



CITY OF HOUSTON STRATEGIC PURCHASING DIVISION

Issue Date: May 15, 2009

FORMAL INVITATION FOR BEST VALUE BID

LANDSCAPING SERVICES FOR CONVENTION AND ENTERTAINMENT FACILITIES DEPARTMENT

BID NO: S11 – L23254

NIGP CODE: 988-52

The City of Houston, Administration & Regulatory Affairs Department (ARA) invites prospective contractors to submit a sealed “**BEST VALUE**” bid for Landscaping Services for the City of Houston.

Sealed bids, in duplicate, must be received at the City of Houston, City Secretary’s Office, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 no later than Thursday, June 25, 2009 at 10:30 A.M. No bids will be accepted after the stated deadline. All bids will be opened and publicly read in the City Council Chambers, City Hall Annex, Public Level, 900 Bagby at 11:00 A.M. on that date for the goods and services listed herein.

ECTRONIC BIDDING

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

A complete version of this ITB can be downloaded from the City’s website at <http://purchasing.houstontx.gov/>, or the ITB document may be obtained from ARA, Strategic Purchasing Division, Basement Level, Room B121A, City Hall, 901 Bagby, Houston, Texas 77002.

A Pre-Bid Conference will be held **on Wednesday, June 10, 2009 at 1:30 P.M.** in the Strategic Purchasing Division, Conference Room No. 2, located at 901 Bagby, City Hall Basement Level, Houston, Texas.

All Prospective Bidders are urged to be present. It is the bidder’s responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

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

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it. City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

Inquiries concerning this ITB should be submitted to Strategic Purchasing, Service Contract Section, Room B 403, City Hall, 901 Bagby, Houston, Texas 77002, Attn: Gloria Jordan-King, phone: (832) 393-8750, fax: (832) 393-8758, Gloria.king@cityofhouston.net no later than **5:00 P.M., Tuesday, June 16, 2009.**

***CONTENTS:**

SECTION A: OFFER
SECTION B: SCOPE OF WORK/SPECIFICATIONS
SECTION C: GENERAL TERMS & CONDITIONS
SECTION D: EVALUATION MATRIX

***NOTE 1: Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

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

SECTION A



**LANDSCAPING SERVICES
FOR
CONVENTION AND ENTERTAINMENT FACILITIES DEPARTMENT
BID INVITATION NO. S11-L23254
NIGP CODE:**

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

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

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

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

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

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

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide wood waste removal services for the City in accordance with attached Specifications.

Additional Required Forms to be included with this Bid:

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

| TABLE 1 - REQUIRED FORMS |
|--|
| Affidavit of Ownership.doc |
| Fair Campaign Ordinance.doc |
| Statement of Residency.doc |
| Conflict of Interest Questionnaire.doc |
| Bidders Qualifications & Experience |
| Pay or Play Program Acknowledgement Form |
| Bid Bond |

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

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

BID BOND:

The Contractor shall be required to provide and submit with the bid a Bid Bond in the amount of 10% of the total amount bid by the Contractor. The Bid Bond shall be in the same form as that distributed by the City, and attached hereto, all duly executed by this Bidder (as "Principal") and by a corporate surety company licensed to do business in the State of Texas, and if the amount of the bond is greater than \$100,000.00 the surety must hold a certificate of authority from the United States Secretary of the Treasury, or a Cashier's or a Certified check in a like amount. Company or personal checks are not acceptable.

**CITY OF HOUSTON
LANDSCAPING SERVICES
FOR CONVENTION AND ENTERTAINMENT FACILITIES DEPARTMENT**

LIST OF PREVIOUS CUSTOMERS

In order to receive bid award consideration, the bidder must be able to demonstrate that it is currently providing or has had at least one contract, as a prime contractor, for landscaping services that are similar in size and scope to those in this ITB. **Bidder must have references documenting that it has performed landscaping services of a scope similar to that identified in this Best Value invitation to bid, at some of the following types of facilities: theaters, convention centers, large public assembly buildings and auditoriums, and large high-rise buildings.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility. Bidder must have references documenting that it has performed landscaping services at locations similar in size to the facilities named in this ITB.**

1. Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years of Service: _____

Services Provided: _____

E-mail Address _____

2. Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years of Service: _____

Services Provided _____

E-mail Address _____

3. Name: _____

Address: _____

City & State: _____
Name & Phone Number of Contact: _____ Years of Service: _____
Services Provided: _____
E-mail Address _____

4. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Service: _____
Services Provided: _____
E-mail Address _____

5. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Service: _____
Services Provided: _____
E-mail Address _____

SITE INSPECTION

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

QUALITY AND WORKMANSHIP

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

GENERAL GUIDANCE IN PREPARING PRICING ITEMS ON THE E-BID FORM

Note: The word each in the “Estimated Frequency/yr.” column means the estimated number of times per year that the service(s) will be needed. For example, “Tree Pruning—Major” at 1 (time) each year means the bidder should provide its company’s price for major pruning of all trees at that particular location one (1) time per year (not the cost for pruning each tree).

Prices for each of the tasks listed are all-inclusive, per occurrence of the entire task at the Landscaped Area indicated. For example, one occurrence of ground cover trimming means each time the task of trimming all ground cover at a particular Landscaped Area is completed, whether the work is completed in one day or started on one day and completed the next day. “All-inclusive” means that the prices for each occurrence include all labor, materials, supplies, equipment, fuel, and transportation that are necessary for Contractor to perform each task, at each different Landscaped Area.

As a further example, “Seasonal Installation” means the entire task, from beginning to end, of obtaining a Facility Manager’s approval for the purchase of new seasonal annuals, buying enough healthy, new annual plants for that particular Landscaped Area, transporting the plants to the Landscaped Area, removing the old plants, carefully planting the new plants, with growing medium or fertilizer if needed, watering the new plants as appropriate, and discarding any old plants in a responsible manner, off site. The City will pay Contractor for the actual cost of additional plants, provided that Contractor properly documents the actual costs and attaches receipts or copies of receipts to invoices as requested.

Note: To ensure accuracy in bidding, bidders should be aware that each Landscaped Area is a different size and has different landscaping requirements. Prices should vary accordingly. No allowances will be made for mistakes in bidding after the bid is publicly opened.

For the prices quoted, Contractor shall furnish all necessary labor, equipment, material, supplies, personnel, services, and all activity necessary for, or incidental to, performing the Landscaping Services as specified in the Agreement. The e-bid form must be completed for all five (5) years.

All quantities listed are estimated quantities. The actual quantities may be higher or lower than any estimates, and Contractor shall be paid only for actual Landscaping Services performed, subject to prior direction and approval from the Director’s designee or a Facility Manager.

1.0 **Tours**

Tours of the grounds at various Facilities will follow the Pre-Bid Conference. **To ensure accuracy in bidding, all bidders are strongly encouraged to tour the grounds at all facilities.** Other arrangements for on-site visits can be made by contacting the Facility Managers of the following facilities: Theater District Parks (Brian Watson: 713-250-3666), Jones Hall (Vivian Montejano: 713-236-5705 or 713-227-3974), George R. Brown Convention Center (David Osterhout: 713-853-8013), Miller Outdoor Theatre (Shawn Hauptmann: 713-533-3275), and the Houston Center for the Arts (Larry Larson: 713-250-3633) from 9:00 a.m. to 5:00 p.m., Monday through Friday.

1.1 **Bidders as a minimum must:**

- 1.1.1 Be able to comply with the required landscaping schedules, taking into consideration all existing business commitments;
 - 1.1.2 Have adequate financial resources, or the ability to obtain such resources as required during the performance of the Agreement;
 - 1.1.3 Provide proof of financial stability by submitting your company's audited annual financial statements, prepared by a certified public accountant for the past two years or copies of your Federal Tax forms filed to the Internal Revenue Service (IRS) for the past two years;
 - 1.1.4 Have a satisfactory record of past performance and contract compliance;
 - 1.1.5 Have necessary personnel and management capability to perform the services required by the Agreement, as more fully described in Section "E" herein entitled Scope of Services.
 - 1.1.6 Be qualified as an established firm regularly engaged in the type of business necessary to fulfill the Agreement requirements;
 - 1.1.7 Be able to secure all necessary parts and equipment to repair and maintain irrigation systems.
 - 1.1.8 Provide a complete inventory of all equipment and tools owned by your company;
 - 1.1.9 Provide color photographs of uniforms to be used for the Agreement, if awarded; and be qualified and eligible to receive the Agreement award under applicable laws and regulations.
- 1.2 Bids shall be considered only from bidders who can demonstrate that they are currently providing or have had one contract for landscape service that's similar in size and scope to this contract and is or have performed these services satisfactorily. As demonstration of satisfactory performance for these services, bidders shall provide a list of current and former customers, with contact names and telephone numbers, and list the types of landscaping services provided for each customer. The City shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.
- 1.3 Bidders should also provide a listing of employees who will perform Agreement services along with the number of years each employee has been employed with the company and job descriptions. Resumes for each of the specialized staff/subcontractor positions proposed for this Agreement (the Certified Landscaped Professional, the Commercial Pesticide Applicator, and the Licensed Commercial Irrigator), should be provided, including all certifications and trainings completed by each such employee/subcontractor.

Bidders as a minimum must: (continued)

- 1.4 Bidder should include a description of any accidents or personal injury litigation associated with any other agreements its company has had in the past five (5) years.
- 1.5 Bidder should list references for both current agreements and any agreements that have been terminated in the past five (5) years.
- 1.6 Bidder should submit a listing of any OSHA-related issues, reviews, or reports concerning its company in the past five (5) years.
- 1.7 Bidder should submit copies of current licenses and certificates described in the section below.
- 1.8 Include an organizational chart in your bid response, showing only the number of employees, including subcontractor employees, who will be dedicated solely to the Agreement contemplated by this ITB, if awarded. Do not include office personnel, such as accounting clerks or administrative staff, who routinely work on other matters for your company. Include the job title of each employee who will be dedicated only to the Agreement, if awarded

2.0 REQUIRED LICENSES AND CERTIFICATIONS

- 2.1 To be considered responsive, bidders should submit copies of the following licenses and certificates with their bids or within five (5) working days from receipt of a written request from the City to do so. Submitting false or inaccurate information will be considered non-responsive.
- 2.2 The Contractor shall have a “**Certified Landscape Professional**” on its permanent staff, or under subcontract, assigned to the Agreement. If the certificate is not included with the bid, the bidder shall be required to provide such certificate to the City of Houston within five (5) working days after receipt or a written request from the City to do so.
- 2.3 Contractor is required to have on permanent staff, or under subcontract, a licensed **Commercial Pesticide Applicator** who is certified by the Texas Department of Agriculture or by the Structural Pest Control Board. If the certificate is not included with the bid, the bidder shall be required to provide such certificate to the City of Houston within five (5) working days after receipt or a written request from the City to do so.
- 2.4 Also required on staff, or under subcontract, is a **Licensed Commercial Irrigator** approved by the Texas Board of Irrigators. If the Irrigator’s license is not included with the bid, the bidder shall be required to provide such certificate to the City of Houston within five (5) working days after receipt or a written request from the City to do so.

3.0 EQUIPMENT, TOOLS, SUPPLIES, AND MATERIALS REQUIREMENTS

Contractor shall have sufficient equipment, miscellaneous small tools, materials, and supplies on hand throughout the term of the Agreement in order to perform the Landscaping Services in an efficient and workmanlike manner. Such equipment, tools, materials, and supplies shall include, but are not limited to, the items specified in Section “E” herein entitled Scope of Services.

