



# CITY OF HOUSTON INVITATION TO BID

Issued: August 23, 2013

## **BID OPENING**

Sealed bids, in duplicate, and one (1) additional electronic CD copy of the bids will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 a.m., Thursday, September 12, 2013** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

**LANDSCAPE AND HORTICULTURAL SERVICES  
FOR THE HOUSTON AIRPORT SYSTEM  
BID INVITATION NO.: S55-L24543  
NIGP CODE: 918-73**

## **BUYER**

Questions regarding this solicitation document should be addressed to Joseph Badell at **832.393.0209**, or e-mail to [joseph.badell@houstontx.gov](mailto:joseph.badell@houstontx.gov).

## **ELECTRONIC BIDDING**

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

## **PRE-BID CONFERENCE**

A Pre-Bid Conference will be held for all Prospective Bidders at 18600 Lee Road Humble, Texas 77338 Conference Room #113 at 9:00 a.m. on August 28, 2013. Site visits for George Bush Intercontinental Airport (IAH) will begin immediately after the pre-bid conference and will start at 18600 Lee Road, Humble, Texas 77338. Transportation to IAH will be provided by the City. Contractors are required to have valid identification card for security clearance when making site visits. Contractors shall be responsible for scheduling their own site visits at William P. Hobby Airport (HOU) and Ellington Field (EFD) by contacting the HAS representative as listed below.

Ellington Field	William P. Hobby Airport
Address: 11602 Aerospace Houston, TX 77034 Contact: Jeff Overby @ Office: 713-847-4207 or Cell: 281-433-5446 Time of Visit: 12:30 p.m. to 2:00 p.m.	Address: 8800 Paul B. Koonce, Houston TX 77061 Contact: Jesus Duran @ office: 713-641-7737 or Cell: 713-417-0722 Time of Visit: 2:30 p.m. to 4:00 p.m.

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, and terms and conditions as stated herein.

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

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

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

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

### **\*CONTENTS:**

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

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

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

## SECTION A



**LANDSCAPE AND HORTICULTURAL SERVICES  
FOR THE HOUSTON AIRPORT SYSTEM  
BID INVITATION NO.: S55-L24543  
NIGP CODE: 918-73**

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

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for Landscape and Horticultural Services for a three-year period with two (2) one-year option periods to extend for the Houston Airport System**," 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 180<sup>th</sup> 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 181<sup>st</sup> 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 (10<sup>th</sup>) 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 cancel this ITB, 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 Landscape and Horticultural services for the City in accordance with attached specifications.

**Documents/forms must be downloaded from the City’s Website at <http://purchasing.houstontx.gov/forms.shtml>**

**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.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, along with the bid/proposal number:

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Pay or Play Certification of Agreement to Comply w’ the Program
Contractor’s Questionnaire
Hire Houston First Application and Affidavit

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:

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Insurance Endorsements
Pay or Play Office of Business Opportunity & Contract Compliance Q & A
Pay or Play Office of Business Opportunity & Contract Compliance Requirements
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors
Criminal Justice Information Services (CJIS) Compliance Addendum (Applicable to Houston Police Department (HPD) Occupied Facilities)

Questions concerning the bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B-500, Houston, TX 77002, Attn: Joseph Badell (or) by fax: 832.393.8759 or by e-mail (preferred method) to **joseph.badell@houstontx.gov**. no later than **12 p.m., Tuesday, September, 3, 2013.**

## **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.

## **PROTEST:**

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual [http://purchasing.houstontx.gov/docs/Procurement\\_Manual.pdf](http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf) and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

## **NO CONTACT PERIOD:**

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official prebid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

## **HIRE HOUSTON FIRST**

### **Designation as a City Business or Local Business**

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit (“HHF Affidavit”)** to the Director of the Mayor’s Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible. **Download the HHF Affidavit** from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

### **Award of a Procurement of \$100,000 or More for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A “CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

### **Award of Procurement under \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A “CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

### **Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A “CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

**Award of Procurement of \$100,000 or More for Purchase of Non-Professional Services , Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement under \$100,000 Purchase of Non-Professional Services Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED N SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement that may be More or Less than \$100,000 for Purchase of Non-Professional Services, Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE LOCAL BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**SECTION B**  
**SCOPE OF WORK/SPECIFICATIONS**

**1.0 SCOPE OF WORK**

**1.1 SERVICES IN GENERAL**

- 1.1.1 For and in consideration of the payment specified in this Agreement, Contractor shall provide Exterior Horticultural and Landscape Maintenance Services, i.e. "The Work" at George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport/Houston (HOU), and Ellington Airport (EFD) as outlined herein. Work to proceed will be initiated by a notice to proceed.
- 1.1.2 Contractor shall provide all necessary labor, equipment, material, tools, supplies, transportation, supervision, personnel, services, and all activity necessary for, or incidental to, the performance of the Work, and to otherwise fulfill all other requirements of this Agreement.
- 1.1.3 All Work must be in accordance with the highest standards prevailing in the industry, as well as applicable codes, rules, regulations, laws, and practices governing the Work. These standards will be achieved by continuous improvement through open communications with HAS, regular management reviews and industry guidelines.
- 1.1.4 The Contractor shall be responsible for providing all Basic Services specified in the Agreement.
- 1.1.5 Horticultural and landscape maintenance services must conform to the materials and performance requirements specified in the Agreement. Unless otherwise specified, all requirements must be performed under Basic Services.
- 1.1.6 Contractor shall maintain flowers, shrubs, trees, and turfgrass to present healthy uniform displays and to achieve the full aesthetic potential of the species.
- 1.1.7 The Work provided by Contractor under the Agreement includes Basic Services and Other Work/Services.

**1.2 BASIC SERVICES**

**1.2.1 Exterior Landscape Maintenance**

- 1.2.1.1 Contractor shall provide continuous landscape maintenance services 52 weeks per year to maintain landscape locations listed in Attachment "B-1" Landscape Areas at the monthly price per square foot for maintaining the estimated square footage of Flower Beds & Shrubs and Trees & Turfgrass specified in Exhibit "H" Fees and Costs. The Work includes, but is not limited to, all labor, equipment, materials, supplies, chemicals, transportation, and supervision necessary, tools, vehicles, fuel, and incidental expenses, etc.

- 1.2.1.2. Landscape Maintenance includes, but is not limited to the following tasks specified in Attachment "B-2":
  - 1.2.1.2.1 Maintaining beds/containers
  - 1.2.1.2.2 Removal of dead, dying, hazardous plants/trees/turfgrass
  - 1.2.1.2.3 Policing/Cleanup
  - 1.2.1.2.4 Fertilizing
  - 1.2.1.2.5 Erosion Control/Remediation
  - 1.2.1.2.6 Mulching
  - 1.2.1.2.7 Pruning
  - 1.2.1.2.8 Trimming
  - 1.2.1.2.9 Soil Amendments
  - 1.2.1.2.10 Soil Analyses
  - 1.2.1.2.11 Staking Plants
  - 1.2.1.2.12 Weed Control
  - 1.2.1.2.13 Pesticide, herbicide, insecticide & fungicide applications
  - 1.2.1.2.14 Mowing
  - 1.2.1.2.15 Edging
  - 1.2.1.2.16 Aeration/Thatch Control
  - 1.2.1.2.17 Watering
  - 1.2.1.2.18 Irrigation System Maintenance
  - 1.2.1.2.19 Planters & courtyards
  - 1.2.1.2.20 Winterization

**1.2.2 Preparation and Installation for Seasonal Color Rotations**

- 1.2.2.1 When requested by Director, Contractor shall prepare for seasonal plant color rotations and install plants at landscape area locations listed in Attachment "B-1" at the price per square foot specified in Exhibit "H" Fees & Cost. The Work includes, but is not limited to, all labor, equipment, materials, supplies, chemicals, etc.
  - 1.2.2.1.1 Preparation and plant installation for seasonal plant color rotations includes, but is not limited to, the following specific task specified in Attachment "B-2": (*Excluding supply of new plants*)
    - 1.2.2.1.1.1 Removal and disposal of existing plants
    - 1.2.2.1.1.2 Provide and apply appropriate amendments
    - 1.2.2.1.1.3 Cultivation/bed preparation
    - 1.2.2.1.1.4 Install new plants
    - 1.2.2.1.1.5 Apply fertilizer and amendments
    - 1.2.2.1.1.6 Apply initial water
    - 1.2.2.1.1.7 Apply mulch

**1.2.3 Seasonal Plant Color Rotations**

- 1.2.3.1 When requested by Director, by means of a Work Order, Contractor shall provide and install seasonal color rotation plants in designated bed areas as specified by the Director.
- 1.2.3.2 The Director may provide instructions, plans, and schedules regarding color rotation of seasonal plantings approximately two (2) times a year during the spring and fall.

1.2.3.3 Seasonal Plants will be obtained for this Agreement by the following methods:

1.2.3.3.1 HAS may supply the plants to the contractor at HAS cost.

1.2.3.3.2 Contractor shall obtain (3) itemized bids/estimates from separate / different vendors / suppliers for the required plants / materials. Contractor shall submit the bids/estimates to Director and obtain written approval from Director before proceeding with the Work. Contractor shall be compensated at cost plus percentage markup specified in Exhibit "H" Fees and Cost.

#### **1.2.4 Housekeeping/Disposal Functions**

1.2.4.1 Contractor shall ensure landscaped areas, containers, etc. are clean and free of debris at all times. Contractor shall remove and dispose of all trash, debris, dead plants, clippings and cuttings, etc., from HAS premises.

1.2.4.2 All debris, old materials, and trash resulting from Work on this contract are considered property of Contractor. Contractor shall be responsible for the disposal of all waste or hazardous materials resulting from the Work under the Agreement. Handling, transport, and disposal of waste or hazardous materials must be done in such a manner as to insure the highest level of safety to the environment and to public health. Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law.

1.2.4.3 Contractor shall assume full responsibility, liability and cost for licensing, permitting, handling, transporting, manifesting, and disposing of any landscape debris, trash, scrap, waste, hazardous materials etc., in compliance with Federal, State, and local laws and regulations.

1.2.4.4 Contractor shall provide the Director with a copy of all waste manifest and shall ensure that any disposal facility to which any waste, hazardous material, etc., may be moved is in compliance with federal, state, and local laws and regulations.

1.2.4.5 In the event that the Contractor discovers potential hazardous waste such as batteries, tires, oil/fuel waste, etc., the Contractor shall notify the Director immediately. The Contractor shall provide a written report to the Director within 24 hours, indicating date, time, and location of potential hazardous waste discovered. The hazardous waste must be properly removed and disposed of at HAS cost.

### **1.3 OTHER WORK/SERVICES**

1.3.1 Within the general scope of the Agreement, Other Work/Services may be required to meet desired conditions not covered in the Basic Services of the contract. Contractor shall provide the Other Work/Services specified herein on an as-need basis when Director authorizes such services in a written form describing the scope and cost of the services.

