CITY OF HOUSTON
INVITATION TO BID

Issued: November 25, 2009

BID OPENING

Sealed bids, in **duplicate**, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 AM Thursday, December 17, 2009** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

TREE REMOVAL AND DISASTER SERVICES
FOR THE PARKS & RECREATION DEPARTMENT
BID INVITATION NO.: S50-L23465
NIGP CODE: 968-88

BUYER

Questions regarding this solicitation document should be addressed to **Arturo Lopez,** at **(409) 832-393-8731**, or e-mail to **arturo.lopez@cityofhouston.net.**

ELECTRONIC BIDDING

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the **"PLACE BID"** page.

Pre- Bid Conference:
There will be no Pre-Bid Conference.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at https://purchasing.houstontx.gov/. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

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SECTION A: OFFER
SECTION B: SCOPE OF WORK/SPECIFICATIONS
SECTION C: GENERAL / SUPPLEMENTAL TERMS & CONDITIONS

***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

SECTION A

TREE REMOVAL AND DISASTER SERVICES
FOR THE PARKS & RECREATION DEPARTMENT
BID INVITATION NO.: S50-L23465
NIGP CODE: 968-88

To The Honorable Mayor
and Members of the City Council
of the City of Houston (the "City"), Texas:

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain **"Contract for Tree Removal and Disaster Services for a three-year period with two (2) one-year option periods to extend for the Parks & Recreation Department",** which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Tree Removal and Disaster Services** for the City in accordance with attached Specifications.

Documents/forms must be downloaded from the City's Website at https://purchasing.houstontx.gov/

Additional Required Forms to be included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in **Table 1 must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

TABLE 1 - REQUIRED FORMS
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Contractor's Questionnaire

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

TABLE 2 - DOCUMENTS & FORMS
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over $50,000.pdf
Pay or Play Affirmative Action & Contract Compliance Q & A
Pay or Play Affirmative Action & Contract Compliance Requirements
Pay or Play Certification of Agreement to Comply w' the Program
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play List of Participating Subcontractors

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Arturo Lopez or via fax: 832-393-8759 or via email (preferred method) to arturo.lopez@cityofhouston.net **no later than 4:00 PM, Friday, December 4 2009.**

CONTRACTOR'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, for **Tree Removal and Disaster Services** that is similar in size and scope to this contract. **Bidder must have references documenting that it has performed Tree Removal and Disaster Services.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.**

1. Name: _____

   Address: _____

   City & State: _____

   Name & Phone Number of Contact: _____ Years

   of Services: _____

2. Name: _____

   Address: _____

   City & State: _____

   Name & Phone Number of Contact: _____ Years

   of Services: _____

3. Name: _____

   Address: _____

   City & State: _____

   Name & Phone Number of Contact: _____ Years

   of Services: _____

SITE INSPECTION

The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.

QUALITY AND WORKMANSHIP

The bidder must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. The bidder will provide records of warranty and repair services upon request by City. The City of Houston shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.

CERTIFICATIONS

Contractor must have a degreed Urban Forester and/or a certified arborist on staff to oversee work. Vendor is responsible for technician's certifications and must provide proof to City within 5 days from request by City.

SITE-VISIT

Minimum Resource Requirements

The Department will require acceptable evidence of the prospective contractor's ability to obtain required resources. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of site-visit, to rent purchase, or otherwise acquire the needed equipment, personnel or other resources.

Removal Dumps meeting the following specifications:
Minimum 12 cubic yard capacity
Minimum of 8 dump trucks in operation (2 per crew)

Prentice Loaders meeting the following specifications:
Minimum of 2 knuckle-boom prentice loaders
Minimum 20' boom with extension

Aerial-lift meeting the following specifications:
Minimum of 2 aerial-lift bucket trucks
Minimum of 50' boom

Chainsaws meeting the following specifications:
2 large saws per work crew
Large saw defined as having a minimum 36" bar
2 medium saws per work crew
Medium saw defined as having a minimum 20" bar

Crew meeting the following specifications:
Minimum of 3 people
Minimum of 4 crews working at all times

Stump grinding meeting the following specifications:
Power rating 45-65 Horsepower
Minimum of 2 stump grinding units
Minimum cutter wheel 23" x ¾"
Minimum cutting tooth's 12

SECTION B
SCOPE OF SERVICES

1.0 SERVICES IN GENERAL

The Contractor shall furnish all labor, tools, safety equipment, supervision, transportation, insurance, and all other ancillary items/services necessary to complete the following project in strict accordance with the provisions of this Contract. The work shall be performed at the locations specified in the "work order". The Contractor shall coordinate its performance of the services with the department Director or designee.