4.0 SITE INSPECTION AND STAFFING

- 4.1 The City reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of the Agreement, as defined herein. For example, the bidder should have an adequate inventory of landscaping materials and sprinkler parts.
- 4.2 At the beginning of the Agreement, as defined herein, the successful bidder ("Contractor") shall provide evidence of each worker's qualifications, background checks, and applicable certifications to the Director. Thereafter, the Contractor shall provide updates of background checks and workers' certificates to the Director as they are renewed or upon request. Each landscaping worker shall have at least six (6) months' experience providing landscaping services.
- 4.3 One of the landscaping workers shall be a working supervisor (the "Supervisor") of the other landscaping workers. The Supervisor and Contractor's professional staff or subcontracted professionals (the Certified Landscape Professional, the Commercial Pesticide Applicator and the Licensed Commercial Irrigator) shall each have at least two (2) years' previous work experience providing landscaping services or services related to the services they will provide under the Agreement, if awarded.
- 4.4 The bidder's office facility shall meet all applicable Federal, State, and City of Houston laws, local regulations, ordinances, codes, and standards that govern such facilities and the equipment therein.
- 4.5 The bidder and its subcontractors shall be ready for a Shop Inspection of their offices by the City "Inspection Team" within 72 hours following receipt of a notice from the City Purchasing Agent or the Director. The City "Inspection Team" shall consist of City employees who have responsibilities related to monitoring compliance with the new agreement. There may be more than one "Shop Inspection" to determine whether the bidder and/or its subcontractors are in the landscaping services business and appear capable performing the services called out in the published scope of work.
- 4.6 Failure of the bidder to satisfy requirements of the City Inspection and staffing requirements shall disqualify the bidder from further consideration.

PROPOSED STAFFING

Please complete the following application. Include information for professional staff, landscaping supervisor, and landscaping workers to be assigned to the Agreement, if awarded. Attach additional sheets if needed.

| | |
|-------------------------------|------|
| 1. Company | |
| Company Name: | |
| Primary Company Contact Name: | |
| Address: | |
| Phone: | Fax: |
| E-mail address: | |

| | |
|---------------------------------|---|
| 2. Professional Staff | (Note: Attach resumes and copies of licenses or certificates for professional staff) |
| Employee Name: | |
| Primary Area of Responsibility: | Certified Landscape Professional |
| Address: | |
| Phone: | Fax: |
| E-mail address: | |
| | |
| Name: | |
| Primary Area of Responsibility: | Licensed Commercial Irrigator |
| Address: | |
| Phone: | Fax: |
| E-mail address: | |
| | |
| Name: | |
| Primary Area of Responsibility: | Licensed Commercial Pesticide Applicator |
| Address: | |
| Phone: | Fax: |
| E-mail address: | |

| | |
|----------------------------------|-------------------------------|
| 3. Landscaping Supervisor | |
| Employee Name: | |
| Primary Area of Responsibility: | Landscaping Supervisor |
| Address: | |
| Phone: | Fax: |
| E-mail address: | |

4. Landscaping Workers

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

Employee Name:
Primary Area of
Responsibility:

Address:

Phone:

Fax:

E-mail address:

SECTION B
SCOPE OF LANDSCAPING SERVICES WORK/SPECIFICATIONS

1.1 SERVICES IN GENERAL

The Contractor shall provide all supervision, labor, materials, supplies, tools, equipment, fuel, and transportation necessary for producing and maintaining healthy and aesthetically pleasing landscaping for the facilities defined herein. The following specifications comprise the scope of services for each of the facilities listed herein (the "Landscaped Areas" or "Facilities"). All materials and equipment must be approved by a Facility Manager or the Director's Designee prior to being implemented. The Contractor shall be required to verify that its employees and approved subcontractors fulfill all of the requirements set out herein. The contractor must comply with the specifications for each Landscaped Area. All changes in subcontractors are subject to the prior written approval of the Director.

1.2 LANDSCAPED AREAS

Landscaping Services are required for the following Facilities/Landscaped Areas located in Houston, Texas:

- 1.2.1 **"George R. Brown Convention Center"** includes the landscaped areas on or near the George R. Brown Convention Center, including any form of landscaping in the median along Avenida de las Americas, from Polk Street to Texas Avenue; the Chenevert pedestrian walkway and the block ending at Texas Avenue; including landscaping around the perimeter of the two historic houses located on that block, bounded by Rusk and Capitol streets; and the two staging lots at 2200 Dallas Street.
- 1.2.2 **"The Hanging Tree"** landscaped area means the location of the historic oak tree located near the old Albert Thomas Convention Center, near the corner of Capitol and Bagby streets in downtown Houston, and the four large twenty inch terra cotta pots located nearby at the Theater District Parking Garage's Capitol Street entrance and exit. Contractor shall maintain the Hanging Tree and the irrigation underneath it, in addition to the four large twenty inch terra cotta pots located nearby.
- 1.2.3 **"The Houston Center for the Arts"** includes all landscaped areas surrounding the City-owned building located at 3201 Allen Parkway. Services include all seasonal color changes in front of the building, planters, the courtyard, and the exterior of the warehouse. Also included are the trees on the west side of the building and the landscaping surrounding the parking lot.
- 1.2.4 **"Jones Hall"** includes the landscaped areas and plants in the exterior levels of Jones Hall, all trees surrounding the building, including 18 exterior trees and 18 exterior tree wells, the Courtyard planters, and other containerized plants.
- 1.2.5 **"Jones Plaza"** is the downtown plaza located between Bayou Place and Jones Hall. Landscaping of Jones Plaza encompasses all landscaped areas including hanging baskets, containerized plants, and trees surrounding and located on Jones Plaza. Contractor shall furnish durable year round plants in the planters and flower beds.

1.2 LANDSCAPED AREAS: (continued)

- 1.2.6 **"Miller Outdoor Theatre"** includes the landscaped areas surrounding the outdoor theater located in Hermann Park at 100 Concert Drive, Houston, Texas. Landscaping at this location includes grass, trees, ground cover, irrigation, and seasonal flower installations as requested.
- 1.2.7 **"Root Memorial Square Park"** is the downtown park located near the Toyota Center basketball arena. It is bordered by Clay, Bell, Austin, and La Branch streets. Contractor shall maintain all landscaped areas including trees and Azalea bushes.
- 1.2.8 **"Sabine Promenade"** is a 23-acre waterfront park adjacent to Buffalo Bayou (the "Bayou") that includes abundant native perennials flanking the park's stairways, a variety of trees and sun and shade gardens placed throughout to provide continual color. On both sides of the Bayou, it also includes hike and bike trails, 12 street-to-Bayou access points, dramatic lighting, canoe launches and civic artwork. It links the Allen Parkway/Memorial Drive trails at the Sabine Street Bridge with Sesquicentennial Park in downtown.
- 1.2.9 **"Sweeney Clock Triangle"** is a small park-like area located on a triangular esplanade between Capitol Street and Rusk Street, on Bagby Street. All landscaping and irrigation is to be maintained, including all trees.
- 1.2.10 **"Talento Bilingue de Houston"** is a City-owned facility located at 333 S. Jensen. Contractor shall provide services at all landscaped areas around the exterior of the building and the grass area at the rear of the building up to the railroad tracks.
- 1.2.11 **"Wortham Theater Center"** includes all landscaped areas, trees, and any hanging baskets and plants in containers surrounding the Wortham Theater Center, including Fish Plaza, Sesquicentennial Parks I and II.

1.3 LANDSCAPING TIME FRAME

Upon receipt of a Notice to Proceed from the Director or City Purchasing Agent, the Contractor shall provide Landscaping Services at the locations described in Section 1.2 above, from the beginning of the Agreement, in accordance with the specifications in this Section and the attached landscaping schedules. Contractor shall report to the Director's Designee and the applicable Facility Manager regularly about the Landscaping as often as requested to do so.

2.0 LABOR, SUPERVISION, AND PROPERTY DAMAGE

2.1 LABOR

- 2.1.1 The Contractor shall provide an experienced supervisor with the technical skills and knowledge necessary to perform all work and who shall work diligently and efficiently to ensure that all landscaping personnel, including subcontractors, meet the performance standards set out herein. The supervisor shall have at least five (5) years' experience as a landscaping supervisor and must consult with and act in accordance with instructions from the Certified Landscape Professional assigned to the Agreement. Contractor must provide the City with a copy of the supervisor's resume and must provide a copy of the Certified Landscape Professional certificate, at the beginning of the Agreement and as any changes occur throughout the term of the Agreement.

- 2.1.2 Contractor must provide an adequate number of landscaping workers to fulfill the requirements of this Agreement in an effective manner. Each of the landscaping workers must have at least six months' previous landscaping experience and must be trained in the various disciplines of landscaping and grounds maintenance services. The landscaping workers shall perform landscaping services in a good and workmanlike manner meeting the highest standards.
- 2.1.3 Contractor shall provide a permanent office telephone number and two secondary telephone numbers (i.e., pager, cell phone, etc.) where Contractor's representative can be contacted on a twenty-four hour basis, along with an e-mail address and fax (facsimile machine) number. Contractor shall give immediate verbal notification to the Director and the Facility Managers, immediately followed by written notification if there are any changes to the three required telephone numbers or the e-mail address or fax number. The Director may terminate this Agreement immediately if Contractor fails to comply with notification requirements.
- 2.1.4 Contractor shall perform all work Monday through Friday, between the hours of 7:00 a.m. and 7:00 p.m., or the hours directed by the Director's designee. There is no provision for overtime in this Agreement. All work schedules must be coordinated at least one week in advance with the Facility Managers to avoid disruption of events scheduled at the Facilities. Copies of the weekly schedules will also be given to the Director's designee, if requested.
- 2.1.5 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor's employees should be trained to be customer-service oriented and to positively and politely interact with citizens and Department staff when performing contract services. Contractor's employees should be courteous, efficient, and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the Contractor shall take all remedial steps to conform to the standards set by this Agreement and is subject to termination for breach of contract.
- 2.1.6 Contractor shall remove particular landscaping workers from assignment to the Landscaped Areas upon receipt of a written or oral request from the Director in his or her sole discretion to do so. The written or oral request will specify the name of the landscaping worker whose removal is desired. Contractor shall recover the identification badge from any landscaping worker whose removal is requested and return it to the Facility Manager or to the Department's Director of Security. A landscaping worker who is removed from a Facility shall not be allowed to return to any other Department Facility as a landscaping worker.
- 2.1.7 Contractor agrees to meet with the Director and any of the Facility Managers, and other Department staff, as often as necessary to discuss Contractor's performance.

2.2 SUBCONTRACTORS

Contractor shall manage, control, and be responsible for all work performed by its subcontractors/agents. A complete list of all subcontractors shall be submitted to Director for approval prior to any subcontractor commencing work. Subcontractors shall perform at the same standards as those required of Contractor and must be fully insured, as required by the agreement between the City and the Contractor. Contractor shall not substitute subcontractors without Director's prior written approval. The Director shall have the right to determine the locations where subcontractor employees are assigned.

2.3 SPECIAL REQUIREMENTS—LICENSES AND CERTIFICATES

Contractor shall provide copies of the following certificates and licenses to the Director prior to the beginning of the Agreement and shall keep such certificates and licenses in effect throughout the term of the Agreement. Contractor shall provide copies of all renewal licenses and certificates to the Director as the Agreement progresses, upon renewal or when requested. At least one of Contractor's employees must be a member of the Texas Nursery and Landscape Association ("TNLA").

- 2.3.1 Contractor shall have a Certified Landscape Professional on its permanent staff, or under subcontract, and shall provide a copy of the Certified Landscape Professional's certificate to the Director or designee.
- 2.3.2 Contractor is required to have on permanent staff, or under subcontract, a licensed Commercial Pesticide Applicator who is certified by the Texas Department of Agriculture or by the Structural Pest Control Board.
- 2.3.3 Also required on staff, or under subcontract, is a Licensed Commercial Irrigator approved by the Texas Board of Irrigators.
- 2.3.4 Failure to provide evidence of compliance with this section is a material breach of contract. The Director may terminate this Agreement immediately if Contractor fails to provide services from certified and licensed individuals as indicated above.

2.4 SAFETY

2.4.1 SAFETY MEETINGS

Contractor is required to conduct monthly safety meetings with its staff and shall provide documentation to the Director's Designee to verify that safety meetings were held, upon request.

