**SECTION C**
**GENERAL TERMS & CONDITIONS**

**THE STATE OF TEXAS**

**COUNTY OF HARRIS**

**ORDINANCE #** 2007-958

**CONTRACT #** 4600008033

## I. PARTIES

### A. Address

**THIS AGREEMENT FOR WEED MOWING & DEBRIS REMOVAL SERVICES FOR THE HOUSTON POLICE DEPARTMENT** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and Jefferson Mowing Company ("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**

City Purchasing Agent for Director
of Police Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

**Contractor**

Jefferson Mowing Company
2102 Desoto
Houston, Texas 77091
Phone: 713-682-2185
Fax: 713-681-8121

The Parties agree as follows:

### B. Table of Contents

This Agreement consists of the following sections:

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* G. DRUG POLICY COMPLIANCE DECLARATION
H. FEES AND COSTS

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

**C. Parts Incorporated**

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

**D. Controlling Parts**

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

**E. Definitions**

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

## F. Signatures

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

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

By: Isaac Jefferson
Name: ISAAC JEFFERSON
Title: OWNER

Jefferson Mowing Company

By: Mary Jefferson
Name: MARY JEFFERSON
Title: OWNER
Federal Tax ID Number: 54-2095489

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

Bill White

Mayor

APPROVED:

City Purchasing Agent

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

9-5-07

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.

8-16-07
Date

Legal Assistant

## II. DUTIES OF CONTRACTOR

**A. Scope of Services**

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

**B. RELEASE**

**RELEASE:**
**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.**

**C. INDEMNIFICATION:**
**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, ATTORNEYS' 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:**

**(1) PRIME CONTRACTOR/SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
**(2) THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND**
**(3) THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.**

**PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**D. INDEMNIFICATION PROCEDURES:**

(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:
(a) a description of the indemnification event in reasonable detail,
(b) the basis on which indemnification may be due, and
(c) the anticipated amount of the indemnified loss.

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.

(2) Defense of Claims

(a) 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.

(b) 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 Contractor 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.

## E. Insurance

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 coverages in the following amounts:

(1) Commercial General Liability insurance including Contractual Liability insurance:

$500,000 per occurrence; $1,000,000 aggregate

(2) Workers' Compensation including Broad Form All States endorsement:

Statutory amount

(3) Automobile Liability insurance

$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limi re per 12-month policy period unless erwise indicated.

(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)

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:

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

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

**F. Warranties**

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.

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

(1) that all items are free of defects in title, material, and workmanship,

(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,

(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

(4) that no item or its use infringes any patent, copyright, or proprietary right.

**G. Licenses and Permits**

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

**H. Compliance with Equal Opportunity Ordinance**

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

**I. MWBE Compliance**

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 15% 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.

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.

**J. Drug Abuse Detection and Deterrence**

(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.

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

(a) a copy of its drug-free workplace policy,

(b) 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,

(c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact

Positions, substantially in the form set forth in Exhibit "F".

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.

(3) 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.

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

**K. Environmental Laws**

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.

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.

**L. Contractor's Performance**

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.

**M. Payment of Employees and Subcontractors**

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.

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

**A. Payment Terms**

The City shall pay and Contractor shall accept fees at the unit prices 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.

Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

**B. Taxes**

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.

**C. Method of Payment**

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.

**D. Method of Payment - Disput Payments**

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.

**E. Limit of Appropriation**

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

(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 $250,000.00 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:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the"[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of $_____, upon the request of the below-signed Director, 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 cha. d to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is $_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

(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.

**F. Changes**

(1) At any time during the Agreement Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.

(2) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 th.. Agreement between the City and [Nar.. 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 upon written notice to the City Purchasing Agent]

(3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:

(a) Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, 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.

(b) 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.

(c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

(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.

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

## IV. TERM AND TERMINATION

### A. Contract Term

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

### B. Notice to Proceed

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

### C. Renewals

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 of City chooses not to renew this Agreement, the City Purchasing shall notify Contractor of non-renewal at lease 30 days before the expiration of the then-current term.