2.0 STANDARD OF PERFORMANCE AND EMPLOYEES QUALIFICATIONS

2.1 The Contractor's performance shall be in accordance with the highest standard prevailing in the tree removal industry. The Contractor shall be required to perform and complete the tree removal work described in this Contract in a thorough, professional, and safe manner. Any item primary, secondary or incidental to the performance of this contract shall be included in this service. The Contractor shall employ individuals skilled in their respective trades. Any person the Director may deem incompetent or disorderly must be promptly removed by the Contractor and not allowed to work on a City project.

2.2 The Contractor must have a degreed Urban Forester and/or a certified arborist with at least five years experience on staff to oversee tree-removal work. The Contractor shall provide all applicable licenses to the City within five working days after receipt of the request from the City to do so.

3.0 WORK OBJECTIVES

Work under this Contract has three broad objectives:

3.1 To provide for the safety of people and property.
3.2 To preserve trees and to maintain them in a healthy and vigorous condition.
3.3 To maintain the aesthetics of both the trees and the environment.

4.0 ASSIGNMENT OF WORK

4.1 The Contractor shall be notified by the Director or designee, by telephone or E-mail, when a "work order" has been prepared. The Contractor shall pick up the "work order" within two (2) working days after receiving telephone notification. The work involved for a "work order" shall be completed within twenty (20) Calendar days from the date the Contractor receives the "work order" and to include but not limited to tree removal, stump grinding, sod replacement, back fill of top soil, debris removal, safety controls, sodding and pest control. If there is inclement weather or extenuating circumstances during the work period, the Director or designee may extend the time period in which the work is to be completed. All extensions shall be in writing and signed by the Director's representative.

5.0 PERFORMANCE OF WORK

5.1 The Contractor shall fax, or e-mail its work locations for a particular day to the Director or designee between 7:00 a.m. and 9:00 a.m. each workday.

5.2 Work hereunder shall be performed on City property, which may include street right-of-ways, parks, esplanades, parkways, and other City properties.

5.3 The Contractor shall not allow any worker to perform work hereunder if there is a reasonable

possibility of any limb or debris falling on vehicles or pedestrians. The Contractor shall be held liable for all damage to vehicles and pedestrians caused by falling debris.

5.4 All vehicles, which may interfere with the work, shall be moved by the owner of the vehicle. The Contractor shall make all necessary contacts with the vehicle owner in such cases.

5.5 All damaged vehicles and injuries to pedestrians shall be reported to the Director's representative within four (4) hours after incident.

5.6 The Contractor agrees that upon entering City park property to perform the work it shall adhere to the City Parks and Recreation Department rules, regulations and all other rules and regulations of the City. The Contractor shall not place its vehicles on park property except with the prior authorization of the Director's representative.

5.7 If a tree to be removed overhangs into residential property, the Contractor shall notify the homeowner in writing that a tree is to be removed, and there should be no activity under and immediately around the tree until it is removed. If the homeowner is not home, the Department's designated representative must be notified by Contractor after three (3) failed attempts to contact that homeowner.

5.8 The Contractor shall furnish and install all construction signs, pavement markings, barricades, and all other safety controls for the duration of each service. All control devices and installation shall be in conformance with the **City of Houston drawings "Barricade Standard" (T&T #3723), "Typical Urban Construction Sign Standard" (T&T #3729), and part VI of the 1980 Texas Manual of Uniform Traffic Control Devices.** All information in reference to traffic controls and devices can be found at the City of Houston Public Works and Engineering Department, Street Cut Permit Section: Located at 611 Walker, 18th floor, Houston, Texas, 77002, office phone no. 832-395-4409, "streetcutops@cityofhouston.net".