2.4.2 MATERIAL SAFETY DATA SHEET (MSDS)

Contractor is required to provide material safety data sheet ("MSDS") information for all chemical products used at each Landscaped Area, to each Facility Manager who manages a Landscaped Area at which chemical products are used.

2.4.3 SAFETY EQUIPMENT AND TRAINING

2.4.3.1 Contractor shall comply all OSHA requirements applicable to its agreement with the City.

2.4.3.2 Contractor shall provide basic safety instructions or training to its employees and subcontractors about the safe and proper use of landscaping tools, equipment, and materials. Contractor's employees, including subcontractor employees, must take reasonable safety precautions to protect themselves and the public from harm while on City property to perform Landscaping Services. Earplugs are required when using blowers and safety glasses with side shields should be worn when appropriate. Safety training and basic safety items, such as safety glasses and earplugs, which Contractor shall provide to its employees, are an ordinary business expense and will not result in any additional charge to the City.

2.4.3.3 Contractor is required to keep all equipment in safe working condition at all times while in use on City property (e.g., deflectors on all mowers). All equipment must be properly operated and maintained to achieve minimum noise levels.

2.4.3 SAFETY EQUIPMENT AND TRAINING: (continued)

2.4.3.4 Failure to observe and follow safety requirements is a material breach of contract, which may result in immediate termination of this Agreement by the Director, at the Director's sole discretion.

2.5 UNIFORMS AND IDENTIFICATION BADGES

All of the Contractor's personnel working at the Facilities are required to wear a uniform suitable for outdoor work, such as t-shirts and shorts for summer and a uniform jacket for cold weather, subject to pre-approval by the Director or Director's designee, whose approval will not be unreasonably withheld. Contractor shall also ensure that all of its employees, including subcontractor employees, wear photo identification badges issued by the Contractor. Each photo identification badge shall include a recent photograph of the employee, the employee's name, and the Contractor's or subcontractor's company name. Contractor shall be solely responsible for paying all costs associated with the provision of uniforms, uniform jackets, and photo identification badges to its employees. Likewise, any of Contractor's subcontractors shall also bear sole responsibility for providing and paying for their employees' uniforms, uniform jackets, and photo identification badges.

2.6 BACKGROUND CHECKS

At its sole expense, Contractor shall conduct national and local background checks on all temporary and permanent employees, including subcontractor employees, before they are assigned to work at any of the Facilities. Background checks shall include a thorough criminal history check, including registered sex offender status, prior employment history check, inclusive of reasons for dismissals, if any, and level of education. Contractor shall also check the authenticity of all licenses and certificates, at no additional cost to the City. Upon request by the Director or the Director's designee, Contractor shall provide evidence that the background checks have been conducted., both at the beginning of the Agreement and at any other time deemed necessary by the Director or Director's designee throughout the term of the Agreement. The Contractor shall be responsible for all costs associated with the background checks.

2.7 PROPERTY DAMAGE

Contractor shall immediately report to the Director any damage to furnishings or property caused by its employees. Contractor shall be responsible for reimbursing the City for all damage to property and furnishings caused by Contractor's personnel or subcontractors while performing services pursuant to the Agreement.

3.0 SPECIFICATIONS FOR LANDSCAPE MANAGEMENT

3.1 WORKMANSHIP AND INSPECTION

3.1.1 All work is to be performed in a professional manner to the satisfaction of the Director and the Facility Managers, and in complete accordance with the specifications. The Contractor shall not charge for services that are not provided.

3.1.2 A weekly grounds maintenance inspection may be conducted by the Director or Facility Manager. A joint inspection between the Contractor and a Department representative may be requested by the Director or Facility Manager on a monthly basis. At the request of the Facility Manager, the Contractor and/or subcontractor must check in with the Facility Manager upon arrival to and departure from a Landscaped Area. Checklists must be signed off by the Facility Manager when work is completed. An example of a checklist is attached as **Exhibit "BB."** The City will not pay for work that is not on an approved checklist or which has not been otherwise pre-approved in writing by the Director.

- 3.1.3 The City reserves the right to use other contractors to perform irrigation repair services and irrigation inspections. However, if Contractor is requested to perform irrigation repair work, the Contractor must utilize a Licensed Professional Irrigator to supervise or perform all required irrigation work. The Contractor must also use only a Commercial Pesticide Applicator to supervise and perform chemical work, and a TALC Certified Landscape Professional to conduct the required site inspections. The site inspections entail a close inspection of all Landscaped Areas to locate and identify insects and/or disease that may be present, evidence of vandalism, soil erosion, irrigation or drainage problems, and to ensure that the work is in compliance with the specifications in this Scope of Services.
- 3.1.4 There is no irrigation system at Jones Hall. Therefore, the Contractor shall be required to hand water all plants at Jones Hall three times per week or as needed to maintain plant health. The hand watering of plants must be done both at the street level and courtyard level of Jones Hall. The plants requiring hand watering include all containerized plants and the eighteen (18) trees planted around the perimeter of the building.
- 3.1.5 As a safety precaution at heavily trafficked areas such as Jones Hall, "Caution/Wet" signs or traffic cones are to be set out when watering Landscaped Areas near pedestrian walkways such as sidewalks and courtyards.
- 3.1.6 At Jones Hall, all watering of exterior areas, including the Courtyard, should be done before 11:00 a.m. or after 2:00 p.m., unless the Facility Manager approves of another time.
- 3.1.7 Contractor will coordinate its schedule of services with the Facility Managers, to accommodate scheduled events and to prevent disruption of business operations.

3.2 REPORTS AND RECORDS

3.2.1 Reports

Contractor shall provide both written and oral reports and recommendations to the Director, the Director's Designee, and the Facility Managers as specified herein, with respect to conditions, transactions, situations or circumstances affecting Contractor's performance under the Agreement. Contractor shall also provide additional oral or written reports as requested by the Director. All reports are due at the times specified below unless different reporting frequencies are agreed upon by Director.

3.2.1.1 Contractor must immediately telephone the Director's designee to report any change in the Hanging Tree's condition, or any other substantive matter, such as damage to property, graffiti, or vandalism. The telephone notification shall be followed by an e-mail or fax report, within the same day.

3.2.1.2 Twice per month, Contractor shall submit a written irrigation report to the Facility Managers and the Director's designee, following each irrigation inspection. The irrigation report is due on the first (1st) and the fifteenth (15th) day of each month throughout the term of the Agreement, unless the Director agrees to a different reporting frequency.

3.2.1.3 Contractor shall submit a monthly typed landscaping report to the Director's designee and all Facility Managers detailing the current condition of each property and a list of recommendations for corrective actions and/or enhancements, after each monthly inspection. The monthly landscaping report should summarize any major changes made at the Landscaped Areas during the previous month and should describe any problems that require attention, such as dead trees, etc. The monthly landscaping report may be submitted by e-mail or fax and is due within fifteen (15) days following the end of each calendar month unless otherwise agreed upon by Director.

3.2.1.4 Contractor shall submit written soil test reports to the Director's designee and each Facility Manager three times per year, by the last day of the month every March, June, and September, or the months specified by the Director.

3.2.1.5 Contractor shall submit any other report required by this Agreement in a timely manner, as specified by the Director.

3.2.2 Records

Contractor shall develop procedures for maintaining records for services provided under the Agreement. As a minimum and in compliance with this specification, the records shall cover:

3.2.2.1 Agreement Documents

- 3.2.2.1.1 Agreement Terms and Specifications
- 3.2.2.1.2 Insurance policies
- 3.2.2.1.3 Approvals called for in Agreement Documents
- 3.2.2.1.4 Service subcontracts and invoices from subcontractors
- 3.2.2.1.5 Receipts for materials or supplies purchased

3.2.2.2 Service Documentation

- 3.2.2.2.1 Inspection reports
- 3.2.2.2.2 Incident Reports
- 3.2.2.2.3 Soil analysis reports
- 3.2.2.2.4 Weed, pest, and disease management reports
- 3.2.2.2.5 Safety reports
- 3.2.2.2.6 Approved checklists and logs

3.3 EQUIPMENT, POWER TOOLS AND SUPPLIES

3.3.1 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.

3.3.2 All mowing and landscaping activities using gasoline-powered equipment should be scheduled after 12:00 noon, preferably in late afternoon hours during the months of April through October, in order to comply with the City's air quality plan to reduce ground-level ozone. When practical, mowing should be postponed on days when ground-level ozone is forecast to be high, at the Facility Manager's discretion. During the summer, Contractor shall fill any gas-powered equipment during the cooler early evening hours and should always be careful not to spill gasoline or oil.

3.3.3 Contractor shall not disrupt scheduled events at any of the Facilities in any way. All landscaping services must be performed during times scheduled in advance with the Facility Managers, especially any activities generating noise (e.g. mowing, leaf blowing).

3.3.4 Contractor shall have sufficient equipment, miscellaneous small tools, materials, and supplies on hand throughout the term of the Agreement in order to perform the Landscaping Services in an efficient and workmanlike manner. Such equipment, tools, materials, and supplies shall include, but are not limited to, the items listed below, which the Contractor shall have on hand throughout the term of the Agreement. All such items must be stored at Contractor's business location. There are no storage areas available to Contractor at the Landscaped Areas. When possible, all gas driven equipment, including trucks, should use environmentally friendly or "green" fuel. Contractor is encouraged to use "greener" tools and equipment, such as electric mowers and manual tools, to the extent such tools and equipment can be readily obtained and do not cause any disruption of the Landscaping Services.

3.3.4.1 Chain saw

3.3.4.2 52" mowers

3.3.4.3 48" mowers

3.3.4.4 Hand or gas-powered walk behind mower

3.3.4.5 Hedge trimmers

3.3.4.6 Leaf blowers

3.3.4.7 Pickup trucks for hauling equipment

3.3.4.8 Pole pruners

3.3.4.9 Straight edging blade equipment

3.3.4.10 Weed eaters

3.3.4.11 Miscellaneous small tools and supplies:

3.3.4.11.1 Beneficial insects, such as ladybugs, green lacewings,

3.3.4.11.2 Spider mite predators and beneficial nematodes

3.3.4.11.3 Chemicals

3.3.4.11.4 Cleaning Wipes

3.3.4.11.5 Fertilizers

3.3.4.11.6 Fungicides

3.3.4.11.7 Hand pruners

3.3.4.11.8 Herbicides (Weed killers)

3.3.4.11.9 Insecticides

3.3.4.11.10 Ladders

3.3.4.11.11 Mulch—organic, free of insects, Weed seeds, and disease

3.3.4.11.12 Personal protection equipment for all workers

3.3.4.11.13 Pesticides

3.3.4.11.14 Pruning shears and hand pruners

3.3.4.11.15 Rakes

3.3.4.11.16 Safety gas cans (5gal and 2.5gal)

3.3.4.11.17 Shovels (round, square and sharp shooters)

3.3.4.11.18 Soil amendment materials such as compost, garden lime, manure, sand

3.3.4.11.19 Tie downs (for equipment in trailers)

3.3.4.11.20 Traffic cones

3.3.4.11.21 Trowels

3.3.4.11.22 Water Dispensers

3.3.4.11.23 Work gloves

3.3.4.12 Additionally, the City recommends that Contractor either keep equipment such as the following items on hand in its inventory or have the capacity to acquire such equipment, if needed:

3.3.4.12.1 Dump truck

3.3.4.12.2 Bobcat or similar utility work machine with attachments (e.g., Toolcat™)

3.3.4.12.3 Water truck

3.3.4.12.4 Tree spade

- 3.3.4.12.5 Tractor with attachments (finish mower, box-blade, landscape rake, bush hog, loader)
- 3.3.4.12.6 Trencher with small backhoe
- 3.3.4.12.7 Tree chipper
- 3.3.4.12.8 Boring machine
- 3.3.4.12.9 Concrete mixer
- 3.3.4.12.10 Concrete saw
- 3.3.4.12.11 Chemical application tank equipment
- 3.3.4.12.12 Bulldozer

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

3.3.6 All supplies, materials, repair or replacement parts, equipment or tools used or furnished by the Contractor to perform the work specified herein shall be of the type, quality, size, etc., customarily used in the trade of such work. Any such items deemed unsuitable by the Director's designee will be replaced by the Contractor at the Contractor's expense. Contractor shall use all tools, materials, supplies, and equipment in accordance with the manufacturer's instructions and shall maintain tools and equipment in first-class working condition satisfactory to the Director.

