

THE STATE OF TEXAS

BID # S50-L23060

ORDINANCE # 2008-1227

CONTRACT # 4600009353

COUNTY OF HARRIS

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR TREE PLANTING AND MAINTENANCE SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **LANDPRO, INC.** ("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(s)
of the Parks and Recreation Department(s)
City of Houston
P.O. Box 1562
Houston, Texas 77251

LandPRO, Inc.
11450 FM 1960 W Suite #214
Houston, TX 77065
Phone: 832-237-5936
Fax: 832-237-5938
landpro@sbcglobal.net

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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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):

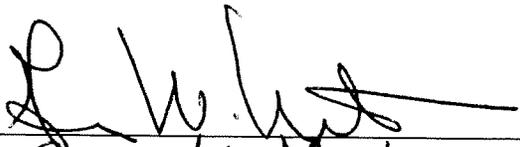
LandPRO, Inc.

WITNESS (if not a corporation):

By: _____

Name:

Title:

By: 

Name: George W. Meeks

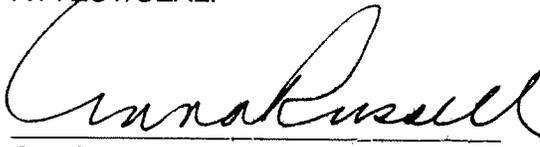
Title: President

Federal Tax ID Number: 76-0678501

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:



City Secretary

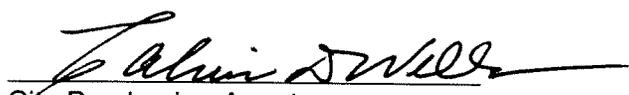


Mayor

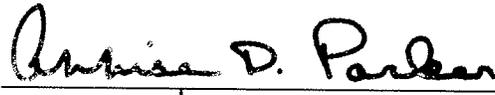


APPROVED:

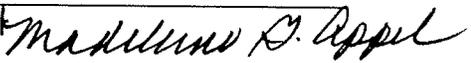
COUNTERSIGNED BY:



City Purchasing Agent



City Controller



DATE COUNTERSIGNED:

1-7-09

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.

12-23-08
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 labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibit "B" & "BB."

2.0 INDEMNITY AND RELEASE:

2.1 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.

2.2 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, 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:

2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

2.2.3 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.

2.2.4 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 \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.3 INDEMNIFICATION:

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

3.0 INDEMNIFICATION PROCEDURES:

3.1 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:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 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.

3.3 Defense of Claims

3.3.1 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.

3.3.2 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.

4.0 INSURANCE:

4.1 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 coverages in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:

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

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

4.1.3 **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.

4.1.4 **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)

4.2 All insurance policies 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:

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

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

5.0 WARRANTIES:

5.1 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.

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

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

5.2.2 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,

5.2.3 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

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

6.0 LICENSES AND PERMITS:

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

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

7.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in

8.0 MWBE COMPLIANCE:

- 8.1 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 11% 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.
- 8.2 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.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 9.1 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.
- 9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 9.2.1 a copy of its drug-free workplace policy,
 - 9.2.2 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,
 - 9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 9.3 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.
- 9.4 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.
- 9.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

10.0 ENVIRONMENTAL LAWS:

- 10.1 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.
- 10.2 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.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 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.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 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.
- 12.2 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.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's 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.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 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. Exhibit "I".
- 13.2 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.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 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.
- 1.2 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.

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 **\$750,000.00** 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:
- 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 \$50,000. A Change Order of more than \$50,000 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 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 of the City Department elects not to renew this Agreement, the City Purchasing 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 the 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 therefor.

END OF GENERAL TERMS AND CONDITIONS

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.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"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.

EXHIBIT "B"
SCOPE OF WORK

1.0 GENERAL:

The Contractor shall furnish all labor, tools, material, supplies, supervision, transportation, insurance, permits, clean-up and all other ancillary items/services necessary to complete the following project in strict accordance with the provisions contained herein and Exhibits attached hereto and made a part hereof for all purposes. The work shall be performed at the sites specified. The Contractor shall coordinate its performance of the services specified herein with the Parks and Recreation Departments designated representative. The Contractor shall make periodic verbal or written reports and recommendations to the Parks and Recreation Department designated representative with respect to conditions, transactions, situations or circumstances encountered by the Contractor relating to the services to be performed under this Contract and attend meetings determined to be necessary by the Parks and Recreation Department designated representative.

2.0 STANDARDS OF PERFORMANCE:

- 2.1 The Contractor's performance shall be in accordance with the highest standard prevailing in the tree planting and maintenance industry. The Contractor shall be required to perform and complete the work described in this Contract in a thorough and professional manner. Any item primary, secondary or incidental to the performance of this contract shall be included in this service.
- 2.2 The Contractor shall contact the Director (hereinafter referred to as the Director or his/her designee) by telephone and by E-mail, anytime work at a jobsite is interrupted for any reason, designated jobsite planting schedule is complete, or Contractor is ready for the next scheduled tree planting.
- 2.3 The Contractor must have a degreed Urban Forester and/or be certified by the Texas Nurserymen and Landscape Association (TNLA), with at least five years experience on staff and or subcontractor with the aforementioned credentials to oversee tree planting and maintenance 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 plant 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 PERSONNEL:

Contractor shall employ individuals skilled in their respective trades and skilled in the use of methods, tools and appliances developed to obtain the highest quality of workmanship. Any person that the Director or designee deem incompetent or disorderly must be promptly removed by the Contractor and not re-employed to work on this project.