5.9 No direct compensation will be made to the Contractor for the work and materials involved in contracting for and maintaining barricades, signs, pavement markings, warning devices and lights or for providing any other incidental items necessary for the proper direction, safety and convenience of the traffic during any service.

5.10 The Contractor will report any conditions foreseen before commencing or during the work that will adversely affect the performance of the work to the Director or designee in writing or by telephone.

6.0 TREE REMOVAL SPECIFICATIONS

6.1 The trees to be removed will be plainly marked by the Director or designee with a painted "X", using fluorescent orange paint.

6.2 In locations where ordinary felling operations might cause damage to property, the trees shall be suitably dismembered and felled using recognized forestry rigging practices (encompassing OSHA regulation), ensuring that any severed portion of the tree is under control at all times.

6.3 After all limbs have been removed which might contact utility lines or cause damage to other trees or property, trees shall be felled directly away from power or communications lines, structures, vehicular or pedestrian rights-of-way, or horticultural plantings. If a tree must be felled toward a power or telephone line, it shall be topped low enough to clear all conductors, poles, guys, and similar installations.

6.4 If there is danger that the trees being felled may fall in the wrong direction or damage

property, guide ropes shall be used. All limbs shall be removed from trees to a height and width sufficient to allow the tree to fall clear of any wires and other objects in the vicinity.

6.5 The Contractor shall take special precautions in roping rotten or split trees because of the danger that such trees may fall in an unexpected direction even though the cut is made on the proper side.

6.6 Under no circumstances shall pike poles be used for the purpose of holding or pushing trees during felling operations.

6.7 Ropes shall be used to lower all limbs of size sufficient to cause damage to other trees or surrounding public or private property.

6.8 Before any trees are felled, workmen, other than those operating the saw or giving directions to the workmen involved, shall move and remain clear of the danger zone. The danger zone is that sector of the felling area in which the tree could fall. The size of the danger zone shall be determined by the job supervisor upon consideration of all pertinent factors relative to the tree removal operation. Ample warning shall always be given before a tree is expected to fall and the workmen must stand clear in case the tree springs from the stump while falling. The Contractor shall clear away all brush and other debris or equipment that would hamper free movement when using sharp tools or when getting clear in case of emergency.

6.9 Under no circumstances shall a partially cut tree or debris be left standing during rest breaks, lunch breaks, or overnight. All debris created must be removed from the jobsite within a 24-hour period.

6.10 When removing a tree that is split or a tree with twin trunks, chains or cable with adequate strength shall be placed tightly around the tree before commencing the back cut. At least one chain or cable shall be placed above and as close as practical to the back cut to prevent separation of the trunk.

6.11 Except as otherwise provided in this Contract, the stumps of all removed trees will be lowered to a point no more than two inches (2”) above grade.

6.12 When swelling, bumps, depressions, or branches occur at diameter breast height, diameter breast height measurements shall be taken just above or below the irregularity at a point where it ceases to affect normal stem form. If a tree forks immediately above diameter breast height, it is measured below the swell resulting from the double stem. Stems that fork below diameter breast height shall be considered two separate trees. Diameter breast height for all species with large buttresses or elevated root matting shall be measured just above the pronounced swelling at a point where it ceases to affect normal stem form.

6.13 Palm trees and tree trunks are included in a grouping separate from other tree removals. “Tree Trunks” for purposes of this grouping shall include trees with little or no remaining crown.

6.14 The Contractor shall take special precautions in that some tree(s) will have item(s) in and around them before being cut. The Contractor must encompass this situation within their bid.

6.15 The Contractor shall furnish and insure that all persons, including subcontractors, employees and supervisors wear uniforms or clothing indicating the company name and/or logo for the staff members name and contractor company name. The company logo and/or company name shall be worn in a clearly visible area on the employee’s person.

6.16 Vehicles belonging to the contract employees and their subcontractors shall have

identification with the company's name and a phone number, along with the company's insignia, so that the operator's identity may be verified. The sign must be no smaller than 12 inches tall by 12 inches wide, placed on the driver and passenger side doors.