### D. Time Extensions

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).

### E. Termination for Convenience by the City

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.

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.

TERMINATION OF THIS AGREEME . AND RECEIPT OF PAYMENT FOI ,ERVICES 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.

**F. Termination for Cause by City**

If Contractor defaults under this Agreement, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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:

(1) Contractor fails to perform any of its duties under this Agreement;

(2) Contractor becomes insolvent;

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

(4) a receiver or trustee is appointed for Contractor.

If a default occurs, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing Agent 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.

**G. Termination for Cause by Contractor**

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.

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.

**H. Removal of Contractor Owned Equipment and Materials**

Upon expiration, or termination of this Agreement, Contractor shall immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement, unless Contractor is notified that the contract has been extended. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

## V. MISCELLANEOUS

**A. Independent Contractor**

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

**B. Force Majeure**

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. This relief is not applicable unless the affected party does the following:
   (a) uses due diligence to remove the Force Majeure as quickly as possible; and
   (b) provides the other party with prompt written notice of the cause and its anticipated effect.

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

4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.

**C. Severability**

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.

**D. Entire Agreement**

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.

**E. Written Amendment**

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.

**F. Applicable Laws**

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.

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

**G. Notices**

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier

of the date actually received or the th. day following: (1) deposit in a United .tes Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

**H. Non-Waiver**

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.

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.

**I. Inspections and Audits**

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.

**J. Enforcement**

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.

**K. Ambiguities**

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.

**L. Survival**

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.

**M. Parties In Interest**

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

**N. Successors and Assigns**

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.

**O. Business Structure and Assignments**

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 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.

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

**P. Remedies Cumulative**

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.

**Q. Contractor Debt**

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 therefor.

**EXHIBIT "A"**
**DEFINITIONS**

1.0 Definitions.
As used in this Contract, the following words and phrases shall have the meaning set out below unless a different meaning clearly appears from the context in which the term appears:

1.1 City.
Shall mean the City of Houston, Texas, a municipal corporation whose initial address is as follows:
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

1.2 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.

1.3 Clean
Shall mean to remove or clear completely all trash and debris, to fill with dirt on the site, and grade any ruts and/or depressions caused by the Contractor in clearing the site. No extra fill dirt will be required, unless the Contractor is found negligent in handling of tractor(s) or other equipment.

1.4 Contract.
Shall mean this agreement, approved by the governing body for the performance of the work or service, as set forth in the documents and specifications.

1.5 Contract Administrator.
Shall mean the representative of the Houston Police Department who is responsible for the administration for the Contract.

1.6 Contract Award Notice.
Means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

1.7 Contract Charges.
Shall mean the charges that accrue during a given month as defined in Article III.

1.8 Contract Sum.
Shall mean the sums set out in full in Article V.

1.9 Contract Term.
Is defined in Article II.

1.10 Council Motion or Ordinance.
Shall mean the official document passed by the Governing Body designating award(s) and directing the City Purchasing Agent to issue Notice(s) to Proceed.

1.11 Debris/Rubbish/Trash
Shall mean all bottles, cans, paper, loose building materials, felled trees, pieces of concrete, brick, rock or mortar, etc., or any other municipal solid waste, appliances and any other refuse whether loose or bagged and organic debris/waste.

1.12 Director
Shall mean the Director of the Houston Police Department or any other person who may be designated (by means of written notice to the Contractor from the Director) to perform the functions delegated to the Director in this Contract, but only for so long as the designation remains in effect and only within the limits of authority set out in such a notice.

1.13 Effective Date
Is defined as date contract is countersigned by the City Controller.

1.14 Established Supplier.
Is defined as any company who engages in any practice or trade, or method of dealing regularly in a place, vocation or trade as to justify an expectation that the Contractor can be expected to perform in a satisfactory manner with respect to this Contract.