5.0 POWERTOOLS AND EQUIPMENT:

Contractor shall provide, at its expense, all approved power tools, machines and equipment necessary to perform work as specified. All equipment must be maintained in first class condition to ensure safe and effective performance.

5.1 The Director or designee will require acceptable evidence of the prospective contractor's ability to obtain required resources for tree planting. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of site-visit, to rent or purchase, or otherwise acquire the needed equipment, personnel or other resources, such as, but not limited to, the following.

- Two (2) 500 gallon watering vehicles
- Five (5) man crew, two (2) of which must be capable of supervising. A competent supervisor must be on site at all times during planting
- One (1) Bobcat w/auger
- Two (2) stake drivers
- Steel stakes. Two (2) per tree 15 to 30 gallon
- 4' feet "Arbor tape" per tree, or approved tree-tie
- 1/3 cubic yards per tree of native hardwood mulch
- Six (6) round point shovels
- Six (6) sharpshooter shovels
- One (1) "railroad bar" digging bar
- Two (2) pickaxes
- One (1) cup per tree of 1200# Osmocote, Microlife or other slow-release fertilizer
- Pick up remaining trash/dirt excavated from planting holes
- *One-half (1/2) cup hydrogel per tree.*

(No wire or hoses will be accepted for securing of trees.)

6.0 CONTRACTORS' DUTIES:

6.1 The Contractor shall furnish all trees and associated supplies and materials to provide all services to plant and maintain the trees in accordance with the provisions of this contract. The Contractor shall coordinate its performance of the services with the Director or designee and such other persons as the Director or designee may specify.

6.2 The Contractor shall warrant that all of the trees planted shall remain alive at time of planting and healthy until the end of the two (2) year guarantee period (the "guarantee period") from time of planting. The warranty begins on the date the tree is planted and/or replaced.

6.3 The Contractor will maintain relevant utility marks in planting area(s).

7.0 TREE SPECIFICATIONS:

7.1 Tree species and the location at which they are to be planted are listed on Exhibit BB. All trees shall be of good quality and shall be healthy representatives of their species and variety. Trees to be planted shall have straight trunks and uniformly shaped crowns. All trees shall be tagged with the scientific and/or common name and shall have been grown to standards of the American Association of Nurserymen and shall meet the

standards set in ANSI Z601 American Standard for Nursery Stock. All trees shall be container grown (no ball and burlap trees) with trunk caliper Measured at six (6) inches above soil level. All trees must meet the size criteria stated herein. The Director or designee shall be notified 48 hours in advance of the arrival times (date, hour) of all trees on the job site for inspection and acceptance of each tree prior to planting.

7.2 Substitution of sizes, grades, species or forms shall not be made without prior written permission from the Director or designee.

7.3 Tree minimum specifications are as follows;

7.3.1 5-gallon: CALIPER: 0.50 – 0.75 INCHES
HEIGHT: 2 – 5 FEET
CROWN: 3 – 4 FEET

7.3.2 15-gallon: CALIPER: 1.25 – 1.75 INCHES
HEIGHT: 5 – 7 FEET
CROWN: 3 – 4 FEET

7.4 The Director or designee shall have the authority to suspend the Contractor's operations in whole or in part for such period or periods of times, as they considers unfavorable for tree planting because of unsuitable weather or other conditions, which the Director or designee considers unfavorable. The Director or designee shall also have the authority to order the resumption of any operations that have been suspended by the Contractor as a result thereof. Any notification to suspend or resume operations shall be through official correspondence signed by the Director or designee.

7.5 Trees shall be transported and handled with adequate protection during delivery including covering trees to be planted hereunder with tarpaulin or transporting them in an enclosed truck. The Contractor is responsible for loading and unloading at the job site. The Contractor assumes all risk and expense associated with the storage of unplanted trees. No trees shall be left unplanted without proper security.

7.6 The Director or designee may determine that additional trees are required to the listed site(s). Upon written notification by the Director or designee under the City's Addition and Delete provision, the Contractor shall furnish and install trees as requested at the price specified in the contract fee schedule.

8.0 TREE PLANTING WORK PROCEDURE:

8.1 The Contractor shall follow the following guidelines for planting the trees specified herein: Holes for the trees shall be excavated to one and a-half (1 1/2) times in width than the diameter of the tree soil ball with the sides of the hole being vertical and the bottom horizontal. The trees shall be planted with the top of root ball one and a half (1.5) inches above existing grade. Under no circumstances are holes to be left uncovered overnight. Under no circumstances are holes to be left uncovered overnight. The Contractor at its own expense shall dispose of all surplus excavation materials

8.2 Trees will be set in an upright plumb position at a depth of one and a half (1.5) inches higher than they grew in the container unless otherwise specified by the Director or

designee. Care shall be taken so as not to injure the root system, trunk or foliage.