6.17 All Contractor employees and subcontractors must be a United States citizen or have a legal work permit. A United States issued resident alien card, with photo, passport or other United States Federal photo documentation is acceptable to present for verification of citizenship or work eligibility. It is the responsibility of the Contractor to immediately inform the City of Houston of any personnel changes.

7.0 GRINDING PROCEDURES

7.1 The Contractor shall provide stump-grinding machinery with a cutter head designed to grind stumps approximately six (6) inches below ground level.

7.2 The cutter head shall have solid fixed teeth equipped with carbide insert cutters (swinging teeth will not be acceptable). The machine must have a guard to protect flying debris and be capable of working next to traffic, at a distance of five (5) feet.

7.3 All loose material (chips and soil) or any mixture created by the grinding process shall be removed by the Contractor before leaving the premises.

7.4 Upon completion of this operation, the terrain is to be left in condition to allow mowers to pass over and safely cut over the previous fallen tree(s) and grinded stump(s) area(s).

7.5 The Contractor shall be responsible for locating all underground utilities, which can include, but are not limited to electrical, water, gas, cable, irrigation, etc. In the event a utility is interrupted, the Director's Designee must be contacted within 2 to 4 hours of incident verbally and followed up in writing.

7.6 The Contractor shall also be responsible for grinding and removing roots up to one (1) inch away from pavement within the right-of-way.

7.7 The Contractor shall repair any damage to structure(s) sidewalk, curb, underground utilities, and turf or surrounding vegetation at its own cost.

7.8 Once the stump has been ground topsoil shall be placed within the area of excavation. The topsoil shall be fertile, friable, natural and a sandy loam. Surface soil obtained from excavation or borough operations shall have the following characteristics:

7.8.1 PH value of between 5.5 and 6.5

7.8.2 Liquid limit: 50 or less

7.8.3 Plasticity index: 20 or less

7.8.4 Gradation: maximum of 10 percent passing the No. 200 sieve

7.9 Topsoil shall be free of subsoil, clay lumps, rocks, weeds, non-soil materials, and other litter or contamination. Topsoil shall not contain roots, stumps, or stone. The City Forester or designee must approve topsoil before use.

8.0 TOPSOIL AND SODDING PROCEDURES FOR STUMP GRINDING

8.1 Once topsoil has been placed, the Contractor shall restore existing lawn areas disturbed by

stump grinding by the installation of new sod. Sod is defined as blocks, squares, and strips of turf grass, and adhering soil used for vegetative planting. Sod shall be placed edge to edge for complete coverage. Lawn is defined as ground cover with fine textured grass kept neatly mowed.

8.2 The Contractor shall sod only when weather and soil conditions are deemed suitable for proper placement.

8.2.1 Species: Bermuda (Cynodon dactyl on) or Buffalo (Buchloe dactyloides) or St. Augustine (Stenotaphrum secundatum).

8.2.2 Contents: 95 percent permanent grass suitable to climate in which it is to be placed; no weeds and undesirable grasses; good texture, free from obnoxious grasses, roots, stones and foreign materials.

8.2.3 Size: 12-inch wide strips, uniformly 2 inches thick with clean-cut edges.

8.2.4 Sod is to be supplied in a healthy condition as evidenced by the grass being a normal green color.

8.2.5 Sod will be replaced according to existing turf grass species.

9.0 PREPARATION, APPLICATION AND CLEAN UP OF TOPSOIL AND SOD

9.1 The Contractor shall be responsible for all preparation, application and cleanup of topsoil and sod while meeting the minimum requirements listed below. The contractor shall not start work until conditions are satisfactory. During inclement or impending inclement weather, the Contractor shall not begin work until conditions are dry and suitable for topsoil application.

9.2 Verify that soil placement and compaction have been satisfactorily completed. Verify that soil is within allowable range of moisture content.