1.15 Governing Body.
Shall mean the Mayor and City Council of the City of Houston.

1.16 Hazardous Waste
The Resource Conservation and Recovery Act (RCRA) defines "hazardous solid waste" as any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities...It exceeds the specified threshold levels for any one of the four characteristics of ignitability, corrosivity, reactivity and toxicity.

Some hazardous materials that are easily identified are: sealants, pesticides, adhesives, herbicides, paints, paint thinner, solvents, automotive parts cleaners, wood sealants, lacquers, caustics, fungicides, acids, oil, gas or diesel fuel. This is not a complete listing of all hazardous materials, however, these items are representative of many common materials frequently dumped.

*Notation #1:* The Contractor should note that medical waste can also be defined as either hazardous or non-hazardous. The EPA has listed over 500 chemicals or species, which when discarded or spilled are hazardous wastes. Therefore, when in doubt, upon discovery of any foreign materials, please immediately notify the Houston Police Department.

1.17 Industrial Waste
Solid, non – hazardous waste generated by industrial or manufacturing processes and is typically landfill – disposable.

1.18 Mulch
Shall mean to crush, pulverize, or grind to a uniform consistency by mechanical means any organic matter two inches (2") in diameter or less, through the use of a mechanical mulcher or grinder meeting industry standards for on-site, heavy-duty recyclical grinding of organic materials. All mulched residual material shall be returned to the lot and graded accordingly. If any other mechanical means achieves the same results as mulching, the Contractor is not required to utilize a mulcher.

1.19 Municipal Solid Waste
Solid waste resulting from or incidental to municipal, community, commercial, institutional and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, and all other solid waste other than industrial waste.

1.20 Organic Debris/Waste
Shall mean any plant matter, cuttings and residuals from mowing, trees, standing dead trees, shrubs, branches, bushes, or other brush, and other smaller uncultivated vegetation, not constituting added landscaping features, are to be considered as such.

1.21 Site(s)
Shall mean any location of public or private properties in the City of Houston, Harris, Fort Bend and Montgomery Counties or other counties as defined by the Department of Planning and Development. On sites with a concrete slab or foundation, the Contractor must mow around the foundation or slab. Drainage ditches, bridges or other culverts along any public ways adjoining the property must be cleared. Site locations may vary according to maintenance requirements, seasons of the year, weather conditions and other unknown variables.

1.22 Special Waste
Shall include, but is not limited to used batteries and medical waste.

*Notation #2:* The removal and disposition of abandoned automobiles is not a part of the Scope of Services under this contract.

1.23 Start of Contract Period.
Shall mean the date specified in the notice to proceed from the City Purchasing Agent.

1.24 Surety
Shall mean the party who is legally bound with and for the Contractor to insure the payment of all lawful debts pertaining to and for the acceptable performance of the Contractor.

1.25 Tires
Tires will include but not be limited to those commonly referred to as passenger and truck tires, commercial industrial off-road and agricultural tires, with or without wheels attached. Passenger tires include those tires most commonly found on passenger cars, SUVs, motorcycles, and pick-up trucks. Commercial truck tires are those tires most commonly found on 18-wheelers. Commercial industrial off-road and agricultural tires are those tires most commonly found on construction and farm equipment.

1.26 Trees
Shall mean a woody plant with a single trunk measuring at least 3" in diameter.

1.27 Weed Mowing.
Shall mean the cutting of grass and/or weeds, within the specified height in Section 6.2, with a mechanical devise or scythe. Grass and/or weed cuttings shall be mulched and shall remain on the serviced site. Weed Mowing includes debris removal up to 30 cubic yards.

1.28 Work Order
Shall mean authorization to begin work. Work orders shall be delivered in a format approved by the director. Delivery may be by electronic means or hard copy, including but not limited to faxes and email. A sample work order is included solely for descriptive purposes.