- 1.3.2** Contractor shall provide specified Other Work/Services at the rate specified in Exhibit “H” Fees and Cost. Contractor shall maintain proper accounting procedures to facilitate City audit of Contractor’s expenses.
- 1.3.3** Other Work/Services may include, but not be limited to, the following:
- 1.3.3.1** Initial Clean-up/Repair/Replacement
    - 1.3.3.1.1** Within the first ten (10) working days after the Notice to Proceed, Contractor and HAS may jointly inspect all landscaped locations to determine the scope of initial clean-up/repair/replacement of landscape areas and to determine if any plants are dead or dying and to bring the landscaping up to standards as a starting point to begin regular maintenance.
    - 1.3.3.1.2** The initial clean-up and repair of landscape include:
      - 1.3.3.1.2.1** Removal of all dead trees and shrubs.
      - 1.3.3.1.2.2** Removal of all dead wood in all trees and shrubs.
      - 1.3.3.1.2.3** Renovation of abandoned plant beds including removal of debris, soil preparation and turfgrass seeding
    - 1.3.3.1.3** Dead or dying plants may be replaced by the Contractor or may be removed by HAS.
    - 1.3.3.1.4** The cost to replace any subsequent dead or dying plants will be the responsibility of Contractor.
    - 1.3.3.1.5** All work performed by Contractor, which upon inspection by the Director, is found to be faulty, incomplete, or does not comply with the Agreement specifications, must be corrected by Contractor at Contractor’s cost.
  - 1.3.3.2** Establish Additional Landscape/Plant Locations
    - 1.3.3.2.1** When requested by Director, Contractor shall provide plans /drawings for additional landscapes, planters, establish additional (new) landscaped areas / improvements etc. at the material and labor rates specified in Exhibit “H” Fees and Cost.
  - 1.3.3.3** Sprinkler/Irrigation Systems
    - 1.3.3.3.1** When requested by Director, Contractor shall furnish all labor, supervision, equipment, supplies, tools, transportation, chemicals, signs, etc., to install/upgrade irrigation and sprinkler systems at the rates specified in Exhibit “H” Fees and Cost.
    - 1.3.3.3.2** Sprinkler/irrigation components furnished by Contractor must be heavy-duty commercial grade components chosen for reliable, efficient operation and long life expectancy. Contractor shall install systems in accordance with applicable City code (i.e., backflow prevention devices are required).
  - 1.3.3.4** Soil Sterilization and Weed Control

1.3.3.4.1 When requested by Director, Contractor shall furnish all licenses, labor, supervision, equipment, supplies, tools, transportation, chemicals, signs, etc., for soil sterilization and weed control at the rates specified in Exhibit "H" Fees and Cost.

1.3.3.5 Tree Falling and Tree Removal

1.3.3.5.1 When requested by Director, Contractor shall furnish all labor, supervision, equipment, materials, supplies, tools, transportation, signs, etc., for tree falling and tree removal at the rates specified in Exhibit "H" Fees and Cost.

1.3.3.5.2 Trees must be removed by sound arboreal practices according to the International Society of Arboriculture (ISA) guidelines.

1.3.3.5.3 When requested by Director, Contractor shall remove tree, branches, and debris from the site after felling. Removal operations must avoid unnecessary disruption to the work site.

1.3.3.6 Stump Grinding/Removal and Root Removal

1.3.3.6.1 When requested by Director, Contractor shall furnish all labor, supervision, equipment, materials, supplies, tools, transportation, signs, etc., for stump grinding/removal and root removal, at the rates specified in Exhibit "H" Fees and Cost.

1.3.3.6.2 Stump above ground roots must be removed to a depth of 6-inches below normal ground elevation.

1.3.3.6.2.1 The Contractor shall properly dispose of all associated debris.

1.3.3.6.2.2 Removal operations must avoid unnecessary soil excavation and ground disruption.

1.3.3.6.2.3 If in a lawn area, the stump hole and any other surface damage caused by removal must be repaired and filled with topsoil, fertilized, raked, seeded, and turfgrass established.

1.3.3.6.2.4 If the hole is not in a lawn area, it must be filled with topsoil and the surface prepared to match the surrounding surface.

1.3.3.7 Dead/Dying/Hazardous Conditions

1.3.3.7.1 When requested by Director, Contractor shall furnish all labor, supervision, equipment, materials, supplies, tools, transportation, signs, etc., to remove or correct hazardous conditions.

1.3.3.7.1.1 Dead/Dying/Hazardous conditions are any parts of a tree (branches, trunk, roots), which may be structurally compromised due to disease or injury, and pose a risk to property or the public if these parts failed.

1.3.3.7.1.2 The Contractor shall bring the existence of any dead/dying/hazardous trees to the attention of the Director. The Contractor shall confer with the Director to assess hazards in trees and make recommendations for pruning or removal of trees.

#### 1.3.3.8 Disaster/Emergency Services

1.3.3.8.1.1 When requested by the Director, the Contractor shall provide disaster services, (i.e. debris clean-up, repair and replacement of landscaping,) resulting from natural and/or man-made catastrophes.

#### 1.3.3.9 Other Miscellaneous Landscape Services

### 1.4 **PERFORMING OTHER WORK/SERVICES**

1.4.1 Other Work/Services must be performed in accordance with all provisions of this Agreement and any special provisions issued with the Other Service/Request (OSR).

1.4.1.1 Before issuing an OSR, the Director will first issue a written notice to Contractor detailing the specific Other Work/Services to be performed by Contractor.

1.4.1.2 In response to any such written notice, Contractor shall provide Director with a written proposal within 3 days of receipt of OSR Request. 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.

1.4.1.3 Contractor shall furnish all materials, labor, tools, equipment, transportation, and incidentals for accomplishing the described services or as otherwise specified by Director. Director will not approve an OSR without a specified completion date. Contractor shall complete all requested/approved Other Work/Services within the time specified in the OSR. Contractor can request in writing an extension to the completion date. However, Director may or may not allow the extension. Director's decision is final.

1.4.1.4 Upon receipt of Contractor's proposal, Director has the option to reject Contractor's proposal, require resubmission with revised or additional information, or issue an OSR. Should Director reject Contractor's proposal and require resubmission, Contractor shall resubmit a modified proposal within three days of the rejection.

- 1.4.1.5 Upon approval by Director of the modified proposal, an OSR will be issued. Contractor shall commence work as stated in the OSR. Contractor shall diligently work to completion in accordance with the terms and conditions of the Agreement and the approved OSR.
- 1.4.1.6 Labor costs must not exceed the rate stated in Exhibit "H" Fees and Cost. Labor is inclusive of supervision, transportation, tools, and equipment.
- 1.4.1.7 A copy of the approved OSR must accompany the monthly invoice.
- 1.4.1.8 While performing work on any OSR, if hidden damage or additional cost is discovered, Contractor shall notify Director immediately. After determining the extent of hidden damage a supplemental OSR must be submitted.
- 1.4.1.9 If requested by Director, Contractor shall supply Other Work/Services plants, materials, supplies, chemicals, etc., with methods described in Basic Services.
- 1.4.1.10 Contractor shall submit to Director, copies of original purchase orders and invoices evidencing Contractor's acquisition costs.
- 1.4.1.11 Plants, materials, supplies, chemicals, etc., must be supplied from suppliers not affiliated with Contractor, unless otherwise approved by the Director.
- 1.4.1.12 In the case of emergency service, Contractor may perform Other Work/Services upon the verbal approval of Director. However, during the next business day, Director will submit a written Emergency Service Request to the Contractor.
- 1.4.1.13 If it is determined this scope of work should be covered under Basic Services, the Contractor will reimburse any amount paid to the Contractor under Other/Services Request to the City. The City does not waive any of its rights and remedies whether by statute, at law, in equity, or under this Agreement.

## **1.5 SUBCONTRACTORS**

- 1.5.1 Contractor shall manage, control, and be responsible for all the work performed by its Subcontractors/Agents. A complete list of all subcontractors shall be submitted to Director for approval prior to Subcontractor/Agent commencing work.

## **1.6 INVOICING**

- 1.6.1 Contractor shall submit its invoices on a form(s) approved in advance by Director; invoices must be accompanied by support documents requested by Director.
- 1.6.2 Each invoice submitted must be in duplicate and each copy must include required attachments. The invoice must be identified by the Agreement name and Agreement number. All invoices are to be delivered or mailed to the following location:

- 1.6.2.1 City of Houston  
Houston Airport System  
Finance Division/Accounts Payable  
P.O. Box 60106  
Houston, Texas 77205-0106
- 1.6.3 Contractor shall submit for each Airport a separate itemized invoice for Landscape Areas Monthly Maintenance services performed each month.
- 1.6.4 Invoices for the Landscape Areas Monthly Maintenance must state Contract name/number and include but are not limited to reconciliations of the following:
  - 1.6.4.1 Total “Start” square footage of Flower Bed & Shrubs and Trees & TurfGrass areas.
  - 1.6.4.2 “Current” square footage, by defined area, of maintained Flower Beds & Shrubs and Trees & TurfGrass areas.
  - 1.6.4.3 Total current square footage of Flower Beds & Shrubs multiplied by current applicable Contract maintenance fee.
  - 1.6.4.4 Total current square footage of Trees & TurfGrass areas multiplied by current applicable Contract maintenance fee.
  - 1.6.4.5 Grand Total Monthly Maintenance cost for Flower Beds & Shrubs and Trees and TurfGrass.
- 1.6.5 Invoices submitted for services performed as the result of other work/services require a copy of Director’s written request be attached to the original and each of the two (2) invoice copies.
- 1.6.6 The Houston Airport system will accept invoices submitted electronically along with required support information; such as Outline Agreement Number(s), Service Release Orders (SRO) Numbers, and etc. Each invoice should be in a TIFF format. Multiple invoices can be submitted in a single email. Requirements are as follows:
  - 1.6.6.1 Submit invoices in “TIFF” format
  - 1.6.6.2 Submit to [HAS.accountspayable@houstontx.gov](mailto:HAS.accountspayable@houstontx.gov)

## 1.7 **STANDARDS**

- 1.7.1 Except where specified or exceeded by the requirements of the specification, the Contractor shall conform to the latest edition of the following standards:
  - 1.7.1.1 American Standard for Nursery Stock, ANSI Z60.1
  - 1.7.1.2 International Society of Arboriculture (ISA)
  - 1.7.1.3 Standardized Plant Name, latest edition, as published by the American Joint Committee on Horticulture Nomenclature Grades and Standards, latest edition, as published by the Texas Nursery and Landscape Association (TNLA)
  - 1.7.1.4 Plant Hardiness Zone Map, as published by the U.S. Department of Agriculture (USDA)
  - 1.7.1.5 Heat Zone Map, as published by the American Horticultural Society (AHS).

## **1.8 WORK HOURS**

1.8.1 Contractor's normal Work hours must be between 7:00 a.m. and 4:00 p.m. Monday through Friday, 52 weeks per year, except as otherwise requested by Director. Contractor shall perform the Work in such a manner as to prevent inconvenience to Airport patrons, HAS personnel, and other users of the Airport. Any change in hours/workweek must be by mutual Agreement confirmed in writing between Contractor and Director. Approval by the Director is required before any adjustments or changes are made to the work hours. Holidays will be City of Houston council approved holidays.

## **1.9 WORK SCHEDULE**

1.9.1 The Contractor shall submit to the Director a detailed monthly schedule of planned performance of work. The schedule must be submitted no later than one week prior to the scheduled month.

1.9.1.1 The Director must be notified in writing when changes are proposed to the planned schedule of work. Reasons for these changes will be indicated. The Director's approval is required before any changes are made in the work schedules by the Contractor.

1.9.2 The safety, well-being and convenience of all airport employees and the traveling public must be a prime consideration in scheduling and accomplishing all work.

