Agreement may be extended upon written agreement of both parties for three (3) additional one year periods. Said extension shall be addressed at least sixty (60) days prior to the end of the term of this Agreement or extended period.

SECTION 3. Exercise of Option to Extend

Exercise of option to extend term of contract: If the County wishes to enter into an option period, the County shall request from the Vendor their written statement of desire to enter into an extension of the performance period.

SECTION 4. Probationary Period

The first ninety (90) days of this Contract are to be considered a "probationary" period. At the County's election, this Contract may be terminated, based on the performance of the Vendor, and a new award be granted without another formal bid.

SECTION 5. Escalation Clause

Ninety (90) days prior to the end of the contract term, the Vendor may request in writing an increase in an individual item unit cost. Consideration of price

increases at each renewal period will be given provided such escalations are reasonable and acceptable to the County. It is also expected that de-escalation of prices will be extended to the County if market so reflects. The County will consider a price adjustment based on the latest Consumer Price Index and/or proof of a manufacturer's price increase. Any and all proposed increases are subject to approval by the County.

SECTION 6. AUTOMATIC EXTENSION

The County reserves the right to automatically extend this contract for a maximum period not to exceed one hundred and twenty (120) calendar days in order to provide County departments with continual service and supplies while a new contract is being solicited, evaluated and/or awarded. If this right is exercised, the County shall notify Contractor, in writing, of its intent to extend the contract for a definitive period of time prior to the effective date of the extension.

SECTION 7. COMPENSATION

Contractor shall be compensated at a rate not to exceed Fifty-three thousand eight hundred sixty dollars and no cents (\$53,860.00) per year. Said amount shall be paid in equal monthly installments of ~~Five thousand one hundred dollars and thirty-three cents~~ ^{Four THOUSAND Four Hundred Eighty-Eight} ~~sixty dollars and eighty-three cents~~ (\$4,488.33) for work performed each month.

SECTION 8. PAYMENT AND BILLING

Contractor shall provide a monthly invoice to the County's representative showing the services performed during the preceding month and indicating the amount. Invoices shall be paid within forty five (45) days and pursuant to Section 218.70, Florida Statutes, Florida Prompt Payment Act.

SECTION 9. APPROPRIATION

Appropriations necessary for the funding of this Agreement shall be adopted annually by the Board of County Commissioners during the regular budget process. Non-appropriation by the Board of County Commissioners will cause this Agreement to terminate.

SECTION 10. INSPECTION AND ACCEPTANCE

Inspection and acceptance shall be made by the County. All work performed must meet the specifications herein. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the performance meets bid specifications and conditions. Should the services differ in any respect from specifications, payment will be withheld until such time as the supplier takes necessary corrective action.

SECTION 11. TERMINATION

(a) The County may, by written notice to the Contractor terminate this Agreement in whole or in part, at any time, either for the County's convenience or because of the failure of the Contractor to fulfill its Agreement obligations. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless the notice directs otherwise

(b) If the termination is for the convenience of the County, the Contractor shall be paid compensation for services performed to the date of termination.

(c) If the termination is due to the failure of the Contractor to fulfill its Agreement obligations, the County may take over the work AND PROSECUTE THE SAME TO COMPLETION

BY OTHER Agreements or otherwise. In such case, the Contractor shall be liable to the County for all reasonable additional costs occasioned to the County thereby. The Contractor shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of the Contractor, provided, however, that the Contractor shall be responsible and liable for the actions of its subcontractors, agents, employees and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of the County in either it's sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of the Contractor.

(d) If, after notice of termination for failure to fulfill its Agreement obligations, it is determined that the Contractor had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of the County. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the County provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

SECTION 12. EQUAL OPPORTUNITY EMPLOYMENT

The Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to

ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 13. INDEMNIFICATION

The contractor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to loss to or destruction of tangible property, including loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor and/or Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the County or any of its agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits act.

SECTION 14. INSURANCE

The contractor shall, on a primary basis, and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage's, limits, including endorsements, as described herein. The requirements contained herein, as well as Nassau County's review or acceptance of insurance maintained by the Contractor as not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Agreement.

Workers' Compensation: The Contractor shall agree to maintain Workers' Compensation Insurance and Employers Liability in accordance with Florida Statute Chapter 440. Coverage must include Employers Liability with a minimum limit of \$100,000 each.

Business Auto Policy: The Contractor shall agree to maintain Business automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles. In the event the Contractor does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate business auto coverage form.