## SCOPE OF SERVICES

### 1.0 GENERAL SPECIFICATIONS

1.1 **Statement of Work**

The Contractor is to provide all supervision, labor, materials, supplies, tools and equipment necessary for the cleaning, clearing, loading and disposal of all trash, debris, rubbish, organic debris, municipal solid waste, special waste and tires. The Contractor shall mow all grasses, weeds, under brush and remove debris associated with the mowing. Contractor may also be required to remove debris from locations where weed mowing is not required.

1.2 **Intent**

1.2.1 It is the intent of these specifications to define a fixed-price service contract for mowing, as well as the pick-up and removal of trash, debris, rubbish, organic debris, municipal solid waste, special waste and tires. These Items for pick-up may be on public or private properties within the City of Houston.

1.2.2 For the purpose of this weed mowing and debris removal contract, the City of Houston has been divided into four (4) contract areas as listed in section 2.1.1.1.

1.2.3 The City shall from time to time, issue additional regulations to the Contractor, as needed, to provide clarity of contract services required as a result of administrative, policy or ordinance changes.

### 2.0 DETAILED SPECIFICATIONS

2.1 **Minimum Resource Requirements**

The Houston Police 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 contract award, to rent purchase, or otherwise acquire the needed equipment, personnel or other resources.

2.2 For the purposes of this contract, the City has been divided into four (4) contract areas covering Houston Council Districts. Area 1 contains Districts A & H; Area 2 contains District B; Area 3 contains Districts E and I; Area 4 contains Districts C, D, G, F.

2.3 Special standards of responsibility are necessary for adequate contract performance. These special standards are hereby set forth in these specifications.

2.4 A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. To be determined responsible (1) a prospective contractor must have adequate financial resources to perform the contract, or the ability to obtain them, (2) the contractor must be able to comply with the required proposed performance schedule, taking into consideration all existing commercial and governmental business commitments, (3) have a satisfactory performance record, (4) have a satisfactory record of integrity and business ethics, (5) have the necessary experience and operational skills (6) have the equipment and manpower, or the ability to obtain them, and (7) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

2.5 A prospective contractor must have the ability to send and receive electronic communications through computer software comparable to Microsoft Office 2003.

### 3.0 Minimum Required Manpower

3.1 The Contractor shall have in its employ at all times a sufficient number of capable and qualified employees to enable the Contractor to properly, adequately, safely and economically manage, operate and generally perform the scope of work under these specifications. The City requires (via full-time/part- time employment or sub-contracting) a minimum of two (2) crews per contract

area. A typical crew w ,d be comprised of four (4) persons: ee (3) performing the actual cutting and clearing and one (1) operating the dump truck.

3.2 All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of the Contractor. The City of Houston Purchasing Agent may require dismissal from work, on this contract, any employee who is deemed incompetent or is identified as a potential threat to the health, safety, security, general well being or operational mission of the contract. Each employee of the Contractor shall be a citizen of the United States or an alien who has been lawfully admitted for permanent residence as evidence by Alien Registration Receipt Card Form 1-51.

3.3 *Licenses: The Contractor shall have all applicable licenses and permits required to perform under these specifications, including but not limited to any and all TCEQ licenses and tire hauler licenses. Each truck driver shall possess a valid Texas commercial operator's license. Contractor does not need a generator license.*

## 4.0 Minimum Suggested Equipment

4.1 Specific types of equipment are necessary for adequate contract performance. Therefore, the City suggests (via ownership, lease or sub-contractor) the following equipment **per crew**.

**1 Tractor Meeting the Following Specifications:**
- Minimum 55 horsepower engine with low profile to ground
- Must have sheet metal fabrication around tractor to protect driver
- Must have puncture proof tires i.e.; foam filled or equivalent tires
- Must have roll over protection (R.O.P.S) around operator
- Must be OSHA approved

**1 Tractor Mounted Rotary Mower Meeting the Following Specifications:**
- Minimum 4-foot heavy-duty mower with chain curtains

**1 Trailer Meeting the Following Specifications:**
- Tandem axle heavy duty trailer that grosses 15,000 pounds

**1 Truck to Tow Mower Meeting the Following Specifications:**
- Minimum 1 ton – Required dump truck may be used to tow mower, if properly equipped

**1 Dump Truck Meeting the Following Specifications:**
- Minimum 8 cubic yards of hauling capacity
- A high sided trailer may be used in lieu of dump truck to haul debris.