1.9.3 In the event of an urgent situation, such as request for removal of broken tree branches, trash removal, etc., the Contractor shall redirect the necessary on-duty staff to properly respond and take appropriate actions as requested by the Director.

## **1.10 PRE-PERFORMANCE CONFERENCE**

1.10.1 Prior to commencing performance under the Agreement, Contractor shall attend a pre-performance conference with representatives of HAS. The Director will specify the time and place of such meeting in a written notice to Contractor. Representatives of Contractor attending the pre-performance conference must include the Contractor's Supervisors. Items to be addressed at the pre-performance conference include, but not are limited to:

1.10.1.1 Work scheduling

1.10.1.2 Channels of communication

1.10.1.2.1 Logistical management of Contractor furnished supplies and equipment

1.10.1.2.2 Other Work/Services

1.10.1.2.3 Implementation of additional procedures to ensure Agreement is performed in accordance with its terms.

## **1.11 COORDINATION MEETINGS**

1.11.1 Throughout the Term of the Agreement and any extensions hereto, Contractor shall meet with Director, as determined necessary by him or her, to identify and resolve performance issues. Notice of any such coordination meeting may be given by Director to the Contractor either orally or in writing and will designate the time, date, location,

Contractor attendees, and general purpose. Contractor's designated attendees must be present at any such performance meeting for its duration and must take minutes. The meeting minutes must be transcribed by Contractor in approved typewritten form and must be submitted to Director for approval within five (5) days of any such meeting. Director has the right to dispute the accuracy of the minutes and will note the discrepancies in the minutes prior to Director approval. Once approved, the original will be retained by HAS and copies will be provided to all attendees.

## **1.12 INSPECTIONS**

1.12.1 Director will have the right to conduct inspections on all equipment, materials, supplies, and tools furnished, all records and logs, and all work performed under the Agreement without prior notice to Contractor. Equipment, tools, materials, and supplies that do not conform to the specifications of the Agreement or the original equipment manufacturer may be rejected.

1.12.2 A written report of the results of the inspection and recommendations will be forwarded to Contractor and shall require Contractor to take immediate action. Contractor shall correct the deficiency and respond in writing stipulating the corrective action(s) taken within ten (10) days unless otherwise authorized by Director. Director will determine responsibility for any deficiencies identified through an inspection.

## **1.13 STAFFING/PERSONNEL**

1.13.1 All work covered by this Agreement must be performed by trained, properly supervised personnel in accordance with the highest levels of accepted horticultural practices. Untrained employees must not be permitted to perform the services specified in the Agreement. It will be the burden of the Contractor to provide proof/document of employee training if requested by the Director.

1.13.2 At any time during the contract period, the Director may determine that work is not being performed in a timely manner or that the work is deficient. The Contractor shall be required to increase the manpower and/or equipment levels in order to correct these deficiencies at no additional cost to the HAS. These increased levels must be maintained in order to perform the work required.

### **1.13.3 Personnel Requirements**

1.13.3.1 The Contractor shall provide all necessary personnel including supervision, to ensure that all landscape maintenance services are performed as required.

1.13.3.2 Contractor shall develop procedures to ensure all personnel, including newly hired workers, will be familiar with the work tasks. The procedures will include the required equipment for each job and will include safety procedures for all work performed.

1.13.3.3 All Contractor personnel must be reliable, skilled and experienced in their assigned tasks. Contractor shall provide the Director with a list for all Contractor personnel who will be working on HAS property. Contractor may change personnel only with equally qualified personnel and Director's approval.

## 1.13.4 Project Manager

1.13.4.1.1 Within ten (10) days prior to the Effective Contract Date, Contractor shall designate in writing to Director a Project Manager who is skilled and experienced in the type of service described in the Agreement, to direct all contract personnel and maintenance operation. Director must approve the project manager, in writing, before performance begins. If Director refuses to approve Contractor's project manager, Contractor shall submit another project manager to Director for approval. Director has the right to approve or disapprove any successor project manager before performing under the Agreement. The Project Manager must have a minimum of five years managing experience in landscape maintenance on a project of similar size /scope and quality standards stated in the Agreement.

1.13.4.2 Contractor's Project Manager must be available at all times during the performance of the Agreement. Contractor's Project Manager must have full authority to represent Contractor in making decisions and in the execution of the services to be performed. Contractor shall provide Director with the identity, home address, business and home telephone numbers of the Project Manager.

1.13.4.3 The Project Manager must represent the interest of the Contractor with regards to all matters involving work performance under this Agreement.

1.13.4.4 The Project Manager must speak, read and write the English language to effectively communicate with the Contractor's employees and/or subcontractors as well as HAS and other airport personnel. The Director reserves the right to require the Contractor to replace the Project Manager who cannot meet this requirement.

1.13.4.5 If the Project Manager is not on site or absent due to illness or other reasons, the Contractor shall provide an acting project manager to be on site managing and directing all contract personnel and maintenance operations. The acting project manager must have similar job qualifications to those required for the Project Manager.

## 1.13.5 Scheduling

1.13.5.1 Contractor shall ensure that qualified, trained personnel and necessary materials, tools, equipment, and supplies will be available to meet all maintenance requirements of the Agreement.

1.13.5.2 Within one (1) week after receipt of the Notice to Proceed, Contractor shall coordinate a work schedule that is agreeable to Director and submit an approved written schedule detailing the maintenance workdays and responsibilities for each person.

1.13.5.3 Contractor shall notify Director immediately, in writing, of any proposed deviations from the schedule along with the schedule recovery dates. Contractor shall not deviate from the schedule until receiving Director's written approval.

### 1.13.6 Personnel Uniforms

- 1.13.6.1 Contractor's personnel must present a clean and neat appearance. Contractor's personnel must wear a Contractor furnished uniform with Contractor's name clearly displayed on the front of the shirt and seasonal outerwear.
- 1.13.6.2 The Contractor shall provide complete uniforms to employees including, but not limited to, the following:
  - 1.13.6.2.1 Shirt with company identification logo. Tank tops, net shirts, halter tops, etc. are not permitted.
  - 1.13.6.2.2 Full length pants without excessive length or flared bottom.
  - 1.13.6.2.3 Safety gear/apparel.
  - 1.13.6.2.4 Inclement weather apparel.
- 1.13.6.3 Project Manager's uniform must be distinctly different from those of their employees. All uniforms must be approved by the Director prior to the commencement of this Agreement.
- 1.13.6.4 Employees improperly uniformed must not be permitted to work. Any employee found working and not wearing the proper uniform will be asked to leave the airport until they can meet the uniform requirement.

### 1.13.7 Texas Driver's License

- 1.13.7.1 Director requires that Contractor's employees performing work at the Airport possess a valid Texas driver's license for the type of vehicle or equipment operated. It shall be Contractor's responsibility to ensure that its employees meet this requirement.

## 1.14 **SECURITY AND BADGING**

- 1.14.1 Contractor shall comply with all applicable Federal rules governing security at the Airport, as may be amended from time to time.
  - 1.14.1.1 All on-site personnel of Contractor, including sub-contractor's, who perform services under the Agreement, are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport Badging Office and submitted electronically for investigation. The Project Manager must have additional training at HAS to approve badging requests for Contractor personnel.
  - 1.14.1.2 Contractor shall obtain HAS security badges for its personnel performing services on-site, including its sub-contractor's personnel. On-site personnel must wear identification badges at all times while on Airport property. The cost of badges, which is subject to change, is currently \$55.00 each at (IAH)/ (HOU) and \$16.00 each at (EFD). Costs for the fingerprint-based criminal history records check are reflected in the cost of the badges. Contractor is responsible for the cost of badges, including replacements thereof. Contractor personnel losing badges will be charged for replacement badges at the then current rate. Badge yearly renewal cost is \$16.00.

1.14.1.3 All fines or penalties associated with non-compliance with security regulations must be reimbursed to HAS.

1.14.1.4 Contractor personnel must conform to all HAS Security & Operations rules or regulations at all times while on HAS property per HAS Operating Instructions 05-02 and 05-03. (Reference Website <http://www.fly2houston.com/business-badge>).

## **1.15 RESPONSE TIME**

1.15.1 The Contractor shall be on call for repairs and shall respond on site for emergency work requests within 2 hours after receiving notification from the Director.

1.15.2 The Contractor shall respond on site for normal work requests within 24 hours after receiving notification from the Director.

## **1.16 PARKING**

1.16.1 Contractor shall park its vehicles in areas designated by Director at its own cost. Contractor must provide all transportation activities of Contractor or its subcontractors necessary to perform under the Agreement.

## **1.17 VEHICLES/EQUIPMENT**

1.17.1 The Contractor shall provide and maintain all equipment and vehicles necessary to perform their required services defined in this Agreement.

1.17.2 All of contracted vehicles must be clearly marked with identification indicating Contractor's or subcontractor's name. Such identification must be placed on both sides of each vehicle and may be removable, e.g. magnetic, in accordance with HAS OPPS 88-06

1.17.3 Contractor's vehicles shall be equipped with appropriate safety devices to ensure safe operations. These devices must include, but not be limited to, amber (yellow) dome –type flashing light mounted on top of the vehicle, front and tail lights, horns, safety striping and/or triangles, and other safety devices as specified by the Director.

1.17.4 Contractor vehicles used for traffic management must have high intensity strobes /flashers/warning lights and be equipped with a “traffic manager” lighting systems. Moreover, the contractor shall adhere to the Safety Traffic Management Plan as indicated in Attachment B-3 (Road Blocking Guideline).

1.17.5 In the event of equipment failure, the Contractor shall either return the equipment to good operating condition within 24 hours or provide a replacement in good operating condition within 24 hours.

1.17.6 Equipment utilized to apply materials must be calibrated and outfitted with metering devices to measure usage.

1.17.7 At any time during the contract period, the Director may determine that work is not a timely manner due to deficient or lack of equipment, the Contractor shall be required to replace or increase equipment levels in order to correct these deficiencies at no additional cost to HAS.

## **1.18 LICENSE/PERMITS**

1.18.1 The Contractor shall, at Contractor's cost, obtain all licenses, and permits required for the execution of the work.

## **1.19 MATERIALS**

1.19.1 Mulch must be double shredded hardwood, aged, and dark in color, unless otherwise specified by the Director.

1.19.2 Topsoil must be friable, dry, and free of noxious weeds or toxic chemicals. Textures must be loam or sandy loam.

1.19.3 Organic soil amendment shall be decomposed aged organic matter.

1.19.4 All fertilizers must be in its original packaging with the analysis clearly marked.

1.19.5 Landscape plant material must be true to name in accordance with the following:

1.19.5.0 All material must be healthy, free of pests, disease and injury.

1.19.5.1 Nomenclature references- Hortus Third 1976. The Staff of the Liberty Hyde Bailey Hortorium, MacMillan Publishing, New York

1.19.5.2 Manual of Woody Landscape Plants. 1998. Michael A. Dirr. Stipes Publishing, Champaign, IL.

1.19.5.3 All material must comply with the nursery stock standards described in "American Standard for Nursery Stock" ANSI Z60.1.