9.3 That topsoil shall be free of weeds and foreign material immediately before sodding.

9.4 Rake areas to be sodded smooth, free from unsightly variations, bumps, ridges or depressions.

9.5 Lay sod with closely fitted joints leaving no voids and with ends of sod strips staggered. Sod shall be laid within 24 hours of harvesting.

9.6 Tamp and roll sod with approved equipment to eliminate minor irregularities and to form close contact with the soil bed immediately after planting and watering. The Contractor shall submit in writing the type of tamping and rolling equipment to be used to the City Forester for approval, prior to commencing the work.

9.7 During the course of planting, the Contractor shall remove excess and waste materials, keep lawn areas clean and take precautions to avoid damage to existing structures, plants, grass, and streets.

9.8 The Contractor shall remove barriers, signs, and other Contractor material and equipment from the project site at the end of each work day.

9.9 Contractor shall be responsible for removal and disposal of unused materials from curb(s), pavement and gutter(s) and dispose of the materials in accordance with federal, state and local regulations and laws.

9.10 The Contractor shall protect topsoil from wind and water erosion until planting is completed.

10.0 GRINDING CODING TO BE USED ON WORK ORDERS

10.1 Grind Stump and Plant Grass = Code 1

10.2 Grind Stump and Leave Chips = Code 2

10.3 Grind Stump and Remove Chips = Code 3

10.4 No Stump Grinding at Address = Code 4

11.0 DISASTER SPECIFICATIONS (EMERGENCY OPERATIONS)

11.1 During inclement weather or any other weather related emergency, the Contractor shall not begin the work until notified by the Director's Designee. Communication with the Contractor shall be verbal, telephone, 2-way radio, writing, E-mail or by fax.

11.2 Should a natural disaster or emergency including but not limited to a hurricane or tornado, occur within the duration of the contract, the Contractor may be contacted by the Director or designee to assist with emergency clearing of trees, limbs and root balls.

11.3 The Director or designee will notify contractor by telephone, 2-way radio or facsimile of the location of roads, sections of roads or outlying areas for clearing. The Contractor will be responsible for clearing of all locations as notified by the Director or designee. The debris will be removed from the site by the Contractor and properly disposed. The Contractor shall be responsible for keeping all necessary documentation for disposal as required by FEMA, see 11.7.

11.4 Inspections will be made periodically during and following assignments to monitor performance.

11.5 All tree removal services shall be in accordance with the procedures referenced in 6.0, except 6.1.

11.6 All labor and rental rates by the Contractor shall be reviewed and accepted by the Director or Designee before going to the site(s) and when leaving site (s) daily. The rates shall be confirmed before invoicing and payment is made.

11.7 The Contractor shall be required to document emergency work performance through digital photographs. These digital photographs shall be taken before starting removal and after removal has been completed, including all items being removed. The Contractor shall provide GPS location coordinates of trees which meet FEMA 325 guidelines within the notified work area. The Contractor shall provide this documentation with invoice in order for payment of invoice. The FEMA 325 guidelines can be found at http://www.fema.gov/pdf/government/grant/pa/demagde/pdf

11.8 The minimum crew size shall be (4) persons including (1) supervisor.

12.0 SITE CLEAN UP

12.1 At the end of each work day, the Contractor shall be responsible for cleaning the site and all grounds that it has occupied, of all rubbish; debris, downed tree limbs, and branches caused by it; and all parts of the work shall be left in a neat, orderly, and presentable condition. The removal of all rubbish and debris generated as a result of the Contractor's work under this

contract will be the responsibility of the Contractor. No debris will be allowed to remain in or on any roadways at any time.

12.2 Once the tree(s) is (are) removed, all wood chips, brush, limbs, and logs, unless otherwise specified in this Contract, will be considered the property of the Contractor who shall dispose of them in a manner consistent with applicable municipal, state, and federal Laws. No part of any tree shall remain on the site and the Contractor shall not permit any third party to claim the wood.

12.3 In order to reduce the burden on local landfills, all wood debris must be properly recycled or utilized, i.e. mulch, firewood, saw logs, unless where expressly forbidden by the Director or designee; due to oak-wilt or other disease or pests. The Contractor shall be responsible for performing these activities itself or through a third party. See also USDA Forest Service publications: http://www.fs.fed.us/na/morgantown/frm/cesa/rmt/rmt_index.html; http://www.na.fs.fed.us/spfo/pubs/misc/umt/.