4.2 In addition to the above equipment requirements, the City requires that the Contractor own, or have the ability to lease or sub-contract immediately, debris and trash loading equipment. It should be noted that lots with over 30 cubic yards of trash/debris might require more than the above-recommended minimum equipment per crew.

4.3 All equipment used for performance of services shall meet all applicable O.S.H.A. standards, and be licensed and inspected as may be required.

4.4 All supplies, materials, repair or replacement parts, equipment or tools used or furnished by the Contractor to perform the work specified herein shall be of the type, quality, size, etc., customarily used in the trade of such work. The Contractor at the Contractor's expense will replace any such items deemed unsuitable by the City. The City will not be responsible in any way for damage to or loss of supplies, materials, tools, equipment or personal property belonging to the Contractor or his/her employees.

## 5.0 CONTRACTOR WORK PLAN Wi . INSPECTIONS- Work Orders

5.1 The Contractor must pick up work orders assigned to Contract Areas within 48 hours after issuance of a notice from the Director's representative. The Contractor shall complete a work plan for all work orders received on a form approved by the City. The work plan shall be returned to the Director's representative within three (3) working days of the Contractor's receipt. Unless an exception is granted, or the City issues an amended work order, the Contractor shall complete the work within twenty (20) working days with the exception of "Priority Cuts".

5.2 The Contractor shall complete work orders designated as "Priority Cuts" Category E within five (5) days of issuance. The "Priority Cut" fee will be in addition to the applicable fee for servicing the lot. The Priority Cut fee will not be applicable if the contractor fails to perform the service within five (5) days of issuance.

5.3 The Contractor shall not cut lots that are nine (9) inches or less in height without prior authorization from the City of Houston. The issuance of a work order does not constitute prior authorization. The Contractor shall immediately notify the Director's representative of all sites where the height of weeds is nine inches or less. Upon approval by the Director's representative, the Contractor shall remove weeds from the site as required by the contract.

5.4 The Contractor is required to provide the City with monthly reports regarding the status of work orders previously issued.

## 6.0 TIME OF WORK AND ORDER OF PROCESS

6.1 The Contractor may perform assigned work from sunrise to sunset, seven (7) days per week, not inclusive of recognized City Holidays set out by Council Motion.

6.2 Contractors shall process all work orders in a "first in - first out" or oldest work order completed first order (excluding priority cuts which are to be cut in accordance with section 5.2).

## 7.0 TECHNICAL SPECIFICATIONS

### 7.1 Cutting and Debris/Trash/Rubbish Removal

7.1.1 The Contractor shall remove the City of Houston posting prior to servicing the property, and re-post it upon completion if applicable.

7.1.2 The Contractor shall cut grasses and weeds to a height of approximately three (3) inches depending on the work order and the type of terrain. All organic cuttings and residuals from mowing shall be mulched, on site, returned to the lot and graded accordingly. Mulching shall be a mandatory process for all mowing residuals not in a mulched state upon cutting.

7.1.3 Contractor shall cut grass along fences and/or walls 1" or less from said barrier(s). This may require tools or equipment or techniques different from those employed in the cutting of the principal area.

7.1.4 If there are no concrete curbs and gutters, and where there are any drainage ditches, bridges, or culverts along any public ways adjoining any property, such ditches, bridges, or culverts shall be cleared and the same restrictions of height held applicable to the main portions of the property in question.