1.19.5.4 Balled and burlapped (B&B) plant material must have full solid soil balls securely bound in burlap.

1.19.5.5 Container grown material must not be pot bound.

## **1.20 TOOLS, MATERIALS, SUPPLIES, AND EQUIPMENT**

1.20.1 Contractor shall provide all tools and equipment necessary to perform services specified herein. Equipment that may be required to accomplish tasks specified may include, but not be limited to:

1.20.1.1 Dump truck

1.20.1.2 Bobcat with attachments

1.20.1.3 Water truck

1.20.1.4 Tree spade

1.20.1.5 Tractor with attachments (finish mower, box-blade, landscape rake, bushhog, loader)

1.20.1.6 Trencher with small backhoe

1.20.1.7 Tree chipper

1.20.1.8 Chain saw

1.20.1.9 Boring machine

1.20.1.10 Concrete mixer

1.20.1.11 Concrete saw

1.20.1.12 Chemical application tank trailer

1.20.1.13 Bulldozer

1.20.1.14 Fertilizers

- 1.20.1.15 Herbicides
  - 1.20.1.16 Chemicals
  - 1.20.1.17 Garbage Bags
  - 1.20.1.18 Pruning Equipment
  - 1.20.1.19 Cleaning Wipes
  - 1.20.1.20 Water Dispensers
  - 1.20.1.21 Insecticides
  - 1.20.1.22 Water Meter
- 1.20.2 All supplies must be of the quality necessary to fulfill the intended purpose of the product. Contractor shall provide and maintain tools, machines, and equipment to perform the work as specified. All equipment must be maintained in a first-class working condition satisfactory to Director. Contractor shall use all tools, materials, supplies, and equipment in accordance with the manufacturer's recommendations/instructions.
- 1.20.3 The City will assume neither responsibility nor liability for any Contractor furnished items. The City will assume no responsibility or liability for any harm or injury arising from, or caused by, any Contractor furnished item or equipment.
- 1.20.4 The City will not be liable for any loss, breakage, or damage that may result to tools, equipment, materials, or supplies that Contractor may be using in the areas serviced.
- 1.20.5 Contractor shall remove all materials, supplies, and equipment from the work site upon completion or cessation of work. Contractor is responsible for proper storage etc. of its equipment used for work at the Airports.

## **1.21 SAFETY**

- 1.21.1 Contractor shall not require any person to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety. Contractor shall comply with all provisions of the Occupational Health and Safety Act (OSHA).
- 1.21.2 Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable, including but not limited to the following:
- 1.21.2.1 Contractor personnel must wear applicable personal protection equipment at all times.
  - 1.21.2.2 Contractor personnel operating equipment or handling materials must be fully trained in the safe operation of the equipment or materials.
  - 1.21.2.3 Contractor personnel must follow and apply safety practices prevailing in their applicable industry.
- 1.21.3 Contractor shall develop, implement and maintain an on-going safety program concerned with equipment, maintenance work, and related procedures. Contractor shall post safety warnings on equipment as necessary to ensure safe operations. Contractor shall not operate, install, or test any equipment in an unsafe condition. Contractor shall properly operate and maintain all safety equipment associated with its services.
- 1.21.4 When Contractor becomes aware of a hazardous or potentially hazardous condition during the course of performing services, Contractor shall immediately verbally notify Director and immediately send a written correspondence. Contractor shall detail conditions along with non-hazardous conditions and recommendations in its quarterly report.

## **1.22 MATERIAL SAFETY DATA SHEETS (MSDS)**

1.22.1 The Contractor shall furnish to the Director all MSDS for each product used at each Airport. A Material Safety Data Sheet must accompany each product shipment to the Airports.

## **1.23 RECORDS AND REPORTS**

1.23.1 Contractor shall make periodic verbal or written reports and recommendations to Director with respect to conditions, transactions, situations or circumstances affecting Contractor's performance under the Agreement. Contractor shall provide verbal or written reports as requested by Director. All reports are due within fifteen (15) days following the end of the calendar month unless otherwise agreed upon by Director.

1.23.2 Reports must be typed written and must be submitted to the Director by electronic media.

1.23.3 By electronic media the Contractor shall report all daily activities to the Director at the conclusion of each workday in a "Daily Activity Report." The daily activity report must include the date, weather conditions, work performed, quantity of labor force, hours of work, location of work, materials and equipment used, and any applicable special condition or activities.

1.23.4 At each end of the month, the Contractor shall report to the Director the cumulative monthly man-hours utilized to perform the services during the contract period.

1.23.5 Submit a monthly report which shows the type and quantity of chemicals applied during the month.

1.23.6 As part of the organization/planning task, Contractor shall develop procedures for maintaining records for services provided under the Agreement. As a minimum and in compliance with this specification, the records must cover:

### **1.23.6.1 Agreement Documents**

1.23.6.1.1 Agreement Terms and Specifications

1.23.6.1.2 Insurance Policies

1.23.6.1.3 Approvals called for in Agreement Documents

1.23.6.1.4 Service Subcontracts

### **1.23.6.2 Service Documentation**

1.23.6.2.1 Inspection Reports

1.23.6.2.2 Incident Reports

1.23.6.2.3 Soil analysis reports

1.23.6.2.4 Weed, pest, and disease management reports

1.23.6.2.5 Safety reports

1.23.6.2.6 Logs

### **1.23.6.3 Reports**

1.23.6.3.1 Daily Activity Report

1.23.6.3.2 Monthly Man-hour Report

1.23.6.3.3 Monthly Summary Reports

1.23.6.3.4 Semi-Annual Summary Reports

1.23.6.3.5 Annual Summary Reports

1.23.6.3.6 Water Usage Reports (Contractor to provide meter)

1.23.7 Contractor's record keeping system must be subject to approval of Director. Director may inspect all records at any time during normal business hours.

1.23.8 Upon expiration or termination of the Agreement, all records produced and maintained on file must become the property of the City. Contractor shall retain all employee and accounting files and furnish a copy of all such files to the City.

1.23.9 Contractor shall submit all reports and progress updates as required by Director.

#### **1.24 SUBMITTALS FOR APPROVAL**

1.24.1 Prior to use of any landscape products or materials, the Contractor shall provide the following submittals for review and approval by the Director. Contractor shall furnish three copies of each submittal:

1.24.1.1 Manufacturer's product data and literature

1.24.1.2 Manufacturer's installation recommendations

1.24.1.3 Samples, if required by the Director

1.24.1.4 Material Safety Data Sheets (MSDS)

#### **1.25 DAMAGE TO CITY PROPERTY**

1.25.1 Contractor shall repair or replace damages to City property caused by carelessness or neglect on the part of Contractor, its agents or employees.

#### **1.26 INCREASE OR DECREASE OF WORK-INCLUSIONS/EXCLUSIONS**

1.26.1 From time to time throughout the Term of the Agreement, Director may, by written notice to Contractor, increase and/or decrease the work covered by the Agreement. Contractor's sole compensation for such adjustment will be the unit cost per the Bid Form or cost agreed by Director and Contractor.

#### **1.27 PHASE-IN/PHASE-OUT SERVICES**

1.27.1 The services provided by Contractor and continuity of such services at a consistently high level without interruption must be ensured, as they are vital to the City's overall effort. Upon expiration of the Agreement, a successor may continue the services. Contractor shall give its best efforts and cooperation in order to effect an orderly and efficient transition to a successor.

1.27.2 Contractor shall provide phase-in/phase-out services for up to 30 days before Agreement expiration at no extra charge to HAS. Contractor shall negotiate in good faith with the HAS in determining the nature and extent of the phase-in/phase-out services. Contractor shall be totally responsible for providing the services specified in the Agreement during any phase-in/phase-out period.

## **1.28 DUTIES OF HAS**

1.28.1 HAS will provide Contractor with staging and lay down area(s)

1.28.2 HAS will supply water at no cost to the Contractor. There are multiple water filling stations on the Airport Grounds.

## **1.29 WARRANTY OF SERVICES**

1.29.1 *Definitions:* "Acceptance" as used in this clause, must be determined by Director and be established when Director determines that the unit of Work specified under the Agreement is complete and acceptable.

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

1.29.3 As otherwise noted in the specification; and notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. 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.

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

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

## **1.30 ESTIMATED QUANTITIES NOT GUARANTEED**

1.30.1 The estimated quantities specified in this Agreement are not a guarantee of actual quantities, HAS does not guarantee any particular quantity during the term of this Agreement. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this Agreement. Therefore, HAS will not be liable for any contractual agreements/obligations the Contractor enters into based on HAS purchasing/requiring all the quantities specified herein.

## **1.31 ADDITIONS & DELETIONS:**

1.31.1 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

will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

**1.32 INTERLOCAL AGREEMENT:**

1.32.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

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**ATTACHMENT "B-1"**  
**Locations**

<b>Location Reference</b>	<b>Landscape Areas at Houston George Bush Intercontinental Airport (IAH)</b>	<b>Flower Beds &amp; Shrubs (Approx. Sq.Ft.)</b>	<b>Trees &amp; Turf Grass (Approx. Sq.Ft.)</b>
<b>Area # 1</b>	<b>JFK &amp; Green Roads Beds</b>		
a	JFK & Greens Road -- JFK median south of Greens Road	5,850	27,560
b	JFK & Greens Road -- JFK median south of Greens Road, turning island triangle	700	360
c	JFK & Greens Road -- N.E. Corner	5,812	43,585
d	JFK & Greens Road -- N.W. Corner	5,250	17,650
e	JFK & Greens Road -- Turning Islands in front of Welcome sign (2) triangle beds	3,513	1,065
f	JFK & Greens Road -- Welcome sign	3,706	1,100
g	JFK & Hardy Toll Road	2,250	1,880
h	JFK & Hardy North	3,900	410
<b>Area # 2</b>	<b>Economy Lot</b>	405	0
<b>Area # 3</b>	<b>Administration Building</b>	8,224	188,450
<b>Area # 4</b>	<b>Radiant Fountains JFK Blvd.</b>	5,298	1,884
<b>Area # 5</b>	<b>JFK Medians</b>		
a	Bed new sign (JFK)	2,112	518
b	JFK & Adm. Building Bridge	50,775	14,576
c	JFK Median "Adm. Bridge" - Crape Myrtle bed	0	5,360
d	JFK North	710	0
e	JFK & North Median - (2) beds	1,825	0
f	JFK & Will Clayton - "Pork Chop Hill"	3,770	64,150
g	Terminal Split	2,580	39,655
h	JFK Esplanade Hibiscus	1,372	0
i	JFK Service Rds. -Wax Myrtle & Yaupon beds	26,380	0
<b>Area # 6</b>	<b>Terminal Split South</b>		
a	JFK South	3,635	0
b	JFK Terminal Split - Hibiscus & Crape Myrtle beds	13,020	7,932
c	JFK Setback North Split - Hibiscus	1,080	0
<b>Area # 7</b>	<b>Yaupons North &amp; South Will Clayton Blvd.</b>	11,820	0
<b>Area # 8</b>	<b>Lee Road Bed, Mayor Sign</b>		
a	Will Clayton & Old Lee Road	9,294	20,716
b	Mayor's Sign Will Clayton	2,112	904
<b>Area # 9</b>	<b>Terminal C ( Pot Planters )</b>		
a	Terminal C & Parking Garage (20) Planters	1,571	0
b	Terminal C - West - (2) beds, Crape Myrtles & hedges	2,850	1,800
<b>Area # 10</b>	<b>North &amp; South Terminal Roads Beds A&amp;B Terminals</b>		
a	North & South Terminal Rd. Additional Landscape bed in front of South Blast Walls-(1) North Term Rd (1) South Term Rd.	8,320	2,208
b	Terminals A&B - (6) Sound Blast Walls Hawthorne Beds	6,000	0
c	Terminal A - North Term. Rd. Hibiscus Bed	4,200	0
d	Terminals A&B - South Term Rd Hibiscus Bed	6,834	0
e	North Terminal Road Rotundas at A&B Garage East & West sides (2) round Landscape Beds A&B garage entry & exit spiral drives	28,209	9,275
f	North Terminal near AB Parking Garage	2,041	1,680
g	Area Under People Mover	4,948	0
h	B South Terminal Rd. Bed	3,120	0