3.3.7 The City will not be responsible in any way for breakage, damage to, or loss of supplies, materials, tools, equipment, repair or replacement parts, or personal property belonging to the Contractor, its employees, or subcontractors. Contractor shall keep all equipment, tools, materials, supplies, repair or replacement parts, and personal property in its possession and shall store such items off-site, at its place of business. No storage space is available at the Landscaped Areas.

3.3.8 Contractor shall remove all materials, supplies, tools, and equipment from the work site upon completion or cessation of work.

3.4 LANDSCAPING MATERIALS

3.4.1 All materials to be used by the Contractor including fertilizers, pesticides, and soil conditioners, must be approved by the Director's designee. The approved herbicides and pesticides shall be the least toxic chemicals available, so as to prevent unnecessary damage to the environment.

3.4.2 Fertilizers, Chemical Concentrates and Soil Conditioners Contractor shall adhere to the following requirements without exception.

3.4.2.1 Mulch shall be organic mulch, free of termites and other harmful insects, free of Weed seeds and disease, and shall be applied at a depth of one inch twice a year or as requested by Director's designee or Facility Manager. Other types of mulch may be used only if requested in advance by the Director's designee or a Facility Manager.

3.4.2.2 Prior to each application, the Director's designee and the Contractor shall mutually agree on the selection of commercial fertilizer for grass, shrubs, and ground cover. Fertilizers shall be determined by soil analysis and will be applied to correct any nutrient requirements at Contractor's expense. Contractor is encouraged to use fertilizers made from organic materials, such as plant extracts and worm castings, to the extent possible.

3.4.2.3 Prior to use, chemical material selection for the control of Weeds (herbicide) is subject to approval by the Director's designee. Regulated herbicides shall be applied by, or under the supervision of, Contractor's Commercial Pesticide Applicator. "Regulated herbicides," as determined by the Texas Department of Agriculture, are herbicides that must be used as directed or in accordance with widespread and commonly recognized practice, and which require additional restrictions to prevent a hazard to desirable vegetation caused by drift or an uncontrolled application.

3.4.2.4 The method of application for control of specific insects, diseases and animals that damage vegetation (pesticides) will be approved by Contractor's Commercial Pesticide Applicator when requested by the Director's designee, and the approved method of application shall be implemented by the Contractor. Upon request, Contractor shall provide written documentation from the Contractor's Commercial Pesticide Applicator to the Director's designee, attesting that the most effective, but least toxic materials and methods are being used for pest control. Any cost associated with the Commercial Pesticide Applicator's services shall be borne solely by the Contractor. Contractor must use environmentally friendly methods of pest control, and will make changes to the materials and methods of application used, and the Commercial Pesticide Applicator who is employed, as requested by the Director's designee, at no additional cost to the City. Contractor is encouraged to present alternative methods of pest control to the Director's designee for consideration and approval, for example, the introduction of beneficial insects as natural deterrents to common garden pests.

3.4.2.4 Materials used should be selected from the most current, safest, and most effective materials available to the landscape industry/trade.

3.5 Purchase of Seasonal Plants, Perennials, and Related Materials

3.5.1 If the Director initiates a request for additional plants or materials, Contractor shall obtain Seasonal Annual Plants, changes or replacements of Perennial Plants, and related materials by one the following methods, as chosen by either the Facility Manager or the Director's designee.

3.5.2 Contractor shall supply plants and materials at the rates specified in the Contract Fee Schedule

3.5.3 Department management may choose to supply the plants or materials to the Contractor at no cost; or

3.5.3.1. Contractor shall obtain three (3) itemized bids/estimates from separate/different vendors/suppliers for the required plants/materials. Contractor shall submit the bids/estimates to Director's designee and obtain written approval from Director's designee before proceeding with the Work. The bids must be obtained from companies or suppliers which have no connection or affiliation with the Contractor.

3.5.4. Contractor guarantees that any Perennial Plants that it plants shall stay healthy for at least one year from the time of planting, all Seasonal Annual Plants shall stay healthy for at least one season (three months), and all irrigation replacement parts shall function correctly, as intended by the manufacturer, for at least one year's time. If any Perennial or Seasonal Annual Plant dies sooner than normally expected, as described above, due to Contractor's neglect or failure to perform services, or if any replaced irrigation part fails within the stated time period, Contractor shall furnish and install a replacement at its sole expense.

3.5.5 Contractor shall not be reimbursed for the cost of additional plants or materials that are not specifically requested by Facility Managers or Director's designee.

4.0 WORK PROCEDURES

4.1 MAINTENANCE OF TURF AREAS

Mowing and edging will be as shown on the attached schedules for Landscaped Areas requiring mowing, or as requested by the Facility Manager.

- 4.1.1 Remove all litter and trash from all Landscaped Areas and areas to be mowed. Litter and trash includes but is not limited to paper, bottles, metal cans, containers, tires, food scraps, storm debris, or material of any type which is not growing or intended to be a fixture or permanent part of a Landscaped Area. Contractor shall haul off all litter and trash to an off site trash disposal location, in a responsible manner, securing any objects that are loose inside the back of a truck or trailer. Contractor is responsible for recycling materials that can or should be recycled, such as tires.
- 4.1.2 Contractor shall dispose of plant debris, such as tree branches, clippings, and dead or diseased plants, in an appropriate off site disposal location, in a responsible manner. Contractor is encouraged to compost undiseased plant debris off site, at its place of business.
- 4.1.3 Unless the Director provides express written consent to the contrary, Contractor shall use mowers that collect grass clippings. Grass clippings may be used as mulch provided that Contractor collects the grass clippings and allows them to decompose off site, e.g., at Contractor's place of business. The Director's prior written approval is required before Contractor may "grass cycle" or allow grass clippings to remain on Landscaped Areas after mowing. After consulting with its Certified Landscape Professional, Contractor may make recommendations to the Director about any Landscaped Areas that may benefit from grass cycling. The Director will make the final decision to resolve any questions that may arise about whether any modifications should be made to the specifications herein, to conserve resources or to protect the environment while maintaining aesthetically pleasing landscaping throughout the Department's Facilities.
- 4.1.4 Contractor's Certified Landscape Professional will make informed recommendations to the Facility Managers concerning optimal grass height at each Landscaped Area. The Facility Manager for each Landscaped Area shall then make a determination, based on the Certified Landscape Professional's recommendations and the species of grass grown at the individual Landscaped Area, as to the appropriate height at which turf should be kept at each Landscaped Area. Mower blades must be sharp to prevent fraying and shall be replaced or sharpened as needed, at no additional expense to the City.
- 4.1.5 Manicure edge all turf areas adjacent to walks, curbs, drives, and tree wells using a blade edger to maintain a well manicured, aesthetically pleasing appearance.
- 4.1.6 Monofilament trim around all obstacles (e.g., signs, posts, trees, etc.) at a level to match grass height in open areas.
- 4.1.7 Trim turf away from sprinkler heads to eliminate deflection (do not use chemicals to prevent or control the growth).
- 4.1.8 Sweep or otherwise clean up debris caused by the work including any detrimental or unsightly overlay of grass clippings on lawn area.
- 4.1.9 Report the appearance of any graffiti, vandalism, or other problems to the Facility Manager.
- 4.1.10 As scheduled, the Contractor shall apply a balanced fertilizer (16-4-8) that contains 5% iron, 13% elemental sulfur, .3% zinc. The nitrogen source will consist of 30% quick release, 50%

Nitroform, and 20% Milorganite (or acceptable substitutes). All turf areas shall receive a total of 3 to 6 lbs. of nitrogen per year, and will be applied at a rate of .75 to 1.5 lbs. N/1,000 square feet during each application. Modifications to this specification may become necessary if deficiencies are identified in the results of soil analysis, and/or according to specific turf grass needs. Applications shall be distributed uniformly over all lawn areas and watered immediately. Care should be taken not to apply fertilizer to paved areas. In the event this does occur, all residue must be removed before the end of the day. Fertilization schedules may be adjusted in accordance with temperature and weather conditions. Details of the applications or any changes in the schedule will be indicated in the checklists provided to the Facility Managers and Director's designee.

- 4.1.11 Aerify all turf areas using a hollow tine core aeriator that will pull plugs not less than six inches apart and three inches deep.
- 4.1.12 Overseed all turf areas, as indicated by schedule or Facility, with Perennial Rye grass at a rate of 10lbs/1000sf.
- 4.1.13 Contractor shall apply pesticide treatments to control insects or disease affecting the turf when the need is determined by the Facility Manager. The Contractor shall advise the Facility Managers if evidence of insect infestations or plant diseases is detected. Contractor is responsible for the cost of pesticide treatments, at no additional charge to the City, using the appropriate materials described in the "Landscaping Materials" section.

4.2 PERIODIC SERVICES/WORK TASKS AND FREQUENCY

- 4.2.1 Contractor shall implement an herbicide program (i.e. "Spray Lines") to control all vegetation growing through the cracks and expansion joints in the adjacent streets (at curb line), curbs, paved and gravel areas.
- 4.2.2 Special effort shall be given to the control of fire ants infesting the sites. Contractor shall chemically treat ("spot" treat) all ant mounds after each mowing. After control is accomplished, the ant mounds shall be lowered and tamped to the existing grade. As a preventative measure, all turf and bed areas are to be treated with fire ant insecticide, such as Award or equivalent, at a broadcast application rate of 1.5 lbs./acre two or three times per year.
- 4.2.3 Seasonal Annual Plant Installations will be changed out three times per year, or as specified by the Facility Managers. For example, a Facility Manager may request a seasonal Annual planting be changed out to accommodate special events. Contractor shall consult with and obtain the approval of Facility Managers about color preferences for Seasonal Installations.
- 4.2.4 As a part of the Seasonal Annual Plant Installation services, Contractor shall plant seasonal Annual plantings in existing terra cotta pots and other types of plant containers, such as concrete containers or hanging baskets, and reposition any accompanying saucers as needed, at no additional charge. If the Department purchases additional plant containers, Contractor shall plant seasonal plantings in the additional plant containers at a proportional fee comparable to the fees bid for Seasonal Annual installations, but at no additional charge for planting in plant containers.
- 4.2.5 Contractor shall maintain the four large twenty inch terra cotta pots located near the Hanging Tree area, at the Theater District Parking Garage's Capitol Street entrance and exit. Contractor shall perform soil testing on the terra cotta pots three times per year and make any necessary soil amendments. Contractor shall make three (3) seasonal Annual Plant changes each year, unless directed otherwise by the Facility Manager.
- 4.2.6 Except for incidents out of Contractor's control, such as Force Majeure and vandalism, Contractor is responsible for all expenses related to the replacement of all dead or dying

seasonal annual plants that die or appear to be dying prior to the end of their typical growing season or expected lifespan, due to Contractor's neglect or because the plants are of inferior size or quality not meeting specifications. Additionally, Contractor shall be responsible for replacing any broken plant containers, and accompanying saucers, with plant containers and saucers of the same size, quality, material, and appearance, at no additional expense to the City, if such items are broken or damaged by Contractor's employees or subcontractors. Terra cotta pots shall be a minimum of four inches in diameter, and replacement pots shall be the same size or larger than broken pots.

4.2.7 However, replacement of plants, pots, or saucers that are clearly damaged, removed, or destroyed by vandalism or Force Majeure will not be the Contractor's responsibility. The Director's designee or Facility Manager will make the decision about whether the Contractor will bear the expense of replacing these plants, pots, and saucers. Replacement costs for plants, pots, or saucers that are damaged, removed or destroyed by vandalism or Force Majeure will be on a time and materials basis as a special service, through the Special Services Authorization ("SSA") process.