- 8.3 The backfill shall consist of topsoil excavated from the planting hole. If there is insufficient topsoil, a supplement of similar topsoil, approved by the Director or designee, shall be furnished by the Contractor at the Contractor's expense. Each planting hole shall be back-filled with an approved soil and tamped lightly and carefully so as not to damage the tree roots. The tree will then be watered to settle the soil around the roots. Each tree shall be fertilized utilizing Osmocote slow release fertilizer microlife organic fertilizer, or approved equal, and applied per the manufacturer's recommended ratio. One-half (1/2) cup hydrogel per tree shall be added as the hole is back filled. A product containing mycorrhizae (such as Mycor) shall be added with the fertilizer. After the water is absorbed a saucer will be constructed 6-8 inches above soil grade around planting hole a minimum of three (3) feet in diameter. This area shall be mulched with 3-4 inches of pine bark mulch and maintained free of weeds and grass. A final inspection will check for mulch thickness, depth of planting and trunk straightness (plumb).
- 8.4 Pruning shall will be done according to recognized horticultural standards and the instructions of the Director or designee. All damaged limbs will be removed. The Contractor shall ensure that the tree maintains a shape appropriate to its species.
- 8.5 All trees must be staked within 24 hours of planting. All trees shall be staked with two (2) stakes or more. All stakes will be six (6) foot steel t-posts type. All trees will be tied or guyed with a half-inch (1/2") web material arbor tie (tap) in a manner that is both secure and non-injurious to the tree and approved by the Director or designee. The Contractor may use other types of securing ties or devices if prior approval is received from the Director or designee to do so. The Contractor must remove all stakes from the trees at the end of an 18-month period, except as directed by the Director or designee.
- 8.6 Coarse shredded and properly composted bark mulch (pine or hardwood) shall be placed loosely as mulch around trees planted within forty-eight (48) hours after planting to a uniform depth 6" (inches). The mulch must be free of branches, roots or other foreign material. The mulched areas are to be maintained free of weeds and grass vegetation with a minimum of 3-4 inch mulch cover for the maintenance period of twenty-four (24) months. Grouping is determined as mulching areas that are surrounding and in between trees. All trees are to be re-mulched 14-18 months after planting or sooner if there is not 3-4 inches of mulch around any of the trees planted, and at a minimum of 6' (feet) from the back of the curb.
- 8.7 Tree planting locations will be marked in the medians along the specified street. The Parks and Recreation Department personnel will identify tree-planting locations with a fluorescent orange "X".
- 8.7.1 All lawn areas will be left "fan rake clean". All driveways, walkways, roads, curbs, and any other asphalt, concrete, stone and similar surfaces in the vicinity of a work site shall be left "broom clean" when the site is vacated at the end of each day.
- 8.7.2 Per Exhibit BB, tree-planting locations will be marked in the medians along the specified street. The Director or designee shall identify tree-planting locations that will be signified by a painted "X".

- 8.7.3 Trees must be planted at least seventy-five (75) feet from the esplanades nose at an intersection and at least fifty (50') feet from the esplanade nose at a mid-block opening.
- 8.7.4 Trees generally should be planted in groupings on 5' (feet) centers as marked, alternating species until the project end. The marked location will be marked once and it will be the Contractor's responsibility to maintain these marks until the trees are planted.
- 8.7.5 Disposal of all debris, trash, and remaining materials not needed will be considered the property of the Contractor who will dispose of them in a manner consistent with applicable municipal, state, and federal laws regulations.
- 8.7.6 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 Parks and Recreation property without the prior authorization of the Director or designee. It will be the responsibility of the Contractor to inform the homeowner or property owner of when a tree described by the Director/designee will be planted; any conflicts or disputes arising from planting will be resolved by the Contractor. In the event the issue cannot be resolved between the homeowner and Contractor the Director/designee will arbitrate.
- 8.7.7 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 "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, (latest edition). 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. Any deviation or change shall be subject to the written approval of the Traffic Engineer. In addition, if any portion of a major thoroughfare will have to be blocked off because of work to be performed, the Contractor shall submit a general traffic-handling plan to the Director/designee following the Texas manual on Uniform Traffic Control Devices and obtain approval of that plan from the Traffic Engineer.
- 8.7.8 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/designee in writing or by telephone.

9.0 TREE MAINTENANCE:

- 9.1 The Director or designee shall inspect the initial work done under this contract to verify that the services provided are in accordance with the specifications and that it is accepted. The Contractor shall notify the Director or designee in writing (work order or invoice) at least ten (10) days in advance of the desired date for the inspection to occur. After the inspection has occurred, the Director or designee will notify the Contractor in

writing that the tree(s) is/are accepted and the date on which the guarantee period is to begin for each tree planted. The Contractor will be notified of trees planted that are not accepted and need to be corrected.