7.1.5 If the property has a concrete slab or foundation, the Contractor will mow around the slab or foundation. The Contractor shall also cut grass, weeds, etc., growing through cracks in the foundation or slab. All loose building materials are to be considered as trash/rubbish/debris and the Contractor shall clean and remove these from the property. The contractor shall reduce the square footage of the service area by the amount

equivalent to slab area, any area not serviced, building square footage, if applicable.

7.1.6 There may be incidents where the City will require the removal of living trees, or standing dead trees, not constituting added landscaping features that can represent a hazard to the health and safety of the citizens. The removal or abatement of such items shall be done only at the discretion of the Houston Police Department. Cost for this service will be negotiated between the Department and the Contractor on a case-by-case basis.

7.1.7 The Contractor shall immediately notify the Director's representative of all sites containing 30 or more cubic yards of trash/debris/rubbish prior to removal. The Contractor shall cut the lot and store the debris at the front of the lot until the Director's representative verifies the amount of debris. Upon verification by the Director's representative, the Contractor shall remove debris from the site as required by the contract. The Contractor shall communicate with the Director's representative within two (2) working days of removal, giving the Department sufficient lead-time to schedule site inspections.

7.1.8 The Contractor shall load, remove, transfer and properly dispose of all trash, rubbish, debris, organic debris, and municipal solid waste on the site to a State of Texas certified facility/landfill for the type of material removed. The contractor shall notify the director prior to servicing any lot/location where only debris removal is required. Contractor shall store the debris at the front of the lot until the Director's representative verifies the amount of debris. Upon verification by the Director's representative, the Contractor shall remove debris from the site as required by the contract. The Contractor shall communicate with the Director's representative within two (2) working days of removal, giving the Department sufficient lead-time to schedule site inspections. The contractor must provide documentary evidence to include, but not restricted to all landfill receipts, used coupons or monthly statements that the disposal has in fact occurred at designated sited or processing facilities. The City cleans up battery leakage.

7.1.8 (a) The Contractor shall properly transport and legally dispose of all tires from sites to an appropriate municipal solid waste facility as defined by the Texas Administrative Code.

7.1.8 (b) The Contractor shall prepare a Used and Scrap Tire Manifest, which contains the Contractor's Texas Department of Health Registration Number for transport of tires and any other information required by the Texas Department of Health and/or any regulatory agency governing the transport and/or any disposal of tires.

7.1.8 (c) Contractor shall notify the Director's representative prior to removal of 50 or more tires.

7.1.9 The Contractor shall not reject work orders for insect infestations. Protective clothing or insecticide sprays may be used in such events. The Contractor shall submit Material Safety Data Sheets (MSDS) for any proposed insecticides or other chemical sprays to be utilized for this purpose, directly to the Director's representative for prior approval. A licensed pest control operator shall spray insecticide or other chemicals.

7.1.10 Upon arrival at the work order site, if the Contractor finds hazardous or unidentifiable materials, a locked gate, a no trespassing (or similar) sign, or is denied entry, it shall leave the site, and immediately notify the Director's representative and await further instructions. The Contractor shall not make any attempt to handle or remove the hazardous or unidentifiable waste.

7.1.11 The Contractor shall legally dispose of all appliances on the site and shall properly transport appliances to an appropriate municipal solid waste facility as defined by the Texas Administrative Code.

**8.0 Photographic Documentation**

8.1 Contractor shall take the following digital photographs with JPEG and have the capacity to transmit electronically to document work performed and submit them with the work order to the Director's representative:

8.2 At least one (1) "before (measuring the height of the weeds and showing the City of Houston Posting if applicable)," "during" and "after" photograph of the property being cut;

8.3 At least one (1) "before," "during" and "after" photograph of the trash/debris/rubbish accumulations on the property.

8.4 At least one (1) "before," "during" and "after" photograph of any tires, on the Property.

8.5 When the Contractor services two (2) or more adjacent lots or a large tract of property, additional "before" photographs should be taken to document if violations exist on the entire property. For each "before" photograph, a matching "after" photograph should be taken to document the correction of the violation.