Locations Cont B-1

Location Reference	Landscape Areas at Houston George Bush Intercontinental Airport (IAH)	Flower Beds & Shrubs (Approx. Sq.Ft.)	Trees & Turf Grass (Approx. Sq.Ft.)
<b>Area # 11</b>	<b>FIS Terminal E/FIS</b>		
a	Terminal E/FIS - Beds along North Terminal Road, beds east building between IA-1 & IA-2	18,475	6,365
b	Terminal Road & Will Clayton - Terminal Road median-circular bed at light spikes	1,600	0
c	IAB Turnaround	2,700	0
<b>Area #12</b>	<b>Terminal Planters</b>		
a	Terminal A (11) Planters	261	64
b	Terminal C (20) Planters	257	62
c	Terminal D (2) Planters	32	62
<b>Area # 13</b>	<b>Eco-Park</b>	6,592	1,104
<b>Area # 14</b>	<b>Cargo Split(s)</b>		
a	Cargo Split	10,001	0
b	Cargo Split Bed 2	15,767	0
<b>Area #15</b>	<b>Terminal A</b>		
a	Terminal A North Terminal Rd.	0	9,023
b	Terminal A West Parking	3,518	8,325
c	Terminal A South Terminal Rd.	1,328	6,553
<b>Area #16</b>	<b>A&amp;B Garage</b>		
a	A&B Garage North A	0	11,709
b	A&B Garage North B	2,169	16,847
c	A&B Garage South A	0	3,027
d	A&B Garage South B	0	13,601
e	A&B Garage North Shrubs	2,259	12,433
f	A&B Garage South Shrubs	1,824	0
<b>Area #17</b>	<b>Terminal B</b>		
a	Terminal B North	0	17,196
b	Terminal B South	0	17,402
c	South Terminal Rd. @ JFK	2,322	13,071
d	Terminal B East Parking Lot	0	12,927
e	Terminal B @ Compactor 6	660	0
<b>Area #18</b>	<b>Terminal C</b>		
a	Terminal C North Terminal Road	0	59,270
b	Terminal C South Terminal Road	0	14,883
c	Terminal C West	27,230	55,823

Locations Cont B-1

Location Reference	Landscape Areas at Houston George Bush Intercontinental Airport (IAH)	Flower Beds & Shrubs (Approx. Sq.Ft.)	Trees & Turf Grass (Approx. Sq.Ft.)
<b>Area #19</b>	<b>Terminal D/FIS</b>		
a	Terminal D/FIS South	0	8,078
b	East Terminal Entrance ( Old FIS Turnaround )	0	29,376
c	Terminal D Northwest	0	5,539
d	Terminal D North East	0	11,512
e	Terminal D North Feeder	0	7,488
<b>Area # 20</b>	<b>SCM Complex</b>	7,000	37,500
	<b>Total Estimated Square Footage</b>	<b>347,481</b>	<b>831,958</b>
	<b>Total (IAH) Estimated Square Footage of Seasonal Plant Color Rotation - 22,968 Sq.Ft</b>		

Locations Cont B-1

Location Reference	Landscape Areas at William P. Hobby Airport (HOU)	Flower Beds & Shrubs (Approx. Sq.Ft.)	Trees & Turf Grass (Approx. Sq. Ft.)
Area # 1	Airport & Monroe Beds	1,110	0
Area # 2	Airport & Hinman Road Beds	5,294	15 Palm-Trees No Grass
Area # 3	Airport Container Beds (30-color containers & 12 sago and color containers)	420	0
Area # 4	Broadway & Morley Beds		
a	Broadway & Morley beds	1,878	0
b	Rose bed	3,628	3,628
c	SW& SE spiral beds	566	0
Area # 5	Walking Trail Bed	346	0
Area # 6	Bow Tie Bed	380	8 Palm-Trees No Grass
Area # 7	Paul B. Koonce Building Planters		
a	Planters - Approx. 31 each	846	0
Area # 8	Flagpole beds in front of parking garage	618	0
Area # 9	Ernie Bed	635	0
Area # 10	Perennial Beds with Palms behind Ernie bed	338	0
Area # 11	Attrium Beds	370	0
Area # 12	Parking Garage Planters 2nd & 3rd Level	4,796	0
Area # 13	Liriope Beds 2nd Level Parking Garage	710	0
Area # 14	First Floor Parking Garage Beds ( 13 beds )	6,296	0
Area # 15	Outdoor Beds - Approx. 9 ea.	14,336	0
Area # 16	Birds Nest Art bed	1,810	0
Area # 17	Fountain Bed in front of Garage	1,200	0
	<b>Total Estimated Square Footage</b>	<b>45,577</b>	<b>3,628</b>
	<b>Total (HOU) Estimated Square Footage of Seasonal Plant Color Rotation - 6,000 sq.ft</b>		
Location Reference	Landscape Areas at Ellington Field (EFD)	Flower Beds & Shrubs (Approx. Sq.Ft.)	Trees & Turf Grass (Approx. Sq. Ft.)
Area # 1	Challenger 7 St. Entrance Signs (2)	2,000	1,000
Area # 2	Challenger 7 St. Median Signs (2)	2,000	20,000
Area # 3	Aerospace Blvd. Medians (7)	4,000	35,000
Area # 4	KC-135 ( Static Aircraft Display)	10,000	6,000
Area # 5	Brantley St. Entrance Bed	4,000	N/A
Area # 6	EFD Administration Building	12,000	200
Area # 7	Way finding signs (8)	1,200	0
	<b>Total Estimated Square Footage</b>	<b>35,200</b>	<b>62,200</b>
	<b>Total (EFD) Estimated Square Footage of Seasonal Plant Color Rotation - 5,875 sq.ft</b>		

## ATTACHMENT "B-2"

**1.0 LANDSCAPE MAINTENANCE** – Contractor shall be responsible for landscape maintenance in all areas specified in Attachment B-1. Contractor's work includes but is not limited to the following Requirements/Special Tasks and Materials etc., as part of Basic Services

### 1.1 Maintaining Beds/Containers

1.1.1 Seasonal color beds and containers must be kept free of weeds at all times.

1.1.2 Remove and dispose of faded flowers (or) spent blooms as required to keep the plants well groomed, to prevent plants from setting seed, and to promote continued blooms.

1.1.3 Remove and dispose of all natural and man-made debris, including, but not limited to: dead plants, spent blooms, weeds, pruning, unusable mulch, landscape materials etc., from HAS premises. Clean debris from beds.

1.1.4 At the end of each work day, Contractor shall leave any job/work location clean, neat, and with proper disposal of all debris.

1.1.5 All plants must be guaranteed for the duration of the Agreement. Any dead or dying plants exceeding 25% or more of the canopy missing as determined by the Director must be replaced by Contractor at no cost to HAS.

1.1.6 The Contractor shall be responsible for maintenance of all installed plants.

### 1.2 Removal of dead, dying, hazardous plants/trees/turfgrass

1.2.1 Contractor shall remove or replace, at its expense, dead, damaged, dying, or unattractive plants, shrubs, trees, etc. damaged/lost due to contractor's negligent care or failure to perform proper maintenance services. The replacement plant must match existing plant type and size and be approved by the Director.

1.2.2 HAS will be responsible for replacement of plants due to other than Contractor's negligence, such as damage caused by vandalism or theft.

1.2.3 Contractor shall immediately notify the Director in writing when missing or vandalized plants are discovered. Director may conduct an investigation into the circumstances surrounding any missing or vandalized plants to determine any Contractor negligence.

1.2.4 Replacement plants must be planted within seven (7) days from notice of damage, unless otherwise specified by the Director.

### 1.3 Policing/Clean Up of Grounds

1.3.1 The Contractor shall remove and dispose of trash, litter and debris prior to mowing and maintenance.

- 1.3.2 The Contractor shall maintain all paved areas including sidewalks and curbs free of vegetative growth. Weeds must be treated with a pre and/or post-emergent herbicide and all debris must be removed and properly disposed by the Contractor.
- 1.3.3 Fallen leaves must be removed from the grounds and beds on a regular basis as leaves begin to drop. All areas should be completely clean.

#### 1.4 Fertilize

- 1.4.1 Fertilize trees, turfgrass, flowers and shrubs in landscaped areas as required with appropriate fertilizer(s) at appropriate frequencies to ensure all plants receive nutrients essential to remain healthy and vigorous.
- 1.4.2 Deep-root fertilize trees in landscaped areas at least once a year or as required to ensure healthy and vigorous growth.
- 1.4.3 Fertilize roses at appropriate times with slow-release systemic rose food and apply root stimulant and wilt inhibitors as required to maintain health of plants and an attractive appearance.
- 1.4.4 Fertilizers must be applied during appropriate time of year according to appropriate standard and manufacturer's recommendation.
- 1.4.5 Fertilizer must be applied at recommended rates according to appropriate standard and manufacturer's recommendations.
- 1.4.6 Deciduous/evergreen trees, shrubs, groundcovers, perennials, ornamentals turfgrass, etc., must be fertilized according to appropriate standard and species and manufacturer's recommendation.

#### 1.5 Erosion Control/Remediation

- 1.5.1 Prevent the wearing away, washing away, or removal of soil by wind, water, etc., and repair any erosion damage.

#### 1.6 Mulching

- 1.6.1 All planting beds and tree-mulch rings must be mulched at a minimum depth of two inches not to exceed three inches. Mulch must be applied at a minimum of two times per year and as specified by the Director. Any mulch existing from previous years that exceeds two inches deep must be removed before new mulch is applied. The mulch must be kept at least two inches from the base of tree trunks and shrubs.
  - 1.6.1.1 Mulch must be lightly raked throughout the year and loosened to freshen it and break up any water impermeable layers. Light top dress applications of mulch must be applied periodically in order to maintain a consistent two inch layer of mulch in all planting beds and tree-mulch rings.