- 9.2 The Director's designee shall inspect and recommend to the Contractor vendor near the end (between 20 and 23 months) of the guarantee period, all of the trees planted under the contract to determine final acceptance before final service payment is made. The Contractor shall notify the Director or designee in writing at least thirty (30) days before the expiration of the guarantee period. All trees that are not correct from the final inspection shall be deducted from the final service payment of the contract.
- 9.3 The Contractor shall water the trees at a minimum of every twenty-one (21) days during the months of November, December, January and February with each tree receiving a minimum of ten (10) gallons per each (1) inches diameter of tree; every fourteen (14) days during the months of March and October with each tree receiving a minimum of ten (10) gallons per each (1) inches diameter of tree; and every seven (7) days during the months of April, May, June, July, August and September with each tree receiving a minimum of ten (10) gallons per each (1) inches diameter of tree. Tree(s) experience wilting and/or defoliation, or any other sign of stress, the Contractor shall water the trees as needed to ensure the trees remain healthy and vigorous and maintain an aesthetically pleasing appearance until the end of the warranty period.
- 9.4 The Contractor will be required to provide a Tree Watering Schedule/Report for the trees planted and at the minimum include tree location, water meter readings, times watered, dates and personnel assigned, to the Director or designee on the last day of each month as completed to receive payment. Adequate natural rainfall may affect the watering schedule and Contractor must issue a written request to revise the Tree Watering Schedule. Contractor may proceed with the revised schedule upon written acceptance by the Director or designee.
- 9.5 The twenty-four (24) month warranty, watering and maintenance period shall commence after the initial inspection and approval date of the tree planting. Upon the direction of the Director or designee the Contractor, following the specifications contained in this contract, shall replace any tree killed and/or damaged beyond the Contractor's control, such as vandalized trees, and the City will bear the cost of the replacements in accordance with Contract fee schedule.
- 9.6 Any turf areas damaged by the Contractor will be leveled and new sod shall be placed and any horticultural plantings damaged will also be replaced with the same to restore the area to its prior condition. In addition, damage to structures, utilities, signs, light fixtures, landscape furniture, or other City property will be repaired or replaced. It is understood that any and all damages caused by people engaged in the performance of the services under this contract will be repaired by the Contractor without undue delay and at its sole cost and expense. Any repair work will be performed by skilled workmen acceptable to the Director or designee and all repairs and replacements must be approved by the Director or designee prior to final payment hereunder.
- 9.7 Within two (2) weeks of the written notice from the Director or designee, the Contractor shall replace, at its sole expense, any dead tree or trees that in the opinion of the Director or designee, have become unhealthy, unsightly or have lost their natural shape as a result of improper pruning or maintenance. If a tree is replaced, the twenty-four

(24) month guarantee period for that tree shall begin after the Director or designee, has inspected it and approved it. The Contractor shall straighten any leaning trees and bear all cost associated therewith. At the time of each watering, contractor's employees will correct, or note need to correct, any missing or damaged stakes and or tree-to-stake ties.

- 9.8 The Contractor shall dispose of any tree rejected by the Director or designee due to not meeting specifications at any time at the sole expense of the Contractor.

10.0 LABOR SUPERVISION AND PROPERTY DAMAGE:

- 10.1 The Contractor shall keep a competent supervisor on the work site at all times. That supervisor shall represent the Contractor in its absence and all directions given by and to the supervisor shall be binding as if given by and to the Contractor. The Contractor shall properly protect public and private property including, but not limited to streets, curbs, sidewalks, driveways, houses, trees, shrubbery, lawns, retaining walls, fences, gates and utilities. Any damage to such property by the Contractor's employees or equipment shall be repaired and restored to its original condition by the Contractor. The Contractor shall pay any and all such costs, which may be required in the repairing or replacement of any item that is damaged.
- 10.2 Contractor shall immediately report to the Director or designee any damage to furnishings or property caused by Contractor's personnel or subcontractors while performing services pursuant to the Contract.
- 10.3 If it appears that a motor vehicle will hinder work operations hereunder, the Contractor shall be responsible for contacting the owner of the vehicle to have the owner move the vehicle. The Contractor shall take all necessary precautions for the safety of its employees and the public and shall provide and adequately maintain all necessary safeguards at all times as required by the conditions and progress of the work. The Contractor shall comply with all applicable provisions of federal, state, and local safety laws and codes to prevent accident or injury to persons or property.
- 10.4 The Director or designee shall have underground utilities located. When subsurface utilities are encountered, the Contractor shall immediately notify the responsible utility agency, or company, and the Director or designee. The Contractor, at its own expense, shall restore to original condition all damages to facilities, and other property damaged by his work.