13.0 DAMAGE TO CITY AND CITY PROPERTY

13.1 Damages to trees, shrubbery, and other features will result in an assessment of liquidated damages. The parties hereto recognize and agree that the exact amount of such damages to the City is difficult to ascertain but the following formula will render a reasonable pre-estimate of the City's probable loss:

13.2 Tree evaluation shall be based on the "Guide for Plant Appraisal 9th Edition, Council of Tree & Landscape Appraisers, 2000. Copies are available through the International Society of Arboriculture, P.O. Box 3129, Champaign, IL 61826-3129 or "www.isa-arbor.com".

13.3 Damaged turf areas will be leveled and re-sodded and all horticultural plantings damaged beyond repair will be replaced. Damage to structures, utilities, signs, light fixtures, landscape furniture, or other City property will be repaired or replaced. It is understood that all damage caused by workmen engaged in work under this Contract will be repaired by the Contractor without delay at its sole cost and expense. Repair work will be carried out by skilled workmen acceptable to the Director or designee and all repair and replacements must be approved by the Director or designee prior to final payment hereunder.

14.0 UTILITIES

The Contractor shall be responsible at its own cost for any and all work, expense, or special precautions caused or required by the existence or proximity of utilities encountered in performing the work. All workers working in the vicinity of utility lines will be fully briefed and instructed in safe working procedures appropriate to the voltage of the electrical apparatus on or near the work site. The contractor's site supervisor or supervisors in charge of any group or groups shall be fully aware of the safety procedures to be followed in case of an accident involving utility lines.

15.0 EQUIPMENT

15.1 OSHA must approve all safety equipment for the purpose for which it is being used. OSHA – approved hard hats will be worn at all times at the work site.

15.2 No ladder or ladders will be allowed at the work site.

15.3 The Contractor shall provide the Director or designee with one (1) cellular phone/with 2-way communication with 100 minutes per 30 days of free airtime to the City.

15.4 Safety ropes tools, severed limbs, equipment and aerial lifts shall be handled in such a way

as to ensure they do not come into contact with any utility lines.

15.5 The Contractor shall inspect any climbing ropes in use on the site, from end to end, before the start of each day's work, to ensure that there is no weakening, fraying, stressing, or other damage that constitutes a danger to the climber or its co-workers. Similarly, all other safety equipment will be checked regularly to ensure that it is in safe working condition. Any equipment defect shall be rectified immediately.

15.6 All aerial lifts will be insulated, maintained, and tested so as to ensure the safety to an employee in the bucket or at any controls should the lift come into contact with any energized utility line on the work site.

16.0 PEST CONTROL – BEE AND OTHER PEST CONTROL/EXTERMINATION

16.1 The Contractor shall remove, trap and/or exterminate bee(s) and all other flying insects or pests that may interfere with work to be performed. The Director or designee shall be notified verbally by phone/2 way communication and followed up in writing, of a bee or wasp problem before the Contractor issues instructions to remove and exterminate the bees and or wasps.

16.2 The removal and/or extermination shall not pose a potential human health hazard, or pose a threat to property or the environment.

17.0 LIQUIDATED DAMAGES

All services shall be completed within a reasonable time in accordance with Section 4.1. It is understood and agreed that timely performance by the contractor is essential and that damages to the City for failure of the Contractor to complete the work required on a Set of Trees within the time allotted shall be $100 per day, per work order/set of trees of delay past the designated completion date. The parties hereto recognize and agree that the exact amount of such damages to the City as a result of such delay is difficult to ascertain but that this sum represents a reasonable pre-estimate of the City's probable loss. This amount shall in no event be considered as a penalty, but as liquidated and adjusted damages due the City because of said delay, which damages the City will deduct and retain from its final payment to the Contractor.