## 1.7 Pruning

- 1.7.1 All pruning must be done in accordance with the American National Standards Institute ANSI 300 Standards for Tree Care Operations. All cuts must be made without cutting into the branch collar and without leaving a protruding branch stub. Clean cuts must be made at all times. All branches that are too heavy to handle must be precut to prevent splitting. All debris must be properly disposed by the Contractor.
- 1.7.2 Massed shrubs must be hand-sheared and hand-pruned to maintain a neat appearance, improve sight distance and improve plant condition. Woody plants that are massed in beds and not pruned into a hedge must not be sheared unless otherwise specified by the Director. Only cuts above the nodes are allowed. All cuts must be hidden within the shrub mass.
- 1.7.3 Vines, ivy, and groundcover must be pruned by hand regularly as required, to maintain a neat and manicured appearance. They must be pruned at the nodes, with the cut hidden. Groundcover must be maintained within the bed boundaries. Ivy and groundcover must be maintained 4-6 inches away from the trunks of all trees and shrubs. String trimmers and shearing equipment must not be used to prune vines, ivy, or groundcover unless otherwise specified by the Director.
- 1.7.4 Perennial plants must be cut back to the ground before start of growing season with the understanding that certain perennials may have optimal cutback periods shortly before or after this date.
- 1.7.5 All ornamental turfgrasses must be cut back to the ground prior to the start of the growing season, before new growth begins.
- 1.7.6 Flowering perennial plants must be deadheaded as necessary during the growing season to maintain a neat appearance.
- 1.7.7 Hedges must be pruned by hand unless otherwise specified by the Director. Hedges must be pruned as needed to maintain a neat and trim appearance, improve sight distance, and/or improve plant condition. Hedges must be maintained at an exact and equal height for the entire length of the hedge and must be shaped at the bottom of the hedge slightly wider than the top. Hedge height may not be drastically altered at any time unless otherwise specified by the Director.
- 1.7.8 Spring flowering shrubs must be pruned immediately after blooming or according to appropriate standard and species. Broadleaf evergreen trees and shrubs must be pruned after new growth hardens off according to appropriate standard and species. Shrubs that flower during the summer must be pruned at the start of spring or according to appropriate standard and species.
- 1.7.9 Trees must be pruned to remove co-dominant leaders, crossed branches, and/or sprouts to elevate the canopy as needed, improve sight distance, eliminate hazardous condition, and/or improve appearance and condition of the trees. Structural pruning (crossing branches, removing co-dominant branches, thinning) must be performed as needed on each tree as specified by the Director. Deadwood, broken, damaged or hazardous branches must be removed immediately, and must be performed as needed at anytime of the year. Deciduous trees may be pruned at any time except during the periods between bud break to leaf elongation, and during leaf drop.

## 1.8 Trimming

- 1.8.1 Trim to give the turfgrass a finished look around buildings, trees, shrubs, flower/shrub beds, cultivated areas, poles, walls, valves, and other similar objects. Trimming must be accomplished to match the height and appearance of the surrounding mowed turfgrass.
- 1.8.2 Trimming within 15-inches of any tree trunk must be done by hand trimming on all areas around structures or trees must be trimmed to mowing height each time the turfgrass is mowed. String trimmers must not be used around the stems or trunks of trees and shrubs.
- 1.8.3 After trimming, all clippings and debris must be immediately cleaned off of paved areas, vehicles, structures, equipment, and lighting systems.

## 1.9 Soil Amendments

- 1.9.1 Apply amendments according to appropriate standard and manufacturers recommendations to ensure the physical and chemical conditions of the soil in landscaped areas are suitable for growing and drainage.
- 1.9.2 Contractor shall integrate the results of the following analysis into its flowers and shrubs landscape maintenance program and use the data to correct nutritional imbalances in the soil, establish and monitor fertilizer requirements, prevent mineral element deficiencies, and ensure optimum plant health and growth.

## 1.10 Soil Analysis

- 1.10.1 Provide soil sampling consistent with Texas A&M University (TAMU) soil sampling techniques.
- 1.10.2 Use appropriate soil sampling techniques as recommended by TAMU to ensure a composite representative sample is taken from each area to be tested.
- 1.10.3 Use the TAMU Routine Analysis Group (pH, NO<sub>3</sub>, P, K, Ca, Mg, Na, S, and Conductivity) per sample.
- 1.10.4 Provide HAS with a copy of all soil analyses results/reports.

## 1.11 Staking Plants

- 1.11.1 Stake plants and shrubs as needed. Stake must be as inconspicuous as possible using natural colored materials (example green or brown stakes and/or twine.) Stake young and tender plants to ensure root protection and straight growth.

## 1.12 Weed Control

- 1.12.1 Provide an environmentally sensitive Integrated Weed, and Disease Management Program.
- 1.12.2 Prevent and eradicate all weeds/ unwanted turfgrass in bed areas.
- 1.12.3 All planting beds, tree-mulch rings, and planting areas must be kept weed-free at all times.

- 1.12.4 Pre-emergent and Post-emergent herbicides must be applied on an as needed basis to all planting beds. The herbicide used must be approved by the Director before application.
- 1.12.5 Pre-emergent herbicides and post-emergent herbicides must be used as necessary to control weeds in turfgrass. Herbicides must be applied in accordance with the manufacturer's instructions/recommendations. The herbicide used must be approved by the Director before application.
- 1.12.6 Spraying must not be performed when the vegetation is wet, when it appears that rain is imminent within six hours or when the wind is blowing enough to scatter paper or trash.
- 1.12.7 Damage from overspray must be avoided.

1.13 Pesticides, Herbicides, Insecticides, and Fungicides

- 1.13.1 Contractor shall notify the Director and receive the Director's approval prior to treating any pest problems in the landscape areas.
- 1.13.2 Contractor shall provide and apply appropriate pesticides, herbicides, insecticides, and fungicides on an as needed basis in accordance with manufacturer's instructions/ recommendations and best horticultural practices. Pesticides must be used as a last resort to treat problem areas.
- 1.13.3 Records of pesticides, herbicides, insecticides, and fungicides applications must be submitted to the Director within 24 hours after the application of pesticides.
- 1.13.4 Contractor shall notify the Director at least three days before applications. The Contractor, prior to making this application, must post notification signs and must not perform the application unless the signs have been posted. Once spray is complete signs must be removed by contractor within 24 hours.
- 1.13.5 Pesticides, herbicides, insecticides, and fungicides must be applied within seven days after notification, unless otherwise specified by the Director. The Contractor shall not substitute or combine materials without prior approval by the Director.
- 1.13.6 Applications of pesticides, herbicides, insecticides, and fungicides must be stopped immediately if it is determined that the application poses a safety hazard to the public or property. If necessary, in order to avoid exposure to any unintended target, the Contractor shall apply treatments during times as specified by the Director.
- 1.13.7 Pesticides, herbicides, insecticides, and fungicides must be applied in accordance with the manufacturer's instructions /recommendations and the application(s) must adhere to all federal, state, and local laws and regulations.
- 1.13.8 Contractor shall use EPA approved chemicals that are as environmentally friendly as possible and at the minimum quantities required to provide infestation control for trees and turfgrass etc. in landscape areas.
- 1.13.9 Contractor shall use only trained and state-certified or licensed applicators to apply pesticides, herbicides, insecticides, and fungicides on the Airport grounds.

- 1.13.10 Contractor's personnel, applying pesticides, herbicides, insecticides, and fungicides on site, must possess a valid State of Texas Commercial Applicator Certificate/License appropriate for the product being applied.
- 1.13.11 Contractor shall apply pesticides, herbicides, insecticides, and fungicides only under the recommended weather and environmental conditions to avoid drift and prevent damage to adjacent and non-target vegetation. Spraying must not be performed when vegetation is wet, when the wind is blowing enough to scatter paper trash, or when human activity is not at a minimum.
- 1.13.12 Contractor's use of non-selective herbicide must be pre-approved by the Director.
- 1.13.13 Pre-emergence herbicides must be of the non-leaching type.
- 1.13.14 Soil toxicity must be avoided.
- 1.13.15 Contractor's applicators are solely responsible for properly storing and securing the chemicals. Material safety data sheets (MSDS) and product label information must be submitted to the Director prior to pesticide applications.
- 1.13.16 Contractor shall be responsible for any damage to plants, grounds, and landscape incurred as a result of inappropriate or improper application of pesticides, herbicides, insecticides, and fungicides and must repair or replace any such damage at no cost to HAS.
- 1.13.17 Blue dye in pesticides must be used only if absolutely necessary and given prior approval by the Director.

#### 1.14 Mowing

- 1.14.1 Contractor shall maintain an approximately 4-foot area of turfgrass around all beds unless otherwise specified by the Director. Mowing heights must be appropriate for the season and the type of turfgrass planted at each location.
- 1.14.2 Mowing should be done every 5-7 days depending on weather conditions or if the turfgrass is under irrigation. Specific mowing specifications for semi-naturalized areas will be determined by the Director.
- 1.14.3 Turfgrass must not exceed 3.5 inches in height at any time and must not be mowed less than 2 inches. Contractor shall have the option to rake and bag all turfgrass clippings and properly dispose of clippings or recycle mulched turfgrass back into the turfgrass areas.
- 1.14.4 All trash and debris must be removed from lawn areas before mowing.
- 1.14.5 Mowing equipment must be well maintained and cutting blades must be sharp at all times.
- 1.14.6 Lawnmowers must not be used close to the stems or trunks of shrubs and trees. Any shrubs damaged by mowing must be replaced with a specimen of equal size and type at no cost to HAS. Trees damaged by mowing must be replaced with a specimen of equal size or on an inch by caliper inch basis at the discretion of the Director.

- 1.14.7 Mowing must be done in such a way that clippings are not blown into shrub, planting beds, or tree rings. Clippings blown into shrubs, planting beds or tree rings must be removed and properly disposed of immediately after mowing.
- 1.14.8 Clumps of turfgrass or any visible clippings on lawn areas must be removed.
- 1.14.9 After mowing, all clippings and debris must be immediately cleaned off of paved areas, vehicles, structures, equipment, and lighting systems.
- 1.14.10 Any damages caused by mowing to any property, structure, plants, irrigation system, tree stakes, or guying must be repaired or replaced by the contractor at no cost to HAS.

#### 1.15 Edging

- 1.15.1 At the time of the first mowing of the season, all planting beds and tree-mulch rings must be defined and edged at a right angle and a depth of approximately three inches.
- 1.15.2 Edging debris must be removed and properly disposed by the Contractor. Debris must not be placed in the planting beds, tree rings or disposed in refuse receptacles. All tree rings must be evenly concentric around the tree and all bed edges must be maintained as a smooth and continuous line.
- 1.15.3 All areas bordering the turfgrass must be edged during each mowing. At least one time a year, all paved or mulched areas bordering the turfgrass must be edged with a spade. Debris from the edging must be removed and properly disposed of by the Contractor. Debris from edging must not be piled on the top of root balls of trees and shrubs or in planting beds.

#### 1.16 Aeration/Thatch Control

- 1.16.1 Perform regular aeration and thatch control or as instructed by the Director, including but not limited to vertical mowing, aeration, topdressing, spiking and coring, to alleviate surface compaction, promote thatch removal and decomposition, and improve water and fertilizer penetration.

#### 1.17 Watering

- 1.17.1 The Contractor shall submit a watering schedule for review and approval by the Director.
- 1.17.2 Watering must be applied to soil and roots of plants in a uniform manner. Precautions must be taken to prevent runoff into streets, drainage ditches, and accumulations in low areas.
- 1.17.3 The Contractor shall be responsible for maintaining adequate soil moisture so that the flowers establish, grow and develop to their maximum potential. In the absence of rainfall, the flowers must be watered as required to ensure health of plants.
- 1.17.4 The Contractor shall follow any watering schedules provided by the HAS in emergency situations.
- 1.17.5 Plants under severe water stress must be irrigated within 2 hours of notification.