11.0 INSPECTIONS:

- 11.1 Federal, state, or other authorities shall inspect all trees to be planted hereunder before removal from the nursery as required by local law. Required certificates declaring that the trees are free of any diseases and insects shall accompany each order or shipment of trees. The City reserves the right to inspect and accept or refuse acceptance of any trees before they are removed from the delivery truck at the work site. A delivery truck driver, or other agent of the Contractor, shall notify the Director or designee by telephone as listed below before leaving for a work site each day to facilitate these on-truck tree inspections.

Contact:

Project Manager – Victor Cordova (Directors designee)
Urban Forestry (Directors designee)
6501 Memorial Drive
Houston, Texas 77007
713-867-0379 off.
713-503-1254 cell.

Parks and Recreation – Contract Administrator/Procurement Specialist
Walter Guthrie
601 Sawyer No. 234
713-865-9378 off
713-803-3533 fax.

- 11.2 The City reserves the right to perform and unscheduled inspection of any work site at any time without notice given to the Contractor. The Contractor shall notify the Director or designee by telephone on the morning of each working day to inform the City of the location of the work to be performed hereunder for that day.

12.0 SITE CLEAN UP:

- 12.1 Once the tree(s) have been planted, all debris, 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. In all industrial, residential, commercial, park, and similarly maintained areas, all grass, gravel and garden areas shall be left "fan rake clean". All driveways, walkways, roads, curbs, patios, and other asphalt, concrete, stone and similar surfaces shall be "broom clean" when the site is vacated at the end of each shift and at the end of each day. The Director or designee shall have the right to perform, or have performed, inspections of all places where work is undertaken in connection with this contract.

13.0 PAYMENT AND COMPENSATION:

- 13.1 For and in consideration of the services to be performed under this contract, the City agrees to pay and the Contractor agrees to accept the bid pricing in accordance with the schedule of Fees and Costs, Exhibit "H" as full compensation for all work performed during this contract. To receive payment the Contractor must:
- 13.1.1 Submit a monthly original invoice and one copy showing the corresponding services performed. Each invoice must be accompanied by a breakdown of the number and species of trees planted or maintained the location where the trees were planted or maintained, and the cost of trees.
 - 13.1.2 Contract and Ordinance Numbers must be displayed on all invoices submitted, delivery and acceptance of Tree Planting and Maintenance Services by site.
 - 13.1.3 If the Contractor has previously been paid for items or services that have later been found deficient, defective or otherwise unacceptable, subsequent invoices will be adjusted accordingly.
 - 13.1.4 The Contractor shall submit an original invoice for payment and a copy to Mr. Brad Hendricks to the addresses listed below for provision of Purchase, Installation and Planting of Trees, and Maintenance Services (along with

ordinance and contract number), which have been inspected and accepted by the City of Houston Parks & Recreation Department.

City of Houston Parks & Recreation Department -
Attn: Accounts Payable
601 Sawyer No. 211
Houston, Texas 77007
713-865-4552

and a copy of the invoice to:

City of Houston - Urban Forestry
Attn: Superintendant
6501 Memorial Drive
Houston, Texas 77007
713-867-0378 off.
713-598-5404 cell.

14.0 PERFORMANCE TIME:

- 14.1 For quantities between 1,000, and 4,000 trees, the Contractor shall have 90 calendar days to plant and completed all associated work required herein, i.e., scope of work. 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 or designee.
- 14.2 Minimum quantity of 1000 trees shall be planted per work order (s), per year. Estimated quantities of species per year are as follows; Bur Oak 500, Winged Elm 900, Crape Myrtle 1000, Cedar Elm 100, Bald Cypress 1600, Green Ash 800, Loblolly Pine 500, Redbud 500 and all open areas located inside Parks and Recreation Parks will be installed in the first year of contract.

15.0 LIQUIDATED DAMAGES:

- 15.1 Any payment due to the Contractor for work completed under this contract shall be withheld until all property damage has been completely restored or proper arrangements have been made to accomplish the same to the satisfaction of the Director or designee.
- 15.2 If the Contractor fails to complete all site listed on the written planting schedule that has been agree upon in writing within the agreed time period and/or receipt of purchase order, liquidated damages shall be charged. Liquidated damages in the amount of One Hundred Dollars (\$100.00) per calendar day shall be assessed for each calendar day for trees not being completed on the agreed upon planting schedule and/or work order remaining incomplete. For all actions that require approval from the City, response must be received within twenty-four (24) hours after submission in writing. If no approval is submitted to the Contractor in writing, the Contractor shall proceed with all aspects of the scope of work that do not require the City's approval and proper relief in the schedule will be negotiated with the Contractor and liquidated damages will not be enforced.

16.0 ADDITIONS AND DELETIONS OF SITES:

- 16.1 During the term of the Contract, the City may elect to add and/or delete sites to the Contract, for purposes indicated in the Scope of Services. This option will be exercised by means of a written notice signed by the Director and designee, provided however that the Contractor upon receipt of said notice is allowed two weeks prior to commencing operations at any new site that may be added.
- 16.2 If additional site(s) are added to the Contract, the rate(s) shall be based upon a similar site(s) current included pricing in the Contract, as agreed upon between the Director or designee and the Contractor. Any site(s) removed from the Contract shall result in the appropriate amount being subtracted from the total.
- 16.2 If at anytime site(s) are added to the Contract after the initial tree planting period, the Contract may be extended to allow only for the warranty maintenance of planted trees, up to their twenty-four (24) month warranty period after the initial inspection and approval date of the tree planting.
- 16.3 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 therefor will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the contract fee schedule.