8.6 When the Contractor services improved property (vacant/occupied structures), at least one (1) "before" photograph and one (1) "after" photograph should be taken of the front and rear of the property to document existing violations.

8.7 The Contractor shall make every effort to identify common land features of the property in each photograph. Photographs must be clear. Each photograph shall contain a chalkboard, or other identifying mechanism, displaying the work order number and address of the lot visible at each location. The name of the Contractor performing the actual work shall also be written on each photograph. It is the Contractor's responsibility to insure that photos are representative of work performed.

**9.0 Boundaries**

Boundaries for Contract Areas 1-4 shall be defined as those Council Districts are defined as of the date of the countersignature of this agreement.

**10.0 Invoice Requirements**

Contractor's invoice shall include the amount of cubic yards of trash removed from the site and the following supporting documents: photo documentation, tire manifest, and landfill receipts.

Contractor shall invoice using a form approved by the City of Houston.

The City reserves the right to exempt specific geographical areas from the contract during the contract period to meet the requirements of other City programs.

Mail invoices in triplicate to: Houston Police Department
Neighborhood Protection Corps
2636 S. Loop West, 4th floor
Houston, Texas 77054

**11.0 Community Organizations:**

The City may from time to time direct the contractor to subcontract weed mowing services to community organizations. If so directed, the contractor shall be paid at the rate identified in Category F. Contractor shall pay subcontractor the sum of $100 for each lot mowed. Contractor shall add

subcontractors to all of Contra[illegible]'s insurance policies as an additional [illegible]ured and shall provide all supervision, inspection, and debris removal for these lots. The Subcontractors shall be designated by the Director to perform second mowing services on designated lots. Contractor shall submit with his invoice, proof of payment to subcontractors in a form approved by the department.

In the event a community organization's subcontractor fails to mow a designated lot within 30 days of written notice to subcontractor by Contractor, Contractor shall be entitled to an administrative fee of $25.00. The administrative fees, if any, shall be added to the invoices provided for in Section H of the agreement and paid in accordance with the provisions of Section III Duties of City.

**12.0 Non-Performance/Reassignment of Work Orders:**

Unless the time period for completion of a work order is extended by the Director, failure to complete a work order within the specified time period is deemed to be non-performance under the contact. The Contractor shall have 20 days from receipt of a written request from the department's designated representative to complete the work on the specified lot. If the Contractor **fails to complete** the work **within** the specified 20 days, the City reserves the right to reassign the work order(s) not completed within the specified 20 days to another contractor. The method of reassignment is at the sole discretion of the City. Accordingly, failure of the contractor to complete the work within the specified time period will be considered as delinquent performance **and** may be just cause for subsequent termination of the contact for non-performance. Multiple occurrences of non-performance may result in termination of the contract.

**13.0 Additions & Deletions:**

The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

**14.0 Estimated Quantities Not Guaranteed:**

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of Work orders or sites for 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/requiring all the quantities specified herein.

**15.0 Warranty of Services:**

15.1 *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.

15.2 "Correction" as used in this clause, means the elimination of a defect.

15.4 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.

15.5 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.

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

## EXHIBIT "H"

## FEES AND COSTS

| Category | Sq Feet | Price |
|---|---|---|
| A - mowing and debris removal up to 30 cubic yards | 0 - 5000 | .075/sq. ft. |
| B - mowing and debris removal up to 30 cubic yards | 5001 - 10000 | .07/sq. ft. |
| C - mowing and debris removal up to 30 cubic yards | 10001 - 15000 | .055/sq. ft. |
| D - mowing and debris removal up to 30 cubic yards | 15001 and over | .05/sq. ft. |
| E - priority cuts | all size lots | $100 plus Category Price |
| F - Community Organizations | 0 - 5000 | $100 plus Category A charge |
| G – Debris Removal greater than 30 cubic yards | Over 30 | $22.00/cu. yd. |
| Tire Removal | N/A | $15 per tire |
| | | |