1.17.6 In the absence of rainfall:

- 1.17.6.1 Turfgrass area must be watered to provide a minimum of 2 inches of water per week.
- 1.17.6.2 Groundcover and perennials must be watered to provide a minimum of 1 inch of water per week in the absence of rainfall.
- 1.17.6.3 Trees and shrubs must be watered to provide a minimum of 1 inch of water per week in the absence of rainfall. Seasonal flowers must be closely monitored and watered as necessary.
- 1.17.6.4 Annual flowers may require a minimum of 2 inches of water per week. Newly planted trees and shrubs may require more frequent watering.
- 1.17.6.5 During a drought watering guidelines must apply as mandated by the City of Houston.

1.18 Irrigation System Maintenance

1.18.1 Year-round maintenance of irrigation systems including, but not limited to the replacement of worn or damaged irrigation system components as described in Attachment B-4.

1.18.2 Maintenance services for planters and courtyards include:

- 1.18.2.1 Frequency of visits – minimum one time per week.
- 1.18.2.2 Manually turn on each zone and inspect the system for proper performance.
- 1.18.2.3 Repair or adjust system as needed.
- 1.18.2.4 All exposed piping, including under the baggage tunnel, must be blown out and drained of water.
- 1.18.2.5 Contractor shall winterize the automated irrigation system when there is risk of frost damage. Contractor shall use a high volume air compressor to evacuate water from all main, lateral lines, valves and heads. All zones must be turned on in sequence until water is evacuated. The process must be repeated a second time. Contractor shall repair any damage to the system caused by its operation at no cost to HAS.
- 1.18.2.6 Contractor shall charge the system after the last threat of frost depending on weather conditions. All zones must be operated from the controller and the system must be visually checked for leaks, broken heads, head adjustment, and for properly functioning electric valves. Contractor shall notify the Director of any required repairs, provide an estimated cost, and proceed with the repairs upon approval by the Director.
- 1.18.2.7 The Contractor shall be on call for repairs, and shall respond on site within 2 hours after receiving notification from the Director.

1.18.2.8 The system must be repaired in accordance with current industry standards. Parts must be new with heads either identical to those replaced or approved equivalent.

1.18.2.9 Supplemental repairs will be performed under Other Work/ Services.

## 1.19 Planters and Courtyards

1.19.1 All specifications in the Agreement for plant care, irrigation maintenance, and trash policing must apply to the planters and courtyard landscaping.

1.19.2 Landscape maintenance services for the planters and courtyards include:

1.19.2.1 Frequency of visits – planters adjacent to terminal minimum two times per day, courtyards minimum of one time per week.

1.19.2.2 Services to be provided per each visit:

1.19.2.2.1 Police and remove weeds.

1.19.2.2.2 Police and remove trash.

1.19.2.2.3 Monitor health of plants

1.19.2.3 Mulching must be done on the planters as needed.

1.19.2.4 Trimming shrubs and cutting back perennials must be done as directed by the Director.

1.19.2.5 Application of fertilizer must be done as needed in accordance with appropriate standard and manufacturer's recommendation.

## 1.20 Winterization

1.20.1 Protect sensitive plants from inclement weather in all landscaped areas.

## 2.0 **PREPARATION AND INSTALLATION FOR SEASONAL PLANT ROTATION**

2.1 Contractor's preparation and installation for seasonal plant rotation includes but is not limited to the following tasks: (*Excluding plants*)

2.1.1 Remove and Dispose - Existing flowers must be removed and properly disposed of by the Contractor.

2.1.2 Amendments - Provide and apply appropriate amendments to ensure the physical and chemical condition of the soil is suitable for growing/drainage.

2.1.2.1 Contractor shall amend the soil every rotation with 2 inches of approved organic matter such as compost unless otherwise specified by the Director.

2.1.3 Cultivation - Bed areas must be cultivated to a minimum depth of 12-inches unless otherwise specified by the Director.

2.1.4 Installation of New Plants - Install new plants in accordance with best horticultural practices.

- 2.1.5 Fertilize - Flowers must be fertilized immediately after installation with slow release fertilizer. The slow release fertilizer must be applied as required at manufactures recommended rates. Additional applications must be made as required depending on growing conditions.
- 2.1.6 Initial Water - All flowers must be watered prior to and on the same day of installation.
- 2.1.7 Mulch - All planting bed areas must have a defined edge of approximately 3 to 4 inches. Two to three inches of aged shredded hardwood mulch must be applied to the tops of the beds. Mulch must be kept away from the trunks of trees and shrubs.
- 2.1.8 Herbicide -Non-selective herbicide must be applied to existing vegetation in all bed areas seven days prior to planting. After this seven day period, 3" of organic matter such as compost will be evenly spread over the planting bed and tilled in 6" - 8" deep and then evenly graded. The application of 4" - 6" of approved topsoil may also be specified in areas where existing soil cannot be conditioned with organic matter such as compost.
- 2.1.9 All new planting bed areas must be marked/laid out in the field prior to installation.
- 2.1.10 Contractor shall develop and maintaining layout drawings of all landscape beds, including new or modified beds. Drawings must include bed layout details; individual and total square footages. Bed drawings containing seasonal change outs will be updated with each change-out.

### **3.0 SEASONAL COLOR ROTATION**

- 3.1 Seasonal color rotation must be installed in designated bed areas listed in Section "B-1" of the Agreement as specified by the Director.
- 3.2 Contractor shall furnish and install two rotations of seasonal flowers (warm and cool season), unless otherwise specified by the Director.
- 3.3 Seasonal color examples include, but are not limited to: annuals, perennials, succulents, small trees, topiaries, tropical plants, foliage plants, bulbs, flowering shrubs, climbers, vines, etc. Plant and pot sizes will vary.
- 3.4 The color selection, layout, and type of flowers must be presented in a detailed seasonal color design by Contractor to be approved by the Director. Contractor shall meet with the Director to coordinate colors and theme prior to presentation of seasonal color design. Revisions will be made at expense of contractor. Designs must be approved at least four months in advance.
- 3.5 The Contractor shall coordinate delivery time, installation, and layout of seasonal color with the Director.
- 3.6 Director reserves the right to inspect and approve the grower for the following standards:
  - 3.6.1 Sanitary growing conditions
  - 3.6.2 Use of potting mix
  - 3.6.3 Temperature control of growing houses
  - 3.6.4 Use of quality propagating stock
  - 3.6.5 Adequate staffing and equipment for production and delivery
- 3.7 All plants must be inspected by Director prior to installation for size, uniformity, trueness to name, and health and rejected if not supplied as specified.
- 3.8 All plants must be conditioned for outdoor planting at least three weeks prior to delivery. Conditioning must include pre-cooling and or acclimating plants to sun scorch.
- 3.9 New flowers must be installed so that the crown is slightly above grade with soil mounded around the outer edge of the root ball.
- 3.10 Ornamental turfgrasses and perennials must be installed with outer edge of root ball approximately 1" above the surrounding grade. Ground covers must be installed with the edge of the root ball slightly above the surrounding grade. Soil must be banked around the outer edge of root balls, but not placed on top of the root ball.
- 3.11 Root balls must be solid, but not pot bound, and free from pests and diseases. Root balls must hold together when removed from the pot with little or no soil falling away from the root ball.
- 3.12 Soil located around the top of the root ball of trees and shrubs must be removed so as to expose the crown of the stems or trunk.
- 3.13 Foliage must be dense, with normal healthy color and free from pests and diseases.

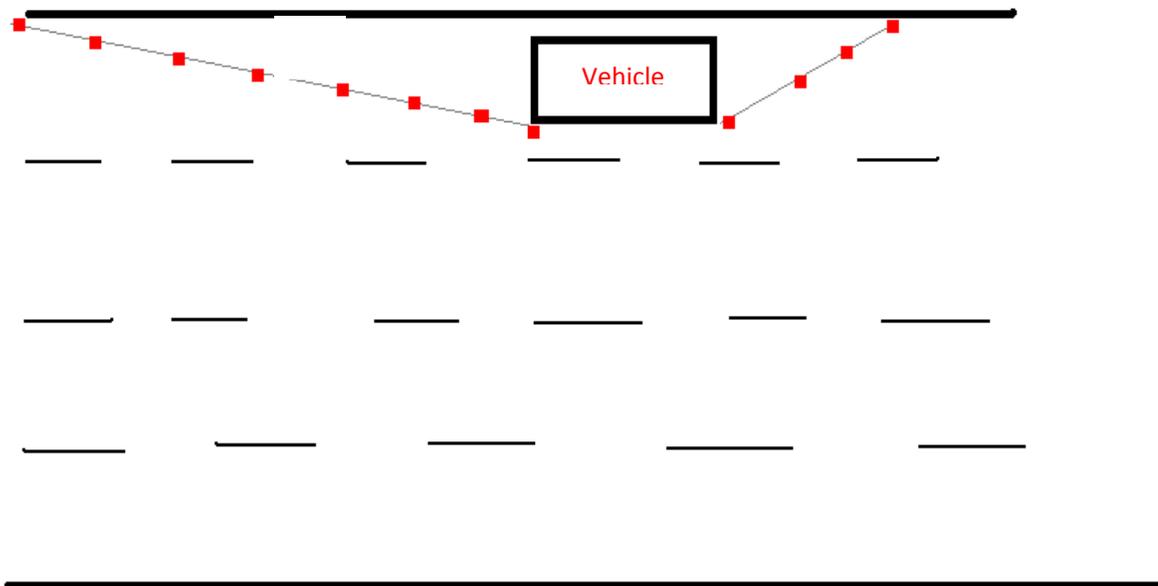
- 3.14 Plants must have prolific blooms and buds throughout the canopy upon delivery unless otherwise specified by the Director.
- 3.15 4" flowerpots, 1 gallon perennials, and 3 gallon shrubs must be used for each rotation, unless otherwise specified by the Director. The plants must be installed in all seasonal color beds and containers.
- 3.16 Trees and shrubs must be installed so that the root ball is approximately 2" - 3" above the surrounding grade.

**ATTACHMENT B-3  
ROAD BLOCKING GUIDELINE**

**Minimum Guideline Requirement for Contractor Blocking Roads:**

1. Contractor shall develop and submit a safety traffic management plan to the Director.
  - 1.1 Each Contractor service vehicle shall deploy a minimum of twelve (12) cones while in the field. Cones must be orange in color and minimum 28" height, with approximately a 14" X 14" base. A minimum of eight cones shall be deployed to the rear of the vehicle, spaced 7-10 feet apart, starting at the curbside, and following a trajectory (20-30 degrees) to intercept the extreme right side of the vehicle's bumper. The remaining four can be similarly spaced from the front right side of the vehicles bumper, 7-10 feet apart and follow a similar trajectory back to the curb. As Contractor's vehicles transition, cones must be removed and replaced to give the workers/vehicle a consistent & protected area.