4.2.8 Seasonal Annual Plant installation services shall include:

4.2.8.1 Demolition (removal of all existing plant material)

4.2.8.2 Cultivation (till soil to 6" depth)

4.2.8.3 Fertilization (apply time release fertilizer, such as Colorstar, Osmocote®, or equivalent, at a rate of 4lbs./100 square feet)

4.2.8.4 Insecticide (apply slug & snail bait at a rate of 2 lbs./100 square feet)

4.2.8.5 Fungicide (drench with Subdue or equivalent at a rate of 2 oz./1,000 square feet)

4.2.8.6 Install new plants (Approved 4" plants or larger; 8" apart or closer)

4.2.8.7 Apply mulch (1" of organic mulch)

4.2.9 Seasonal Annual Plant maintenance shall include:

4.2.9.1 Hand pull Weeds and remove from beds

4.2.9.2 Inspect for insects and diseases

4.2.9.3 Treat for insects and diseases

4.2.9.4 Remove expired blooms

4.2.9.5 Fertilize as needed

4.2.10 The Director's designee or a Facility Manager may request a change of one or more Perennial Plants as a Special Service, if a change in landscaping is desired, or for any other reason. Perennial installation services shall include all tasks specified for Seasonal Installation services, except new Perennial Plants will generally be a larger size than Annual Plants, as indicated in the bid forms or as requested by the Director's designee or Facility Manager. Also, new Perennials shall be planted an appropriate distance from each other, twelve inches or further apart, based on the size of the plant and recommended horticultural practices for each specific species of plant, taking into account growing conditions in the southeastern Texas region. Contractor's Certified Landscape Professional shall provide information on recommended planting practices to the Director's designee, upon request, and shall seek the opinion of a recognized expert in the field when necessary, to ensure that the best horticultural practices are employed.

4.2.11 Perennial Plant maintenance shall include:

4.2.11.1 Hand pull Weeds and remove from beds

4.2.11.2 Inspect for insects and diseases

4.2.11.3 Treat for insects and diseases

4.2.11.4 Remove expired blooms ("deadhead")

4.2.11.5 Cut back flowers and ornamental grasses

4.2.11.6 Fertilize as needed

4.2.11.7 Divide or thin plants that have become overgrown or crowded.

4.2.12 Soil Analysis: Contractor shall collect three composite soil samples (turf; shrub & ground cover; and seasonal Annual color or Perennial beds) from each property three (3) times each year and submit them to an accredited laboratory for testing and recommendations. A report of soil test results shall be submitted to each Facility Manager along with recommendations for any corrective actions that are needed. Corrective actions will be made at Contractor's expense, following each soil test in which soil amendments are indicated.

4.2.13 The Facility Manager may request that Contractor provide landscape service and/or tree trimming at times other than those indicated in the attached schedules, whether to accommodate special events, weather conditions, or for any other reason.

4.2.14 Contractor must provide to the Facility Manager a checklist verifying all work performed, including date and time. The checklist must be signed by the Facility Manager or the Facility Manager's authorized representative. Failure to adhere to this requirement may result in payment disputes. Contractor will not be paid for work that is not requested or documented.

4.3 MAINTENANCE OF SHRUB AND GROUND COVER AREAS

4.3.1 In shrub and ground cover areas, Contractor shall hand pull Weeds, by using an appropriate tool, such as a trowel, a hoe, or a cultivator. Shrub and ground cover areas shall be kept continuously free of all weeds throughout the maintenance period. Contractor shall not remove Weeds with a trimmer, which may cause Weed seeds to spread. Contractor shall remove entire Weed plants, including the roots, and dispose of them off site along with any dead or diseased plant material.

4.3.2 Pruning shall be performed according to standards set forth by the International Society of Arboriculture.

4.3.3 All free form shrubs (e.g. Junipers, Nandina, Coppertone Loquat, etc.) are to be selectively pruned using sharp pruners or loppers. All formal shrubs (ex. Photinia, Yaupon Holly, Wax Ligustrum, etc.) are to be sheared using sharp hedge trimmers. All shrubs are to be trimmed to create and promote uniform and dense growth.

4.3.4 Ruellia should be cut back to a minimum of three (3) feet.

4.3.5 Prior to performing Formal and Informal Trimming services, Contractor's Certified Landscape Professional shall consult with the Director's designee or the Facility Managers concerning the best times of year for the trimming of shrubs and ground cover, at each of the Landscaped Areas where such plants are grown. Contractor shall provide information on recommended trimming practices for each type of shrub and ground cover that need trimming to maintain optimum health, at each Landscaped Area, upon request. Generally, the Contractor shall perform the most severe cutting back of shrubs in early spring, just prior to the emergence of new growth.

4.3.6 Mulch all plant beds and containerized plants as per the specified schedule. A minimum of one inch of organic mulch should be evenly applied during each application.

4.3.7 Contractor shall apply a fertilizer such as NutriStar or an equivalent (21-8-6) at a rate of 2 lbs./100 square feet to all shrub and ground cover areas (except Azalea and Rose beds). Contractor shall irrigate immediately after application and ensure no residue remains on pavement. The fertilizer indicated will be considered as part of the Agreement. Any additional soil amendments that are required for shrubs or ground cover will be by separate agreement or SSA.

4.3.8 Contractor shall be continuously alert for signs and presence of insects or disease. Upon locating such evidence, the Contractor shall report the matter to the Facility Manager and

take such action as directed. Contractor shall be responsible for applying pesticide treatments to control insects or disease affecting shrubs and ground cover when the need is determined by the Facility Manager, with or without the advice of the Contractor. If the Facility Manager observes evidence of insect infestations or plant diseases that are not detected by the Contractor during the scheduled inspections, the Contractor will be responsible for the treatment and/or replacement of any plant that is damaged due to the Contractor's neglect at no charge to the City. Contractor shall dispose of diseased or dead plant materials off site.

- 4.3.9 Contractor shall prune Azaleas immediately after blooms have expired. Contractor shall trim no more than one-third (1/3) of the existing branch length, and shall then fertilize the Azaleas as described below.
- 4.3.10 Contractor shall apply a specially formulated fertilizer to all Azalea beds (15-9-9 with 10% Sulfur and 5% Iron) at a rate of 1 lb./100 square feet. Contractor shall irrigate immediately after application and ensure no residue remains on pavement. The cost of Azalea fertilizer is part of the periodic shrub and ground cover fertilization service and, as such, is included in the Agreement at no additional cost to the City.
- 4.3.11 If the Director's designee determines that a Weed killer is necessary, Contractor shall apply a pre-emergent herbicide to all bed areas as scheduled. Unless the Director's designee and the Contractor determine that a less toxic herbicide should be used or that a Weed killer is not needed, an herbicide should be used, such as Surflan, or an equivalent, which can only be applied as directed on the label. The desired application rate is 3 ounces/1,000 square feet. Regulated herbicides and other toxic or potentially toxic materials, such as pesticides, must be applied by Contractor's Licensed Commercial Pesticide Applicator, under supervision of the Contractor's Certified Landscape Professional, to avoid environmental damage. Failure to apply such chemicals in strict accordance with the manufacturer's directions, such as those found on the label, may be a violation of Federal law and/or Environmental Protection Agency rules or regulations.
- 4.3.12 Ground Covers shall be trimmed to attain optimal growth and any discolored or damaged leaves shall be removed. All Asian Jasmine shall be trimmed using a monofilament trimmer and must be edged with a blade edger. Liriope shall be scalped annually to a height of two inches (2"), unless the Director requests a change in frequency or height.
- 4.3.13 Contractor shall trim the Fig Ivy at the Houston Center for the Arts four (4) to six (6) times per year, unless the Facility Manager requests a change in the frequency of this service. The Fig Ivy should be trimmed away from the top of the building, three to four inches (3" – 4") away from the metal gutter material. The Fig Ivy also needs to be trimmed back from the east side 18 to 20 inches. The Fig Ivy on the fencing surrounding the wood dust removal equipment also needs to be trimmed. Contractor shall discuss the trimming of Fig Ivy with the Facility Manager and obtain his approval before proceeding, to ensure that the desired amount of trimming is performed at each Fig Ivy location, as frequently as the Facility Manager deems necessary. The amount of Fig Ivy that should be trimmed, and the frequency of the Fig Ivy trimming service may vary from time to time, due to factors such as weather conditions.

4.4 MAINTENANCE OF TREES

- 4.4.1 Contractor shall be responsible for the maintenance of all existing trees. All trees shall be pruned, trimmed, and shaped as deemed necessary by management for a well-maintained appearance, except the Hanging Tree, which shall be pruned only by the City's Tree Specialist. Such pruning shall also serve the purpose of preventing any obstruction of the pathways and parking areas. No massive pruning or cropping is to be performed without the prior written consent of the Director or Facility Manager.
- 4.4.2 Contractor shall be responsible for pesticide treatments to control insects or disease affecting

the trees when the need is determined by the Facility Manager or at the advice of the Contractor. If the Facility Manager observes evidence of insect infestations or plant diseases that are not detected by the Contractor during the scheduled inspections, the Contractor will be responsible for the treatment/replacement at no additional charge to the City, using the appropriate materials as described under "Materials."

- 4.4.3 Mulch all trees as per the specified schedule. A minimum of one inch (1") of organic mulch should be evenly applied during each application.
- 4.4.4 Fertilization of trees will be done only by SSA when the need is determined by the Facility Manager or advised by Contractor and approved by authorized Department staff.
- 4.4.5 Removal of dead or diseased trees and replacement of tree(s) shall be a special service when the Facility Manager determines the need or as advised by the Contractor. If Contractor does not properly maintain trees, Contractor shall replace dead or diseased trees at its expense.
- 4.4.6 Any tree that is leaning must be properly anchored by the Contractor to support and encourage vertical growth.
- 4.4.7 Sucker growth is to be removed from all trees and tree grates as a part of the regularly scheduled tree pruning services. All ornamental trees (Crepe Myrtles, Ligustrum trees, Yaupon trees, etc.) are to be trimmed so that the canopies attain a uniform growth that is consistent with the genetic habit of each species. Crepe Myrtles are to be pruned annually to remove only the remaining seedpods and to selectively remove the terminal portion of all secondary branches.
- 4.4.8 Contractor shall keep the areas within tree grates free of trash and debris as part of the regularly scheduled debris removal services. If requested by the Facility Manager or Director's designee, Contractor shall replace missing tree grates at actual cost. Tree grates that are damaged or lost by Contractor's employees shall be replaced at Contractor's expense. The Director may choose to use a third party provider for the replacement of tree grates at any time.
- 4.4.9 The Contractor shall pay special attention to the health and condition of the historic "Hanging Tree" located near the corner of Capitol and Bagby, adjacent to the south wall of Phase Two of Bayou Place. The Hanging Tree is over 400 years old, and its limbs are supported by a pulley/cable system that requires strict attention. Any unusual changes in the condition of the Hanging Tree and any change in the two (2) Live Oak trees directly adjacent to the east and west sides of the seating area at Miller Outdoor Theatre, especially changes in the level of any one of these trees' limbs, or any changes caused by strong winds or heavy rain, must be reported to the Director or the appropriate Facility Managers immediately.

4.5 MAINTENANCE OF IRRIGATION SYSTEMS

Contractor shall maintain irrigation systems at the following Landscaped Areas: George R. Brown Convention Center, the Hanging Tree, Houston Center for the Arts (two systems, one at the main building and one at the parking lot), Sweeney Clock Triangle, Jones Plaza, Miller Outdoor Theatre, Root Memorial Square Park, the Sabine Promenade, and the Wortham Theater Center, unless the Director chooses to use other contractors to perform irrigation repair services.

- 4.5.1 The atmospheric pressure vacuum irrigation system near the Hanging Tree must be operated manually, as a part of the regularly scheduled services, not as an additional cost.
- 4.5.2 Contractor shall be familiar with and maintain the sprinkler irrigation system at each of the Landscaped Areas that has an irrigation system. All irrigation systems are fully functional at the start of the Agreement.