18.0 PAYMENT AND COMPENSATION

18.1 The basis of the fees to be paid hereunder will be the tree's diameter breast height which is the circumference of the tree (outside bark) measured in inches at four and one-half feet (4-1/2 feet) up from the ground ("diameter breast height") divided by 3.14. Directional bias will be minimized by measuring diameter breast height from the tree face lying to the North.

18.2 Should the Contractor disagree with the City's diameter breast height measurements, it shall stop work immediately and contact the Director or designee for verification. The Director's decision regarding the measurement shall be final.

18.3 To receive fees, the contractor must submit monthly invoices showing the corresponding services performed. Each invoice must be accompanied by a breakdown of the category, diameter breast height, and the fee per tree for each service performed and included on the invoice. The fees incurred shall be paid by the City on or about thirty (30) days after the approval of the Director or designee of an invoice submitted by the Contractor. The corresponding payment shall be tendered to the Contractor by check at its current address for notices. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice.

19.0 INVOICING

The Contractor shall submit invoices monthly, by the tenth calendar day of the month, all invoices for the previous month. The contractor shall submit one original invoice to Accounts Payable and a copy to the Urban Forester. All invoices shall be original invoices on the Contractor's company stationery with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the contract period(s). Each invoice shall detail the following information:

City Contract No. and Ordinance No.
Copy of Work Order
Ordering Department and Facility Name and address where services were performed
Date(s) and time(s) services performed
Total Invoice cost.

All unit prices for labor and parts shall be listed and easily identified against the quoted contract pricing.

Contractor shall mail invoices to:

Parks & Recreation Department
Accounts Payable Section
601 Sawyer Room #211
Houston, Texas 77007

Parks and Recreation Department
Urban Forestry Division
12025 Sowden Rd.
Houston, TX 77055

20.0 ADDITIONS AND DELETIONS

20.1 The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional service is not identical to any item already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

21.0 ESTIMATED QUANTITIES NOT GUARANTEED

21.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of tree removal services during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing or requiring all the quantities specified herein.

22.0 WARRANTY OF SERVICES

22.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.

22.2 “Correction” as used in this clause, means the elimination of a defect.

22.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

22.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

22.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

SECTION C
GENERAL TERMS & CONDITIONS

THE STATE OF TEXAS **BID #** _____

ORDINANCE # _____

COUNTY OF HARRIS **CONTRACT #** _____

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **TREE REMOVAL AND DISASTER SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and _____ ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City	**Contractor**
City Purchasing Agent for Director	_____
of the Parks and Recreation Department	_____
City of Houston	_____
P.O. Box 1562	Phone: _____
Houston, Texas 77251	Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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*I. CITY'S CONTRACTORS PAY OR PLAY PROGRAM

* Note: These Exhibits shall be inserted into the Contract agreement at the time of Contract execution.

3.0 PARTS INCORPORATED

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS

4.1 If a conflict among the sections or exhibits arises, the Exhibits control over the Sections.

5.0 DEFINITIONS

5.1 Certain terms used in this Agreement are defined in Exhibit "A".

6.0 SIGNATURES

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL: (if a corporation)
WITNESS: (if not corporation)

_____

By: _____
Name:
Title:

By: _____
Name:
Title:
Federal Tax ID Number: _____

ATTEST/SEAL:

_____
City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

_____
Mayor

APPROVED:

_____
City Purchasing Agent

COUNTERSIGNED BY:

_____
City Controller

DATE COUNTERSIGNED:

_____

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

_____
Date

_____
Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B".

2.0 RELEASE

2.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.0 INDEMNIFICATION

3.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO $500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.2 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4.0 INDEMNIFICATION PROCEDURES

4.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

4.1.1 a description of the indemnification event in reasonable detail, and

4.1.2 the basis on which indemnification may be due and

4.1.3 the anticipated amount of the indemnified loss.