17.0 UTILITIES:

- 17.1 The Contractor shall be responsible at no additional cost to the City, for any and all work, expenses, or special precautions caused by the existence or proximity of utilities encountered in performing the work hereunder. All workmen working in the vicinity of utility lines shall be fully briefed and instructed in safe working procedures appropriate to the voltage of the electrical apparatus on or near the work site.
- 17.2 Utilities are taken into account in the design prepared by the Director or its designee. Utilities will remain marked throughout the tree plantings. The Contractor may move the trees slightly if interference by a utility line, but a movement of more than 18" must be pre-approved by the Director or designee. The Contractor should ensure relevant markings are maintained to avoid damages.
- 17.3 The Contractor's site supervisor or supervisors in charge of any group or groups shall be fully aware of the safety procedures and ANSI standards to be followed in case of an accident involving utility lines. When subsurface utilities are encountered during tree planting, the Contractor shall immediately notify the responsible utility agency or company, and the Director or designee. The Contractor, at its expense, shall restore to its original condition all damages and alterations to utilities, and other property damaged by it.

18.0 ALTERNATE WORK PLAN, INCLEMENT WEATHER:

- 18.1 The Contractor shall contact the City of Houston designee immediately upon possible disruption of work by rain to be allowed as a rain day. The Director or designee must confirm rain days before being allowed as a rain day. Rain days will not be charged to the Contractor as liquidated

damages if the Director or designee concur that the weather conditions merit a rain day, and hence postponement of work. If the Director or designee does not concur that a rain day is merited that the Contractor will be penalized for the delays by way of liquidated damages.

19.0 LICENSES AND PERMITS:

19.1 The Contractor shall be responsible for determining and securing, at its own expense, any and all licenses and permits that are required in any manner connect with providing the work under this contract. Such fee, unless otherwise specified shall be included in the total contract costs bid in this contract for the work. The Contractor shall notify the Director or designee in writing at any time during the contract term, within (2) days of any of suspension, revocation and renewal.

20.0 EQUIPMENT:

20.1 All safety equipment for the purpose for which it is being used shall be OSHA approved.

21.0 METHODS OF OPERATION – WORK WEEK/HOURS:

21.1 The normal workweek for providing the services under this Contract shall be Monday through Friday from 7:00 am to 7:00 pm only. Any change in the workweek, shall be only by mutual agreement (immediately confirmed in writing) between the Contractor and the Director or designee.

22.0 PERFORMANCE OF WORK:

22.1 The Contractor shall fax, or e-mail work locations for a particular day to the Director or designee between 7:00 a.m. and 9:00 a.m. each workday. Work hereunder shall be performed on City property, which may include street right-of-ways, parks, esplanades, parkways, and other City properties.

23.0 ASSIGNMENT OF WORK:

23.1 The Contractor shall be notified by the Director or designee, by telephone or E-mail, when a "notice to proceed" has been prepared. The Contractor shall begin work within two (2) working days after receiving telephone notification. The work involved for a "work order" shall be completed within thirty (30) Calendar days from the date the Contractor receives the "work order". 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 or designee.

24.0 ESTIMATED QUANTITIES NOT GUARANTEED:

24.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of tree planting 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.

25.0 WARRANTY OF SERVICES:

- 25.1 *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.
- 25.2 "Correction" as used in this clause, means the elimination of a defect.
- 25.3 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.
- 25.4 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.
- 25.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

26.0 PRICE ADJUSTMENT:

The Contractors opportunity for annual price escalation shall be based on the U.S. Consumer Price Index for the previous 12 months, not to exceed a maximum of 10% per year and approved in advance by the City Purchasing Agent.

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Wayside	Little York	Claiborne	Median 1	305	18	5,490	220	Loblolly Pine	514
			Median 2	200	18	3,600	144	Winged Elm	514
			Median 3	200	18	3,600	144	Crape Myrtle	513
			Median 4	200	18	3,600	144	Green Ash	513
			Median 5	225	18	4,050	162	Redbud	513
			Median 6	215	18	3,870	155		2,567
			Median 7	225	18	4,050	162		
			Median 8	250	18	4,500	180		
			Median 9	220	18	3,960	158		
			Median 10	275	18	4,950	198		
			Median 11	450	18	8,100	324		
			Median 12	200	18	3,600	144		
			Median 13	100	18	1,800	72		
			Median 14	100	18	1,800	72		
			Median 15	100	18	1,800	72		
			Median 16	100	18	1,800	72		
			Median 17	100	18	1,800	72		
			Median 18	100	18	1,800	72		
				3,565	324	64,170	2,567		