- 4.5.3 Contractor shall turn irrigation systems on and off as requested by Department management during normal business hours (7:00 a.m. – 7:00 p.m., Monday through Friday), throughout the entire term of this Agreement, at no charge to the City. If a Facility Manager requests that Contractor turn irrigation systems on or off outside the normal business hours, City shall pay Contractor the “Other Work/Service” fee listed in the bid forms for such service. However, the City will not reimburse or pay Contractor for any separate transportation costs such as travel time, mileage, or fuel, under any circumstance.
- 4.5.4 A maintenance check of each entire system shall be conducted twice each month by Contractor’s Licensed Commercial Irrigator, who is required to provide a written report to the Facility Managers and the Director’s designee two times each month, on the first (1st) and the fifteenth (15th) day of each month. All controller settings for watering start times, station run times, and watering days shall be included on the report. Director will inform Contractor by written notice if it is determined that irrigation reports are needed less frequently,
- 4.5.5 Contractor shall maintain sprinklers and irrigation systems to ensure complete and proper coverage of all landscape material as directed by the Director’s designee. Contractor shall monitor the systems for water leaks, inoperative sprinkler heads, etc.
- 4.5.6 Unless the Director notifies the Contractor otherwise, Contractor’s Licensed Commercial Irrigator shall be responsible for making irrigation system repairs. Any repairs that are needed shall be reported to the Facility Manager for authorization. The City will not pay for unauthorized repairs. Only the Licensed Commercial Irrigator shall perform repairs to the irrigation systems, if authorized. Contractor’s labor costs associated with making routine irrigation system repairs are included in the prices bid for regularly scheduled Irrigation Inspection and Repair. Replacement parts and labor for underground line breaks or vandalized equipment will be handled by an SSA, if requested by authorized Department staff. Contractor will be reimbursed for the actual cost of replacement parts, but only if itemized receipts are provided with Contractor’s monthly invoice. Receipts of questionable origin shall not be reimbursed (e.g., handwritten receipts or receipts that are illegible).
- 4.5.7 Unless approved in advance by the Facility Manager, repairs or replacements of irrigation system components will be made with like materials and equipment. The recurring task of “Irrigation Inspection and Repair” includes the Contractor’s labor cost of making minor repairs and adjustments such as repairing above ground leaks and adjusting or replacing inoperative sprinkler heads. The City will reimburse Contractor for the actual cost of replacement parts if Contractor provides sufficient documentation, as described above.
- 4.5.8 Contractor shall replace any sprinklers and associated irrigation equipment damaged by its employees or subcontractors, whether such damage is caused by mowing, routine landscape maintenance work, accident, or any other activity, at no charge to the City. The Director’s designee will determine whether or not any such damage is caused by the Contractor or its agents and shall be the final decision maker concerning any irrigation system dispute.
- 4.5.9 To prevent disruption of events, the Contractor shall schedule maintenance of the irrigation system in advance, with the Facility Manager’s prior approval.
- 4.5.10 Contractor shall replace any missing box/valve covers related to the irrigation system, at actual cost. Contractor shall replace any valve covers that its employees or subcontractors lose or damage, at its sole expense. Replacement of clocks (sprinkler timers) will be done by SSA unless they are damaged by Contractor’s employees or agents. The Department will maintain lateral lines, valves, and meters connected to irrigation systems, separately from this Agreement unless the Director issues a Special Services Authorization to Contractor.

4.6 PLANTS IN CONTAINERS

4.6.1 Contractor shall keep all hanging baskets and containerized plants in first class condition through fertilizing and weeding, as a part of its regularly scheduled services for Seasonal Annual and Perennial plants. Upon request from Department management, Contractor shall provide replacement plants at actual cost. City will be responsible for watering all plants in containers, such as hanging baskets and planters, except at Jones Hall.

4.6.2 Plants in containers are located at the following Landscaped Areas:

4.6.2.1 The seventeen (17) hanging baskets on Fish Plaza, outside the Wortham Theater Center

4.6.2.2 Containerized plants at Jones Plaza

4.6.2.3 The courtyard and street level plants at Jones Hall

4.6.2.4 The eighteen (18) exterior trees at Jones Hall;

4.6.2.5 Containerized plants at the Houston Center for the Arts;

4.6.2.6 Containerized plants at Miller Outdoor Theatre; and

4.6.2.7 The four (4) large terra cotta pots at the Theater District Parking Garage entrance and exit #5 on Capital Street.

5.0 SPECIFICATIONS FOR ROSES

Contractor shall perform the following tasks to take care of all roses in the Landscaped Areas.

5.1 ROSE PRUNING

5.1.1 On or about February 14th each year, Contractor shall cut back all rose canes to outward facing bud. Contractor shall remove all dead, diseased canes with central orientation, and canes that cross others, above bud union. Leave three (3) good canes per bush, 18" – 24" high, on Hybrid Teas one to two (1 – 2) years old.

5.1.2 Floribundas: Same as above, but leave four (4) canes.

5.1.3 Shrub Type: Prune out dead and diseased canes, then shape shrub as specimen or hedge, depending on location.

Note: When pruning out diseased wood, clippers should be sterilized between each cut (alcohol, full strength, or bleach, ten percent (10%) solution). Cuts should be made four to six inches (4" - 6") below diseased wood if possible; thoroughly clean up debris to prevent re-infection.

5.2 ROSE FERTILIZATION

5.2.1 Contractor shall apply first application of fertilizer at leaf break, using a water soluble, general purpose foliar fertilizer such as Peter's 20-20-20 or equivalent (mixed at 1/2 - 2/3 strength). Repeat application two weeks later.

5.2.2 Following the foliar application, two to three (2 – 3) weeks after bud break, Contractor shall begin granular feedings with a high-phosphorus fertilizer (unless soil tests show an excess build-up of phosphorus). The high phosphorus feedings shall continue at one month intervals March through June. In July, Contractor shall fertilize at one-half (1/2) rate so roses can enter summer dormancy. Contractor shall not fertilize in August; roses need a rest period. In addition to the regular fertilization, Contractor shall apply three applications of chelated iron to prevent and/or treat iron deficiencies. Contractor shall resume fertilizing at the first of September, and then stop after the November application.

5.2.3 For roses, soil tests should be conducted twice a year or at the frequency requested by the Facility Manager, to determine which fertilizer is required. Contractor shall charge the prices bid in the bid forms for all soil tests, including soil tests for areas in which roses are growing. Due to intensive fertilization and constant irrigation, the formulation may need to be altered occasionally.

5.3 ROSE SANITATION

Due to a high susceptibility to diseases, sanitation is very important. All diseased leaves, clippings, and debris should be removed during Contractor's regularly scheduled visits. See note on pruning diseased wood under Rose Pruning section for proper technique in reference to disease control.

5.4 ROSE LEAF REMOVAL

In late December, it may be necessary to manually strip all leaves from rose plants to force them into winter dormancy, if the weather is unusually warm and there are no freezes.

5.5 ROSE IRRIGATION

The soil must be moist at all times. Watering should be done a minimum of three times per week, or as weather conditions require. Adjustments are to be determined by Contractor and Facility Manager. **There will be no additional charge for irrigation adjustments such as changes in timing or frequency.**

5.6 ROSE CLIP/DEADHEAD

5.6.1 Remove all blossoms that have declined. Though they may not be dead, they will be in a few days once they begin to decline.

5.6.2 To remove the declining blossom, make a cut at first five-leaflet juncture, one-fourth inch (1/4") above the leaf bud in axil. The cut should be at a 45 degree angle, with high side of cut on same side as bud, and lower side of cut no lower than the auxiliary bud.

5.6.3 Any diseased and damaged material should be removed during the scheduled visits.

5.7 MULCH FOR ROSES

Mulch all roses as per the specified schedule. A minimum of one inch (1") of organic mulch should be evenly applied during each application. Special care should be taken so that the bud union is not covered or in contact with the mulch.

5.8 PREVENTION OF ROSE DISEASES AND PESTS

5.8.1 FUNGAL

5.8.1.1 Monthly fungicide applications should be made as a preventative measure, rather than waiting for infection and treating as a curative. Applications should begin at leaf break in February and continue until the end of November, to control Black Leaf Spot, Downy Mildew and Powdery Mildew. Rotation of products is advised to prevent pesticide resistance.

5.8.1.2 Effective removal of Canker and Downy Mildew can only be achieved if proper sanitation and pruning techniques are followed -- see Rose Pruning section, above.

5.8.2. BACTERIAL

Crown Gall may be found in some rose beds; if so, those plants may need to be removed and replaced. An inventory should be done in October so that new material can be installed at the same time the pruning is done. Contractor shall obtain Facility Manager's approval prior to purchasing or planting any new plants, including rose bushes. If the Facility Manager does not specify a particular type or color of roses, replacement rose plants should be Knockout Roses or Double Knockout Roses, in the gallon size specified by the Facility Manager, and should be of a color similar to the roses that are being replaced.

5.8.3. INSECTS

Aphids, thrips, and spider mites are the main insect pests for roses. Constant monitoring is necessary and regularly scheduled spraying is required for preventative control. Rotation of products is advised to prevent pesticide resistance.

6.0 OTHER WORK/SERVICES

6.1 If requested by the Director's designee or a Facility Manager, Contractor shall perform Other Work/Services at the Landscaped Areas, which may include, but not be limited to, the following:

6.1.1 Tree Felling, Tree Removal, Root Removal, and Stump Grinding

If requested, Contractor shall provide labor, equipment, materials, supplies, etc., for tree felling, tree removal, root removal, and stump grinding, at the prices specified in the bid form, as described below.

6.1.2 Tree Felling and Removal

If requested by a Facility Manager, the Contractor shall fell an undesired tree, and remove the tree, its branches, and associated debris from the site. Tree cutting and removal operations shall be scheduled in advance, and Contractor shall avoid unnecessary disruption to the work site.

6.1.3 Tree Felling, Removal, and Stump and Above Ground Root Removal

If requested by a Facility Manager, tree, stump, and above ground roots shall be removed to a depth of six inches (6") below normal ground elevation. Contractor shall remove tree, branches, and debris from the site. Removal operations shall avoid unnecessary soil excavation and ground disruption. If Contractor removes a tree stump from a lawn area, the stump hole and any other surface damage caused by removal shall be filled with topsoil, fertilized, raked, seeded, and grass shall be established. If the hole is not in a lawn area, Contractor shall fill it with topsoil and prepare the surface to be level with and match the appearance of the surrounding surface.

6.1.4 Stump Grinding

When requested by a Facility Manager, Contractor shall grind a tree stump to a depth of six inches (6") below normal ground elevation and remove debris from the site. Removal operations shall avoid unnecessary soil excavation and ground disruption. If Contractor performs this service in a lawn area, the stump hole and any other surface damage caused by removal shall be filled with topsoil, fertilized, raked, seeded, and grass shall be established. If the hole is not in a lawn area, Contractor shall fill it with topsoil and prepare the surface to match the surrounding surface.

6.1.5 Stump and Above Ground Root Removal

When requested by a Facility Manager, Contractor shall remove a tree stump and its above ground roots to a depth of six inches (6") below normal ground elevation and remove associated debris from the site. Removal operations shall avoid unnecessary soil excavation and ground disruption. If Contractor performs this service in a lawn area, Contractor shall fill the stump hole and any other surface damage caused by removal with topsoil, then fertilize, rake, seed, and establish grass in the area. If the hole is not in a lawn area, Contractor shall fill it with topsoil and prepare the surface to match the depth and appearance of the surrounding surface.