Commercial General Liability: Commercial General Liability for public liability during the lifetime of this Agreement shall have minimum limits of \$1,000,000 per claim, \$2,000,000 per occurrence for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations,

Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work to be performed. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the County shall not accept claims-made policies. Specific endorsements will be requested depending upon the type and scope of work to be performed.

SECTION 15. DISPUTES

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Consultant as set forth herein. Disputes shall be set forth in writing to the County Coordinator with a copy to the Department Head or Consultant, depending on which party initiates the dispute, and provided by overnight mail, UPS, FedEx, or certified mail. A response shall be provided in the same manner prior to the initial meeting with the County Coordinator, the Department Head (or their designee), and a representative of the Consultant. This initial meeting shall take place no more than thirty (30) days from the written notification of the dispute addressed to the County Coordinator.

If the dispute is not settled at the initial meeting, the County Coordinator shall immediately notify the County Attorney. The Department Head (or his/her designee), the County Attorney, the County Coordinator, and the Department Head (or their designee(s)) shall meet with the Consultant's representative(s) within thirty (30) days of the County Coordinator's notification to the County Attorney of the continued dispute.

If there is no satisfactory resolution, the claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

SECTION 16. CONTROLLING LAWS AND VENUE

The validity, interpretation, and performance of this Agreement shall be controlled and construed under the Ordinances of Nassau County, along with the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in Nassau County, Florida.

SECTION 17. MODIFICATION

None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 18. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the Contractor (including its officers, employees, and agents) the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Contractor is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

SECTION 19. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid, unconstitutional, or unenforceable by any Court of Competent Jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 20. RULES AND REGULATIONS

The Contractor shall comply with all applicable federal, state, and local rules and regulations in providing services to the County under this Agreement. The Contractor acknowledges that this requirement includes compliance with all applicable federal, state, and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Agreement.

SECTION 21. PERMITS/LICENSES/FEEES

Any permits, licenses or fees required for this service will be the responsibility of the contractor unless otherwise stated.

SECTION 22. ASSIGNMENT & SUBCONTRACTING

The contractor will not be permitted to assign its Agreement with Nassau County, or to subcontract any of the

work requirements to be performed without obtaining prior written approval of Nassau County.

SECTION 23. ACCESS AND AUDITS

The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Work for at least three (3) years after completion of this Agreement. The County and the Clerk of Courts shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the Clerk's cost, upon five (5) days' written notice.

SECTION 24. ENTIRE AGREEMENT

The written terms and provisions of this Agreement shall supersede all prior verbal statements of any official or other representative of the county. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Agreement or contract documents.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two (2) copies, each of which shall be deemed an original in the year and day first mentioned above.

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID HC
TRIMA-1

DATE (MM/DD/YYYY)
08/06/09

PRODUCER John T. Ferreira Ins., Inc. 500 Centre Street Fernandina Beach FL 32034 Phone: 904-261-5571 Fax: 904-261-4621		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Trim All Lawn Service, Inc. dba All Pest Lawn & Pest Management Co. Mr. Jason Lee 97030 Elk Creek Court Fernandina Beach FL 32034		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Travelers Indemnity of America	25666
		INSURER B: St. Paul Fire and Marine Ins.	24767
		INSURER C: Bridgefield Casualty Ins Co	10701
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	X	GENERAL LIABILITY	GL08102114	07/18/09	07/18/10	EACH OCCURRENCE \$ 1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5000
						PERSONAL & ADV INJURY \$ 1000000
						GENERAL AGGREGATE \$ 2000000
						PRODUCTS - COMP/OP AGG \$ 2000000
		GEN'L AGGREGATE LIMIT APPLIES PER:				
		<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
A		AUTOMOBILE LIABILITY	BA4553M126	07/18/09	07/18/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input type="checkbox"/> HIRED AUTOS						
<input type="checkbox"/> NON-OWNED AUTOS						
		GARAGE LIABILITY				
		<input type="checkbox"/> ANY AUTO				
B		EXCESS/UMBRELLA LIABILITY	GL08102120	07/18/09	07/18/10	EACH OCCURRENCE \$ 1000000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 1000000
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input checked="" type="checkbox"/> RETENTION \$ 10000				\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	83031790	04/01/09	04/01/10	WC STATUTORY LIMITS OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 500000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 500000
		OTHER				E.L. DISEASE - POLICY LIMIT \$ 500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as an Additional Insured.

Re: Amelia Concourse MSBU

Bid # NC09-014

CERTIFICATE HOLDER

NASSAUB

Nassau County BOCC
904-548-4687
96160 Nassau Place
Yulee FL 32097

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Halcy Spiers