4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

4.3 Defense of Claims

4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

4.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE

5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:

5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
$500,000 per occurrence; $1,000,000 aggregate

5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

5.1.3 Automobile Liability insurance
$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated

5.1.4 Employer's Liability

Bodily injury by accident	$100,000 (each accident)
Bodily injury by disease	$100,000 (policy limit)
Bodily injury by disease	$100,000 (each employee)

5.2 All insurance polices must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

6.0 WARRANTIES

6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

6.2 With respect to any parts and goods furnished by it, Contractor warrants:

6.2.1 that all items are free of defects in title, material, and workmanship,

6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS

7.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

9.0 MWBE COMPLIANCE

9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at

least **18%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is $50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

10.0 DRUG ABUSE DETECTION AND DETERRENCE

10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

10.2.1 a copy of its drug-free workplace policy,

10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions, and

10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS

11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or

transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

12.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

12.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

13.0 CONTRACTOR'S PERFORMANCE

13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS

1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "H" for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

2.0 TAXES

2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT

3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of $_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

"By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation."

5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES

6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO:	[Name of Contractor]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to $25,000. A Change Order of more than $25,000 over the approved contract amount must be approved by the City Council.

6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

6.3.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the

Agreement.

6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED

2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then current term.

4.0 TIME EXTENSIONS

4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE

CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY

6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:

6.1.1 Contractor fails to perform any of its duties under this Agreement;

6.1.2 Contractor becomes insolvent;

6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

6.1.4 a receiver or trustee is appointed for Contractor.

6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.

6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

2.0 FORCE MAJEURE

2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2.2 This relief is not applicable unless the affected party does the following:

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and

2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.

2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY

3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT

4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT

5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS

6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406(c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefore.

EXHIBIT A
DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

“City Purchasing Agent” is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

“Contract Award Notice” means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

“Contract Charges” means charges that accrue during a given month as defined in Article III.

“Contract Term” is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

“Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

“Effective Date” is defined as date contract is countersigned by the City Controller.

“Governing Body” means the Mayor and City Council of the City of Houston.

“Hazardous Materials” is defined in Article II (Environmental Laws).

“Notice to Proceed” means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

“Parties” mean all the entities set out in the Preamble who are bound by this Agreement.

A “Set of Trees and/or work order” or “Sets” means a list of trees to be removed prepared by the City.

“Diameter Breast Height” means

CATEGORY	DIAMETER BREAST HEIGHT
00	Less than or equal to 9.9”
10	10.0” to 14.9”
15	15.0” to 19.9”
20	20.0” to 24.9”
25	25.0” to 29.9”
30	30.0” to 34.9”
35	35.0” to 39.9”
40	40.0” to 44.9”
45	45.0” or Greater

“Normal Business Hours” means as the hours between 7:00 a.m. and 4:00 p.m., Monday through Friday, not inclusive of City Holidays. No Saturday or Sunday work will be permitted unless authorized by the Director.

“Set of Terms or Sets” means a list of trees to be removed prepared by the City. A set may contain not less than ten (10) trees or more than one hundred (100) trees. A set of trees may include any combination of species and diameter, sizes from the categories as noted in Diameter Breast Height definitions above.

“Standard Service” means service provided within normal business hours and meeting all other performance outlined in the scope of work and this contract.

“Traffic Engineer” means the City’s Director of Traffic and Transportation or his designate.

EXHIBIT B
SCOPE OF SERVICES

(To be inserted by the City at the time of Contract execution)

EXHIBIT C
EQUAL EMPLOYMENT OPPORTUNITY

(To be inserted by the City at the time of Contract execution)

EXHIBIT D
MWBE SUBCONTRACT TERMS

(To be inserted by the City at the time of Contract execution)

EXHIBIT E
DRUG POLICY COMPLIANCE AGREEMENT

(To be inserted by the City at the time of Contract execution)

EXHIBIT F
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

I, _____
(Name - Print/Type) **(Title)**

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

_____ _____
Date Contractor Name

_____
Signature

_____
Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES FOR CONTRACTORS

I, _____
(Name - Print/Type)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

_____ _____
Date Contractor Name

_____
Signature

_____
Title

EXHIBIT G
DRUG POLICY COMPLIANCE DECLARATION

(To be inserted by the City at the time of Contract execution)

EXHIBIT H
FEES AND COSTS

(To be inserted by the City at the time of Contract execution)

EXHIBIT I
PAY OR PLAY

(To be inserted by the City at the time of Contract execution)