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Wayside	Tidwell	Ley Road	Median 1	155	18	2,790	112	Loblolly Pine	460
			Median 2	0	0	0	0	Winged Elm	460
			Median 3	115	18	2,070	83	Crape Myrtle	460
			Median 4	165	18	2,970	119	Green Ash	460
			Median 5	170	18	3,060	122	Redbud	460
			Median 6	170	18	3,060	122		2,300
			Median 7	170	18	3,060	122		
			Median 8	170	18	3,060	122		
			Median 9	170	18	3,060	122		
			Median 10	170	18	3,060	122		
			Median 11	170	18	3,060	122		
			Median 12	170	18	3,060	122		
			Median 13	170	18	3,060	122		
			Median 14	170	18	3,060	122		
			Median 15	170	18	3,060	122		
			Median 16	140	18	2,520	100		
			Median 17	125	18	2,250	90		
			Median 18	130	18	2,340	94		
			Median 19	0	0	0	0		
			Median 20	500	18	9,000	360		
				3,200	324	57,600	2,300		

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Wayside	610	I-10	Median 1	235	18	4,230	169	Loblolly Pine	697
			Median 2	140	18	2,520	101	Winged Elm	697
			Median 3	250	18	4,500	180	Crape Myrtle	697
			Median 4	330	18	5,940	237	Green Ash	696
			Median 5	205	18	3,690	148	Redbud	696
			Median 6	335	18	6,030	241		3,483
			Median 7	260	18	4,680	187		
			Median 8	220	18	3,960	158		
			Median 9	410	18	7,380	295		
			Median 10	160	18	2,880	115		
			Median 11	160	18	2,880	115		
			Median 12	290	18	5,220	209		
			Median 13	310	18	5,580	223		
			Median 14	70	18	1,260	50		
			Median 15	110	18	1,980	79		
			Median 16	110	18	1,980	79		
			Median 17	105	18	1,890	76		
			Median 18	105	18	1,890	76		
			Median 19	100	18	1,800	72		
			Median 20	105	18	1,890	76		
			Median 21	110	18	1,800	79		
			Median 22	110	18	1,800	79		
			Median 23	110	18	1,800	79		
			Median 24	50	18	900	36		
			Median 25	105	18	1,890	76		
			Median 26	345	18	6,210	248		
				4,840	468	86,580	3,483		

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Wayside	Mykawa	Glenhurst	Median 1	280	125	35,000	1,400	Bur Oak	495
			Median 2	215	125	26,875	1,075	Winged Elm	495
				495	250	61,875	2,475	Crape Myrtle	495
								Green Ash	495
								Bald Cypress	495
									2,475

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Clay Road	Eldridge	Addicks Dam	Median 1	386	13	5,018	231	Bald Cypress	4,089
			Median 2	660	13	8,580	396		4,089
			Median 3	820	13	10,660	492		
			Median 4	845	13	10,985	507		
			Median 5	1,165	13	15,145	699		
			Median 6	1,055	13	13,715	633		
			Median 7	540	13	7,020	324		
			Median 8	845	13	10,985	507		
			Median 9	500	13	6,500	300		
				6,816	117	88,608	4,089		

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
S. Dairy Ashfo	Whittington	Westheimer	Median 1	235	8	1,880	376	Bur Oak	598
			Median 2	0	0	0	0	Winged Elm	597
			Median 3	30	18	540	24	Crape Myrtle	597
			Median 4	400	18	7,200	320		1,792
			Median 5	640	18	11,520	512		
			Median 6	150	18	2,700	120		
			Median 7	210	5	1,050	210		
			Median 8	90	5	450	90		
			Median 9	90	5	450	90		
			Median 10	50	5	250	50		
				1,895	100	26,040	1,792		

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 5 GALLON	SPECIES	QUANTITY
Belfort	Mykawa	Telephone	Median 1	1,125	25	28,125	675	Bur Oak	467
			Median 2	157	25	3,925	93	Cedar Elm	467
			Median 3	130	25	3,250	78	Crape Myrtle	467
			Median 4	130	25	3,250	78	Bald Cypress	467
			Median 5	135	25	3,375	81	Green Ash	466
			Median 6	100	25	2,500	60		2,334
			Median 7	350	25	8,750	210		
			Median 8	340	25	8,500	204		
			Median 9	245	25	6,125	147		
			Median 10	275	25	6,875	165		
			Median 11	200	25	5,000	120		
			Median 12	257	25	6,425	153		
			Median 13	260	25	6,500	156		
			Median 14	190	25	4,750	114		
							2,334		

EXHIBIT BB

TREE PLANTING LOCATIONS

STREET	BOUNDARY 1	BOUNDARY 2		LENGTH	WIDTH	PLANTING AREA (SQ.FT.)	TREES 15 GALLON	SPECIES	QUANTITY
RR Track (ROW)	Kansas	Rawls		920'	20'	18,400	15	American Beauty Berry	15
								Arrowwood Viburnum	10
								Bald Cypress	4
								Drummond Red Maple	15
								Green Ash	5
								Hackberry	2
								Loblolly Pine	10
								Mexican Plum	5
								Parsley Hawthorne	5
								Pecan	15
								Red Bud	5
								Sassafras	5
								Swamp Chestnut Oak	4
								Sweet Bay Magnolia	10
								Sweetgum	5
								Sycamore	2
								Water Oak	4
								Western Mayhaw	10
								White Oak	4
								Yaupon	15
									150