**Note:** The diagram below (NOT TO SCALE) illustrates the staging of basic cones.

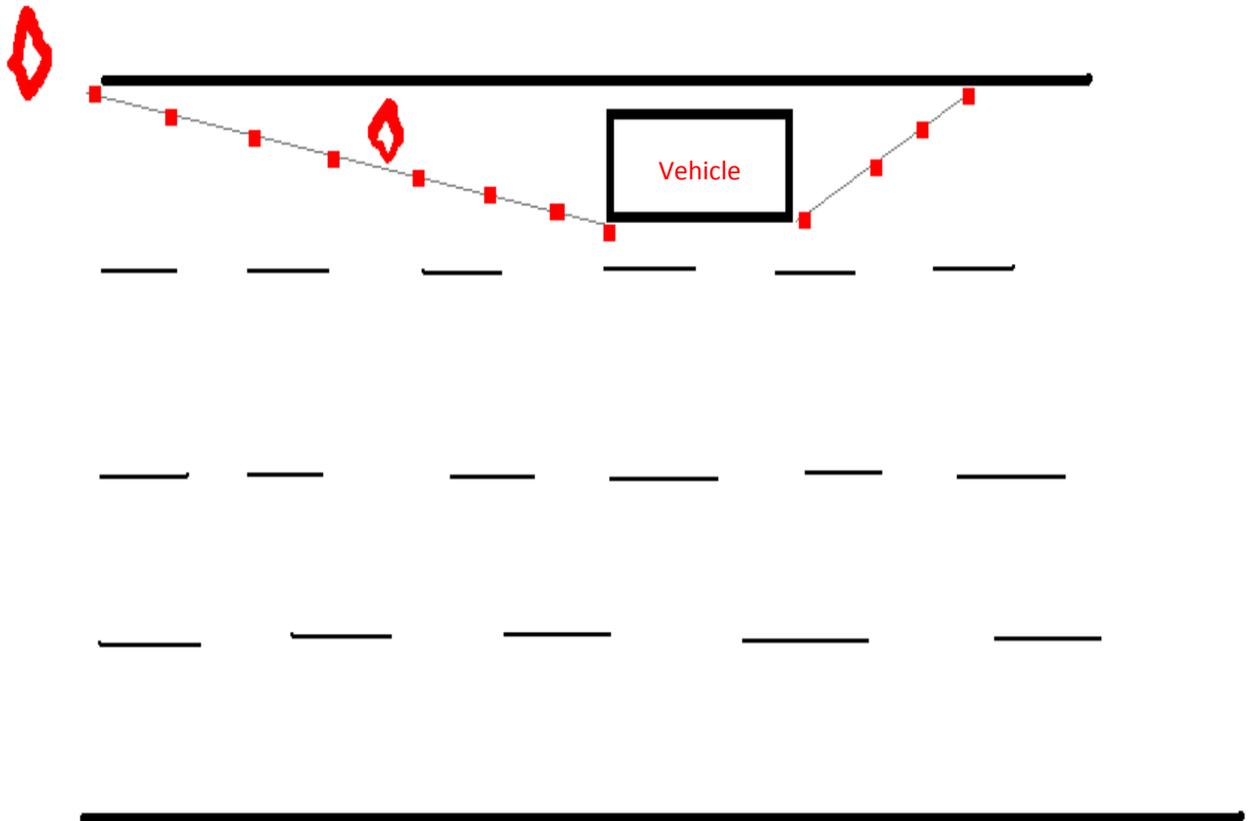


- 1.2 Field Vehicles should carry and deploy large orange Quad shaped warning traffic signs that comply with D.O.T. and MUTCD standards. These may carry symbols, text, or a combination of both.

Roll-Up Sign w/ Flags Mounted



- 1.3 The above signs must be placed in the approximate locations as shown to warn oncoming motorists and further enhance safety.



- 1.4 All Contractors' personnel must wear a highly reflective safety vest (e.g. fluorescent orange or green) during "out-of-vehicle" field operations.
- 1.5 Contractor shall train and have a flagman for on-site field operations.

**ATTACHMENT B-4  
IRRIGATION SYSTEMS**

**HOUSTON GEORGE BUSH INTERCONTINENTAL AIRPORT (HOU)  
IRRIGATION SYSTEMS**

(All electrical controls are Rain Bird Mfg.)

AREA #	CONTROLS TYPE	HEAD TYPE	EST. QTY.
1	3-02APOO & 1-RC060C	1800/T40	121
2		Underground Drip	
3	1 ESP-16MC & 2-ESP-24MC	1800/T40	18
4	1-ESP-24MC	1800/T40	80
5	1-1/2 Quick Connect	1800/T40	22
6	3/4" PVC Threaded Connection	1800/T40	31
7	Manual - No System		0
8	3/4" PVC Threaded Connection	1800/T40	4
9	1-1/2 Quick Connect	1800/T40	33
10	1-ESP-24MC	1800/T40	82
11	Manual - No System		0
12	Manual - No System		0
13	1-ESP-24MC	1800/T40	94
14	Manual - No System		0
Cargo-split	2 - 1-1/2 Quick Connect		
C-West	2 - ESP-24MC		
A-North	1 - ESP-24MC		
A-West	1 - ESP-24MC		
ECP-Park	2 - 1-1/2 Quick Connect		

**WILLIAM P. HOBBY (HOU) IRRIGATION SYSTEMS**

<b>AREA #</b>	<b>CONTROLS TYPE</b>	<b>HEAD TYPE</b>	<b>EST. QTY.</b>
1	ESP-LX Modular	1800	242
		AG-5	12
2	ESP-LX Modular	1800	103

**ELLINGTON FIELD (EFD) IRRIGATION SYSTEMS**

<b>AREA #</b>	<b>CONTROLS TYPE</b>	<b>HEAD TYPE</b>	<b>EST. QTY.</b>
1	Manual - no system	None	None
2	1-ESP-24MC	1800/T40	57
3	3/4" PVC Threaded Connection	1800/T41	124
4	3/4" PVC Threaded Connection	1800/T42	82
5	Manual - no system	None	None
6	Manual - no system	None	None
7	Manual - no system	None	None

**SECTION C  
GENERAL TERMS & CONDITIONS**

**THE STATE OF TEXAS**

**BID #** \_\_\_\_\_

**COUNTY OF HARRIS**

**ORDINANCE #** \_\_\_\_\_

**CONTRACT #** \_\_\_\_\_

**II. PARTIES**

**1.0 ADDRESS**

**THIS AGREEMENT for LANDSCAPE & HORTICULTURAL SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city and \_\_\_\_\_ ("Contractor or Vendor"), a Home-Rule City 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 the Houston Airport System  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**Contractor**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

The Parties agree as follows:

**2.0 TABLE OF CONTENTS**

2.1 This Agreement consists of the following sections:

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- \* C. EQUAL EMPLOYMENT OPPORTUNITY
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- \* E. DRUG POLICY COMPLIANCE AGREEMENT
- \* F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- \* G. DRUG POLICY COMPLIANCE DECLARATION
- \* H. FEES AND COSTS
- \* I. CITY’S CONTRACTORS PAY OR PLAY PROGRAM

\* Note: These Exhibits shall be inserted into the contract Agreement at the time of contract execution.

**3.0 PARTS INCORPORATED**

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

**4.0 CONTROLLING PARTS**

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

**5.0 DEFINITIONS**

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

**6.0 SIGNATURES**

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

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

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Federal Tax ID Number: \_\_\_\_\_

ATTEST/SEAL:

CITY 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

### **III. 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 Exhibits B, B-1, B-2, B-3 and B-4.

#### **2.0 RELEASE**

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

#### **3.0 INDEMNIFICATION**

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

## **4.0 INDEMNIFICATION PROCEDURES**

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

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

4.1.2 the basis on which indemnification may be due, and

4.1.3 the anticipated amount of the indemnified loss.

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

### **4.3 Defense of Claims**

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

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

## **5.0 INSURANCE**

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

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

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

5.1.3 Automobile Liability insurance  
\$1,000,000 combined single limit per occurrence  
Defense costs are excluded from the face amount of the policy  
Aggregate Limits are per 12-month policy period unless otherwise indicated

5.1.4 Employer's Liability  
Bodily injury by accident \$100,000 (each accident)  
Bodily injury by disease \$100,000 (policy limit)  
Bodily injury by disease \$100,000 (each employee)

5.2 All insurance policies must require by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give 30 days 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.

5.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

## 6.0 WARRANTIES

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

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

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

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

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

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

## **7.0 LICENSES AND PERMITS**

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

## **8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

## **9.0 M/WBE COMPLIANCE**

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") 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 M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the Mayor's Office of Business Opportunity (MOBO) and will comply with them.
- 9.2 Contractor shall require written subcontracts with all M/WBE subcontractors and shall submit all disputes with M/WBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. M/WBE subcontracts must contain the terms set out in Exhibit "D."

## **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 workforce.

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

## **11.0 ENVIRONMENTAL LAWS**

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

## **12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM**

- 12.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.
- 12.2 The Pay or Play Program for various departments will be administered by the City of Houston Office of Business Opportunity designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

## **13.0 CONTRACTOR'S PERFORMANCE**

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

## **14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of 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.

## IV. 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 upon receipt of an approved invoice.

### 4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

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

### 5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$\_\_\_\_\_ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

#### "NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

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

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

## **6.0 CHANGES**

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

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

### **CHANGE ORDER**

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

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

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

Signed:  
[Signature of City Purchasing Agent or Director]

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

6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$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.

## **V. TERM AND TERMINATION**

### **1.0 CONTRACT TERM**

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

### **2.0 NOTICE TO PROCEED**

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

### **3.0 RENEWALS**

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

### **4.0 TIME EXTENSIONS**

- 4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 180 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

### **5.0 TERMINATION FOR CONVENIENCE BY THE CITY**

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

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

## **6.0 TERMINATION FOR CAUSE BY CITY**

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
  - 6.1.2 Contractor becomes insolvent;
  - 6.1.3 All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
  - 6.1.4 A receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

## **7.0 TERMINATION FOR CAUSE BY CONTRACTOR**

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

## **8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time

period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

## **VI. MISCELLANEOUS**

### **1.0 INDEPENDENT CONTRACTOR**

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

### **2.0 FORCE MAJEURE**

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
  - 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and
  - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

### **3.0 SEVERABILITY**

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

### **4.0 ENTIRE AGREEMENT**

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

### **5.0 WRITTEN AMENDMENT**

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

## **6.0 APPLICABLE LAWS**

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

## **7.0 NOTICES**

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

## **8.0 NON-WAIVER**

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

## **9.0 INSPECTIONS AND AUDITS**

- 9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

## **10.0 ENFORCEMENT**

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

## **11.0 AMBIGUITIES**

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

## **12.0 SURVIVAL**

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

## **13.0 PARTIES IN INTEREST**

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

## **14.0 SUCCESSORS AND ASSIGNS**

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

## **15.0 BUSINESS STRUCTURE AND ASSIGNMENTS**

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

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

## **16.0 REMEDIES CUMULATIVE**

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

## **17.0 CONTRACTOR DEBT**

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

**EXHIBIT A**  
**[DEFINITIONS]**

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

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

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

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

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

"Governing Body" means the Mayor and City Council of the City of Houston.

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

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

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

**EXHIBIT B  
SCOPE OF SERVICES**

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

**EXHIBIT B-1  
LOCATIONS**

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

**EXHIBIT B-2  
LANDSCAPE MAINTENANCE**

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

**EXHIBIT B-3  
ROAD BLOCKING GUIDELINE**

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

**EXHIBIT B-4  
IRRIGATION SYSTEM**

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

**EXHIBIT C**  
**[EQUAL EMPLOYMENT OPPORTUNITY]**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT D**  
**[M/WBE 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

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

I, \_\_\_\_\_  
**(Name - Print/Type)**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT G**  
**[DRUG POLICY COMPLIANCE DECLARATION]**

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

**EXHIBIT H  
[FEES AND COSTS]**

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

**EXHIBIT I  
[PAY OR PLAY]**

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