6.2 **PERFORMING OTHER WORK/SERVICES**

- 6.2.1 Other Work/Services shall be performed in accordance with all provisions of this Agreement and any special provisions issued with the Special Services Authorization ("SSA").
- 6.2.2 Before issuing an SSA, the Facility Manager or Director's designee will first issue a written notice to Contractor detailing the specific Other Work/Services to be performed by Contractor.
- 6.2.3 In response to any such written notice, Contractor shall provide Facility Manager or Director's designee with a written proposal within three (3) days of receipt of the SSA request or a written explanation for the reason Contractor is unable to perform the Other Work/Service and the reason Contractor is unable to locate a subcontractor who will perform the Other Work/Service. The proposal must include a description of the services to be performed, applicable labor rates, estimated labor hours, performance schedule, total estimated cost, and other requirements set forth in the written notice to Contractor.
- 6.2.4 Contractor shall furnish all materials, labor, tools, equipment, fuel, transportation, and incidentals for accomplishing the described services or as otherwise specified by the Facility Manager or Director's designee. If a Facility Manager or the Director's designee request specific plants or materials, Contractor shall provide such plants and materials at actual cost. Contractor shall provide receipts documenting the actual costs if requested. Facility Manager or Director's designee will not approve an SSA without a specified completion date. Contractor shall complete all such Other Work/Services within the time specified in the SSA. Contractor can request in writing an extension to the completion date. However, the Director may or may not allow the extension. The Director's decision is final.
- 6.2.5 Upon receipt of Contractor's proposal, the Facility Manager or Director's designee has the option to reject Contractor's proposal and seek other proposals from third parties, require resubmission with revised or additional information, or issue an SSA. Should Facility Manager or Director's designee reject Contractor's proposal and require resubmission, Contractor shall resubmit a modified proposal within three (3) days of the rejection.
- 6.2.6 Upon approval of a modified proposal by the Facility Manager or Director's designee, an SSA will be issued. Contractor shall commence work as stated in the SSA. Contractor shall diligently work to completion in accordance with the terms and conditions of the Agreement and the approved SSA.
- 6.2.7 Labor costs must not exceed the rates stated in the bid form for similar services. Labor is inclusive of supervision, fuel, transportation, tools, and equipment.
- 6.2.8 When Other Work/Services have been completed, a copy of the approved SSA and all supporting documentation, such as receipts, if applicable, must accompany the invoice for the Other Work/Services.

- 6.2.9 While performing work on any SSA, if hidden damage or additional cost is discovered, Contractor shall notify the Facility Manager or Director's designee immediately. After determining the extent of hidden damage, a supplemental proposal for Other Work/Services must be submitted if requested by Department management.
- 6.2.10 If requested by Department management, Contractor shall supply Other Work/Services plants, materials, supplies, chemicals, etc., with the same methods described in this Scope of Services.
- 6.2.11 Contractor shall submit to Department management, copies of original purchase orders and invoices evidencing Contractor's acquisition costs. **Failure to submit evidence of Contractor's acquisition costs will result in no payment to Contractor.**
- 6.2.12 Plants, materials, supplies, chemicals, etc., must be supplied from suppliers not affiliated with Contractor.
- 6.2.13 In the case of emergency service, Contractor may perform Other Work/Services upon the oral approval of Department management. However, during the next business day, the Facility Manager or Director's designee will submit a written emergency service request SSA to the Contractor.
- 6.2.14 If it is determined that "Other Work/Services" work is already part of the regularly scheduled Landscaping Services work billed to the City, any amount paid to the Contractor under an Other/Services request will be reimbursed to the City by the Contractor. The City will not waive any of its rights and remedies whether by statute, at law, in equity, or under the Agreement.

7.0 MISCELLANEOUS PROVISIONS

7.1 ESTIMATED QUANTITIES/FREQUENCIES NOT GUARANTEED

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

7.2 INSPECTIONS AND AUDITS

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

7.3 PUBLIC RELATIONS

Contractor agrees that neither it nor its agents, subcontractors, or employees shall issue or make any statements on behalf of the Department with respect to either the Facilities or any incident occurring at any of the Facilities. Contractor shall not issue any publicity or communication to the media of any nature that references the Agreement without the prior written consent of the Director. This applies to all forms of communication, whether oral or written, including press releases, brochures, photographic coverage, and announcements.

8.0 PERFORMANCE-BASED INCENTIVE

- 8.1 The Director’s designee and each of the Facility Managers who are responsible for a Landscaped Area shall evaluate Contractor’s performance semi-annually (twice each Agreement year). Contractor will be eligible to receive a performance incentive payment not to exceed **ten thousand dollars (\$10,000)** each Agreement year. The performance criteria will be based upon Contractor’s performance of the services as set out in Exhibit “I” attached hereto—“Performance Report Card.”
- 8.2 The Director will determine how to weigh the applicable percentage of each of the managers’ scores prior to the first performance evaluation, based on the average cost of Landscaping Services at each Landscaped Area.
- 8.3 For example, Theater District Parks’ score (for the Wortham Theater Center, Talento Bilingue de Houston, Sweeney Clock Triangle, Sabine Promenade, Root Memorial Square Park, Jones Plaza, Jones Hall, and the Hanging Tree) will carry more weight due to the larger number of Landscaped Areas managed by the Theater District Parks manager, perhaps as much as 70% of the total score, while the George R. Brown Convention Center may count as 15% of the total score, Miller Outdoor Theatre may count as 10% of the total score, and Houston Center for the Arts may count as 5% of the total score.
- 8.4 Based on the scores it receives on its Performance Report Card, Contractor will be eligible to receive up to \$5,000 every six months throughout the Agreement, not to exceed \$10,000 per Agreement Year, based on the total Performance Report Card scores it receives. The amount of the total performance incentive will be calculated as follows, for every six (6) month period:

| <u>Total Score</u> | <u>Total Performance Incentive</u> |
|--------------------|------------------------------------|
| 90 – 100 | \$5,000 |
| 80 – 89 | \$2,500 |
| 0 – 79 | \$ 0 |

If mutually agreed upon by the Director and Contractor, the evaluation criteria may be adjusted as the Agreement progresses, as long as the evaluation criteria remains based upon the Agreement’s requirements.

9.0 CONTRACTOR’S PHASE-IN

- 9.1 The Contractor must be prepared to accomplish a smooth and successful transition of operations and services and will have up to a thirty (30) day phase-in period. Contractor’s Phase-in period shall begin upon receipt of a start phase-in notice from the Director (such notice not to be construed as an official Notice to Proceed, but being anticipatory of phase-in only) and shall last approximately thirty (30) days or less, preceding the receipt of Notice to Proceed. The incumbent vendor shall be responsible for performing the duties and services listed in its contract during the Phase-in period. During the Phase-in period, Contractor shall arrange to have necessary supervisory, technical, and other personnel on site to observe the Landscaped Areas.
- 9.2 Contractor may use this Phase-in period to recruit and train personnel, arrange for identification badging, establish management procedures, set up records, ensure adequate equipment is in place for Landscaping Services, and otherwise prepare for the assumption of control without disruption of operations. During the Phase-in Period, it shall be the responsibility of Contractor to develop and implement a full project schedule detailing the responsibilities of assigned personnel and submit it to the Director for approval. Contractor shall have no responsibilities for providing the Landscaping Services during the Phase-in period. The Phase-in period will end at issuance of the official Notice to Proceed, at which time Contractor shall assume full responsibility for the Landscaping Services.

9.3 Contractor shall perform the Phase-in services listed above at no cost to the City.

10.0 CONTRACTOR'S PHASE-OUT

10.1 Contractor recognizes that the services provided by the Agreement are vital to the City's overall efforts to provide aesthetically pleasing landscaping; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of the Agreement a successor may continue these services; and that Contractor must cooperate in order to effect an orderly and efficient transition. Contractor shall provide City will all Documents related to this Agreement.

10.2 Accordingly, Contractor shall be required to provide Phase-out services for up to thirty (30) days prior to contract expiration to its successor Contractor at no extra charge to the City. Phase-out orientation shall comprise a maximum of 30 working days, eight hours per day. Orientation may include landscaping procedures, record keeping, reports, and procurement procedures, etc. Contractor shall be totally responsible for providing the services called for by the Agreement during its Phase-out period. Contractor agrees to cooperate with its successor Contractor in allowing as many personnel as practical to remain on the job in order to enhance the continuity and consistency of the services in the Agreement. Contractor agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Contractor obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters.

11.0 Additions & Deletions

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

12.0 ESTIMATED QUANTITIES NOT GUARANTEED

12.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of "Landscaping 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 during the terms 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.

13.0 WARRANTY OF SERVICES

13.1 *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.

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

13.2 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.

13.3 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.

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

14.0 INSPECTIONS AND AUDITS

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

15.0 PUBLIC RELATIONS

Contractor agrees that neither it nor its agents, subcontractors, or employees shall issue or make any statements on behalf of the Department with respect to either the Facilities or any incident occurring at any of the Facilities. Contractor shall not issue any publicity or communication to the media of any nature that references the Agreement without the prior written consent of the Director. This applies to all forms of communication, whether oral or written, including press releases, brochures, photographic coverage, and announcements.

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID S11-L23254

ORDINANCE # _____

COUNTY OF HARRIS

CONTRACT # _____

I. PARTIES

1.0 ADDRESS

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

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

City

City Purchasing Agent for Director
of Municipal Courts - Administration Department
City of Houston
1400 Lubbock
Houston, Texas 77002

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

TABLE OF CONTENTS

| | <u>Page No.</u> |
|---|-----------------|
| I. PARTIES | 38 |
| 1.0 ADDRESS | 38 |
| 2.0 TABLE OF CONTENTS..... | 38 |
| 3.0 PARTS INCORPORATED | 40 |
| 4.0 CONTROLLING PARTS | 40 |
| 5.0 DEFINITIONS | 40 |
| 6.0 SIGNATURES | 41 |
| II. DUTIES OF CONTRACTOR | 42 |
| 1.0 SCOPE OF SERVICES | 42 |
| 2.0 RELEASE | 42 |
| 3.0 INDEMNIFICATION | 42 |
| 4.0 INDEMNIFICATION PROCEDURES..... | 42 |
| 5.0 INSURANCE..... | 43 |
| 6.0 WARRANTIES..... | 44 |
| 7.0 LICENSES AND PERMITS..... | 44 |
| 8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE | 44 |
| 9.0 MWBE COMPLIANCE | 44 |
| 10.0 DRUG ABUSE DETECTION AND DETERRENCE | 45 |
| 11.0 CONTRACTOR'S PERFORMANCE | 45 |
| 12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS..... | 45 |
| 13.0 CITY CONTRACTORS' PAY OR PLAY PROGRAM..... | 17 |
| III. DUTIES OF CITY | 46 |
| 1.0 PAYMENT TERMS | 46 |
| 2.0 TAXES | 46 |
| 3.0 METHOD OF PAYMENT | 46 |
| 4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS..... | 46 |
| 5.0 LIMIT OF APPROPRIATION | 46 |
| 6.0 CHANGES | 47 |
| IV. TERM AND TERMINATION | 48 |
| 1.0 CONTRACT TERM..... | 48 |
| 2.0 NOTICE TO PROCEED..... | 48 |
| 3.0 RENEWALS..... | 48 |
| 4.0 TIME EXTENSIONS | 49 |
| 5.0 TERMINATION FOR CONVENIENCE BY THE CITY | 49 |
| 6.0 TERMINATION FOR CAUSE BY CITY | 49 |
| 7.0 TERMINATION FOR CAUSE BY CONTRACTOR | 50 |
| V. MISCELLANEOUS | 50 |
| 1.0 INDEPENDENT CONTRACTOR..... | 50 |
| 2.0 FORCE MAJEURE | 50 |
| 3.0 SEVERABILITY | 50 |
| 4.0 ENTIRE AGREEMENT | 50 |
| 5.0 WRITTEN AMENDMENT | 51 |
| 6.0 APPLICABLE LAWS..... | 51 |
| 7.0 NOTICES | 51 |
| 8.0 NON-WAIVER | 51 |
| 9.0 INSPECTIONS AND AUDITS..... | 51 |
| 10.0 ENFORCEMENT | 51 |

| | | |
|------|---|----|
| 11.0 | AMBIGUITIES..... | 51 |
| 12.0 | SURVIVAL | 51 |
| 13.0 | PARTIES IN INTEREST | 52 |
| 14.0 | SUCCESSORS AND ASSIGNS | 52 |
| 15.0 | BUSINESS STRUCTURE AND ASSIGNMENTS..... | 52 |
| 16.0 | REMEDIES CUMULATIVE | 52 |
| 17.0 | CONTRACTOR DEBT | 52 |