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
MWBE REQUIREMENTS

ATTACHMENT "C"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. TNL, Inc. (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. TNL, Inc. (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law, not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

ATTACHMENT "C"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, GEORGE W. MOEKS President as an owner or officer of
(Name) (Print/Type) (Title)
LANDPRO, INC. (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 12-14-08

Contractor Name LANDPRO, INC.
Signature: [Handwritten Signature]
Title President

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

I, George W. Meeks President
(Name)(Print/Type) (Title)

as an owner or officer of LANDPRO, INC. (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.

12-14-08
Date

George W. Meeks
Contractor Name

Signature
President
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**

I, George H. Meeks President as an owner or officer of
 (Name) (Print/Type) (Title)
LAND PRO, INC. (Contractor or Vendor)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20_____.

AW Initials
 A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Initials
 Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Initials
 Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

_____ Initials
 Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ Initials
 From _____ to _____ the following test has occurred
 (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ Initials
 Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ Initials
 I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

_____ (Date)
George H. Meeks (Typed or Printed Name)
[Signature] (Signature)
President (Title)

**EXHIBIT "H"
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
Loblolly Pine Trees			
1	Loblolly Pine Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	30.15
2	Loblolly Pine Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Winged Elm Trees			
3	Winged Elm Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	31.1
4	Winged Elm Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Crape Myrtle Trees			
5	Crape Myrtle Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	33.07
6	Crape Myrtle Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	94.63
Green Ash Trees			
7	Green Ash Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	30.15
8	Green Ash Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Redbud Trees			
9	Redbud Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
10	Redbud Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	33.07
Bur Oak Trees			
11	Bur Oak Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	30.15
12	Bur Oak Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Bald Cypress Trees			
13	Bald Cypress Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	30.15
14	Bald Cypress Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Cedar Elm Trees			

15	Cedar Elm Tree, 5 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	32.34
16	Cedar Elm Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	94.63
Live Oak Trees			
17	Live Oak Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
American Beauty Berry Trees			
18	American Beauty Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	31.1
Arrowwood Viburnum Trees			
19	Arrowwood Viburnum Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	33
Drummond Red Maple Trees			
20	Drummond Red Maple Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	94.63
Hackberry Trees			
21	Hackberry Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Mexican Plum Trees			
22	Mexican Plum Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	109.24
Parsley Hawthorne Trees			
23	Parsley Hawthorne Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Pecan Trees			
24	Pecan Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Sassafras Trees			
25	Sassafras Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	109.24
Swamp Chestnut Oak Trees			
26	Swamp Chestnut Oak Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Sweet Bay Magnolia Trees			
27	Sweet Bay Magnolia Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Sweetgum Trees			
28	Sweetgum Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Sycamore Trees			
29	Sycamore Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary	each	81.06

	for the planting of each tree.		
Water Oak Trees			
30	Water Oak Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Western Mayhaw Trees			
31	Western Mayhaw Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
White Oak Trees			
32	White Oak Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Yaupon Trees			
33	Yaupon Tree, 15 gallon, pricing to include soil prep, mulching, tree watering and all labor, equipment and materials, warranty necessary for the planting of each tree.	each	81.06
Monthly Maintenance Fee			
34	Monthly maintenance fee, year one, to include watering, maintenance of trees, maintenance of mulch and stakes	each	4.24
35	Monthly maintenance fee, year two, to include watering, maintenance of trees, maintenance of mulch and stakes	each	4.29
36	Monthly maintenance fee, year three, to include watering, maintenance of trees, maintenance of mulch and stakes	each	4.30
37	Monthly maintenance fee, year four, option year one, to include watering, maintenance of trees, maintenance of mulch and stakes	each	4.30
38	Monthly maintenance fee, year five, option year two, to include watering, maintenance of trees, maintenance of mulch and stakes	each	4.30

EXHIBIT "I"
PAY OR PLAY PROGRAM



CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: LANDPRO, Inc. \$ 1,295,296.70 JWLK
12/23/08
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 11450 FM 1960 W. SUITE 214, HOUSTON, TX. 77065

Project No.: [GFS/CIP/AIP/File No.] 550-123060

Project Name: [Legal Project Name] TREE PLANTING AND MAINTENANCE SERVICES

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

Yes No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.

Yes No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:
 (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
 (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

Yes No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

Yes No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.

Yes No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

Yes No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Following Information is Mandatory	Prime Contractor	Sub-Contractor
Total No. Of Employees on City Job		
No. Of Employees "Playing"		
No. Of Employees "Paying"		
No. Of Employees "Exempt"		

I hereby certify that the above information is true and correct.

[Signature] 12-15-08
 CONTRACTOR (Signature) DATE
George W. Meeks, President
 NAME AND TITLE (Print or type)