EXHIBITS

- A. DEFINITIONS
- * B. SCOPE OF SERVICES
- *BB CHECK LIST EXAMPLE
- *BB-1 PERFORMANCE REPORT CARD
- C. EQUAL EMPLOYMENT OPPORTUNITY
- * D. MWBE SUBCONTRACT TERMS
- * E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- * G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS
- I. CITY CONTRACTORS' PAY OR PLAY PROGRAM

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

3.0 PARTS INCORPORATED

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

4.0 CONTROLLING PARTS

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

5.0 DEFINITIONS

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

6.0 SIGNATURES

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

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

By: _____
Name:
Title:

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

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

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

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

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

2.0 RELEASE

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

3.0 INDEMNIFICATION

- 3.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
- 3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
 - 3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
 - 3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
 - 3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- 3.2 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4.0 INDEMNIFICATION PROCEDURES

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

- 4.1.1 description of the indemnification event in reasonable detail, and
 - 4.1.2 the basis on which indemnification may be due and
 - 4.1.3 the anticipated amount of the indemnified loss.
- 4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.
- 4.3 Defense of Claims
- 4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - 4.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:
- 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
 - 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated
 - 5.1.4 Employer's Liability

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

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

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

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

6.0 WARRANTIES

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

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

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

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

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

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

7.0 LICENSES AND PERMITS

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

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

9.0 MWBE COMPLIANCE

9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **10%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

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

subcontract must also be signed by the attorneys of the respective parties.

10.0 DRUG ABUSE DETECTION AND DETERRENCE

- 10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions, and
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 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 CITY CONTRACTORS' 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.

III. DUTIES OF CITY

1.0 PAYMENT TERMS

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

2.0 TAXES

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

3.0 METHOD OF PAYMENT

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

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

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

5.0 LIMIT OF APPROPRIATION

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ _____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

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

SIGNED:
(Signature of the City Controller)
City Controller of the City

REQUESTED:
(Signature of the Director)
Director

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 starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED

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

3.0 RENEWALS

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

renewal at least 30 days before the expiration of the then current term.

4.0 TIME EXTENSIONS

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

5.0 TERMINATION FOR CONVENIENCE BY 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.

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 required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

8.0 NON-WAIVER

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

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

9.0 INSPECTIONS AND AUDITS

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

10.0 ENFORCEMENT

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

11.0 AMBIGUITIES

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

12.0 SURVIVAL

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

13.0 PARTIES IN INTEREST

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

14.0 SUCCESSORS AND ASSIGNS

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

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

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

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

16.0 REMEDIES CUMULATIVE

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

17.0 CONTRACTOR DEBT

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

EXHIBIT A DEFINITIONS

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

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

Annual or **Seasonal Annual Plant** means a plant that germinates, grows, flowers, produces seed, and dies in the course of a single growing season.

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

Department means the City's Convention & Entertainment Facilities Department or its successors or assigns.

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

Documents mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

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

Facility or **Facilities** means the Department buildings and Landscaped Areas in close proximity to the premises as specified by the Director, which include, but shall not be limited to, George R. Brown Convention Center ("GRBCC"), including the historic homes adjacent to Avenida de las Americas, the two staging lots, and associated landscaping in the nearby pedestrian walkway and street median, the Hanging Tree, The Houston Center for the Arts, Jones Hall for the Performing Arts, Jones Plaza, Miller Outdoor Theatre, Root Memorial Square Park, the Sabine Promenade (a 23 acre park along Buffalo Bayou from Sabine to Bagby Street), the Sweeney Clock Triangle, Talento Bilingue de Houston, and the Wortham Theater Center, which includes Fish Plaza and Sesquicentennial Parks I and II, all as defined herein.

Facility Manager means the Department's manager for any of the Facilities, as defined herein, or their respective designees, each of whom shall be the Facility Manager for purposes of the Agreement as to the Facilities or properties which each manages for the Department

“Force Majeure” means fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra payment.

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

“Holiday” means any day that has been designated as such by the City Council.

“Informal Trimming” means pruning a shrub or other plant with sharp pruning shears in order to maintain a natural appearance, with branches and stems cut at slightly varying lengths, in order to extend the life of the plant and to stimulate future growth, or to remove limbs from obstructing walkways, signs, etc. Flowering shrubs should generally be trimmed within one month after they finish blooming, in order to preserve next year's blossoms.

“Landscaping” or **“Landscaping Services”** means the provision of all supervision, labor, materials, supplies, tools, fuel, transportation, and equipment necessary for producing and maintaining healthy and aesthetically pleasing lawn, ground cover, annual and perennial plants, shrubbery, and trees for the Facilities or Landscaped Areas.

“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.

“Perennial” or **“Perennial Plant”** means a plant that lives more than two years or three seasons and normally flowers annually. Many perennials die down during the winter but the roots are unaffected by frost, and new growth appears as the weather improves and the temperature rises.

“Seasonal Installation” or **“Seasonal Annual Installation”** means all Landscaping Services related to the planting of Annual Plants.

“Weed” [noun] means a plant that is not valued where it is growing and is usually of vigorous growth; especially one that tends to overgrow or choke out more desirable plants. To **“weed”** [verb] means to remove a weed by manual means (by hand pulling the weed) or to use methods of cultivation

EXHIBIT B
SCOPE OF SERVICES

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

EXHIBIT "BB"

CHECKLIST EXAMPLE

| Landscaped Area: _____ | | | | |
|--|--|---|---------------------------|-------------------------------|
| Week beginning: _____ | | | | |
| TASK | Completion (Date/Verifier initials) | Inspected (Date/Verifier initials) | Contract Price | Payment Authorized |
| Aerification of Turf Areas | | | \$ | |
| Bed Weed Control - Pre-Emergent | | | \$ | |
| Debris Disposal - Pre-mowing | | | \$ | |
| Edging by blade | | | \$ | |
| Fire Ant Control (Broadcast) - all turf and beds | | | \$ | |
| Fire Ant Control (Spot) - directly on each bed after mowing | | | \$ | |
| Ground Cover Fertilization | | | \$ | |
| Ground Cover Trimming - height to be maintained at 9" | | | \$ | |
| Ground Cover Trimming (Scalp) - 2" height | | | \$ | |
| Inspection - Insect and Disease | | | \$ | |
| Irrigation Inspection and detailed written report zone by zone | | | \$ | |
| Ivy Maintenance | | | \$ | |
| Manual weed control by hand pulling | | | \$ | |
| Monofilament Trim | | | \$ | |
| Mowing - 3.5" height | | | \$ | |
| Mulch | | | \$ | |
| Perennial Bed Cut Back | | | \$ | |
| Perennial Bed Fertilization | | | \$ | |
| Perennial Bed Maintenance | | | \$ | |
| Rye Grass Overseeding | | | \$ | |
| Soil Testing | | | \$ | |
| Spray weeds in all paved and concrete areas | | | \$ | |
| Tree Pruning – Major | | | \$ | |
| Tree Pruning – Minor | | | \$ | |
| Turf Fertilization | | | \$ | |
| TOTAL | | | \$ | |

EXHIBIT “BB-1”

PERFORMANCE REPORT CARD

EVALUATION PERIOD: _____

Instructions:
Rate Contractor’s performance for the previous six month period.

Rate on a scale where 10 points is the best. For example:

- 10 points = Excellent, exceeds expectations
- 8 points = Meets contract requirements with rare exceptions
- 6 points = Usually meets requirements
- 4 points = Needs to improve
- 2 points = Frequently not meeting requirements
- 0 points = Failing, does not meet contract requirements

| CATEGORY I. CUSTOMER SERVICE (100 points max) | Theater District Parks | GRBCC | Miller Outdoor Theatre | Houston Center for the Arts |
|--|-----------------------------------|--------------|---------------------------------------|--|
| A) Responsiveness to Facility Manager requests: Excellent = 10 Poor = 0 | | | | |
| B) Landscaping Services are always scheduled in advance as required by contract. Yes = 10 No = 0 | | | | |
| C) Landscaping reports are submitted in a timely manner. Yes = 10 No = 0 | | | | |
| D) Contractor has essential supplies and equipment. Yes = 10 No = 0 | | | | |
| E) Contractor seeks required approvals. Yes = 10 No = 0 | | | | |
| F) Customer complaints. No complaints/minor complaints = 10 Frequent/serious complaints = 0 | | | | |
| G) Contractor’s employees wear a uniform and carry a photo i.d. as required. Background checks have been completed. Yes = 10 No = 0 | | | | |
| H) Landscaping workers take appropriate safety precautions, place traffic safety cones in wet sidewalk areas, etc. as required. No accidents have occurred. Yes = 10 No = 0 | | | | |
| I) Provides copies of required licenses and certificates and | | | | |

| | | | | |
|---|--|--|--|--|
| renewals as required. Yes = 10 No = 0 | | | | |
| J) Telephone messages and other correspondence (fax, e-mail) are answered promptly. Yes = 10 No = 0 | | | | |
| TOTAL SCORE | | | | |

| CATEGORY II. EFFICIENCY OF OPERATION (100 points max) | Theater District Parks | GRBCC | Miller Outdoor Theatre | Houston Center for the Arts |
|---|-----------------------------------|--------------|-----------------------------------|--|
| A) Landscaping problems are reported in a timely manner, to the correct persons, as required. Yes = 10 No = 0 | | | | |
| B) Irrigation systems are kept in functioning condition and box/valve covers are replaced in a timely manner. Yes = 10 No = 0 | | | | |
| C) Collects soil samples from each Landscaped Area and takes corrective actions as required. Yes = 10 No = 0 | | | | |
| D) Performs work <u>only</u> when scheduled, NEVER during performances. Yes = 10 No = 0 | | | | |
| E) Ensures that invoices are accurate and provides supporting documentation of actual costs with invoices. Yes = 10 No = 0 | | | | |
| F) Reports any potential landscaping problems to the Facility Manager or Director's designee in a prompt manner and follows up with correct action. Yes = 10 No = 0 | | | | |
| G) Plants look good and are not dead, missing, or droopy. Yes = 10 No = 0 | | | | |

**EXHIBIT C
EQUAL EMPLOYMENT OPPORTUNITY**

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

**EXHIBIT D
MWBE SUBCONTRACT TERMS**

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

EXHIBIT E
DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

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

Date

Contractor Name

Signature

Title

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

I, _____
(Name - Print/Type)

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

Date

Contractor Name

Signature

Title

**EXHIBIT G
DRUG POLICY COMPLIANCE DECLARATION**

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

**EXHIBIT H
FEES AND COSTS**

**EXHIBIT I
PAY OR PLAY**

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

SECTION "D"

EVALUATION MATRIX

In determining the Best Value, the City will evaluate each bid on the basis of the following criteria

| | | |
|----|--|--------------|
| A. | Bidder's financial stability and proposed fees | 30 % |
| | | |
| B. | Professional background, qualifications, and experience of the proposer and proposed Certified Landscaping Professional | 25 % |
| | | |
| C. | Proven track record of high quality landscaping services at facilities of comparable size and complexity including airports, shopping malls, office buildings, convention centers, theater facilities, and public assembly facilities. Results of interviews and/or reference checks will be taken into account | 25 % |
| | | |
| D. | Bidder's demonstrated level of commitment and ability to provide all services and equipment on an expedited basis as outlined in the bid, including willingness to agree to all legal requirements included in the bid | 15 % |
| | | |
| E. | M/WBE Participation | 5 % |
| | Total % | 100 % |