THE STATE OF TEXAS

COUNTY OF HARRIS

BID # _____
ORDINANCE # 2012-1041
CONTRACT # 4600011797

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR WEED MOWING & DEBRIS REMOVAL SERVICES FOR THE CITY OF HOUSTON ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **TIBH INDUSTRIES, INC.** ("Contractor "), a corporation doing business in Texas.

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

City

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

Contractor

TIBH Industries, Inc.
2626 South Loop W, Suite 530
Houston, Texas 77054
Phone: (713) 667-4900
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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3.0 PARTS INCORPORATED:

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

4.0 CONTROLLING PARTS:

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

5.0 DEFINITIONS:

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

6.0 SIGNATURES:

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

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

By:

Name: James McGhee

Title: Banker

By: Wilford J. Scott

Name: Wilford Jordon Scott

Title: Senior Regional Marketing Manager

Federal Tax ID Number: 1 74 1976051 1

ATTEST/SEAL:

JAMES ALLEN MCGHEE
My Commission Expires
March 24, 2016

City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

Mayor

APPROVED:

Katherine Tipton
Director, Department of Neighborhoods

Arnold Colunga, Assistant City Attorney
LD #: 0371100072001

COUNTERSIGNED BY:

City Controller

12-13-12
Date

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

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

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

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

2.2 INDEMNIFICATION:

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

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

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

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

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

2.3 INDEMNIFICATION:

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

3.0 INDEMNIFICATION PROCEDURES:

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

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

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

3.3 Defense of Claims

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

3.3.2 Continued Participation. If Contractor 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. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

4.0 INSURANCE:

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

edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

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

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

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

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

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

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

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

5.0 WARRANTIES:

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

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

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

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

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

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

6.0 LICENSES AND PERMITS:

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

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

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

8.0 MWBE COMPLIANCE:

8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 20% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.

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

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

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

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

9.2.1 a copy of its drug-free workplace policy,

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

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

9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "I." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the

City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

10.0 ENVIRONMENTAL LAWS:

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

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

11.0 CONTRACTOR'S PERFORMANCE:

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

11.2 City of Houston Department of Neighborhoods may visit the works site and inspect work done on site, at any time.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

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

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

12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to pay its subcontractors as required by law. Contractor shall submit

disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

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

13.2 The Pay or Play Program for various departments will be administered by the City of Houston Office of Business Opportunity's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

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

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

2.0 TAXES:

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

3.0 METHOD OF PAYMENT:

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

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

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

5.0 LIMIT OF APPROPRIATION:

5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety

by the provisions of this Section.

5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **$160,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5.2.1 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.

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

6.0 CHANGES:

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

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

CHANGE ORDER

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

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

[Here describe the additions to or changes to the equipment or services and the Change

Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

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

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

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

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

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

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

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

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement. Renewals are discussed in subsection 3.0, "Renewals", below.

2.0 NOTICE TO PROCEED:

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

3.0 RENEWALS:

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City

Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

4.1 If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay 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 10 days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

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

2.0 FORCE MAJEURE:

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

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

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

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

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

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

3.0 SEVERABILITY:

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

4.0 ENTIRE AGREEMENT:

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

5.0 WRITTEN AMENDMENT:

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

6.0 APPLICABLE LAWS:

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

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

7.0 NOTICES:

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

8.0 NON-WAIVER:

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

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

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three 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, the City Controller shall immediately notify the Contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A"
DEFINITIONS

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

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

1.1 City.
the City of Houston, Texas, a home-rule city of the State of Texas, whose initial address is as follows:

City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

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

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

1.31 Community Organization
An organized group of stakeholders whose purpose is to serve the community by addressing conditions affecting the quality of life in neighborhoods. A Community Organization shall have officers, rules and by-laws.

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

1.5 Contract Administrator.
the representative of the Department of Neighborhoods who is responsible for the administration for the Contract.

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

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

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

1.9 Contract Term.
defined in Article II.

1.10 Council Motion or Ordinance.

the official document passed by the Governing Body designating award(s) and directing the City Purchasing Agent to issue Notice(s) to Proceed.

1.11 Cut
Refer to 1.30, *Weed Mowing.*

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

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

1.14 Effective Date
the date the agreement is countersigned by the City Controller.

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

1.16 Governing Body.
the Mayor and City Council of the City of Houston.

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

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

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

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

1.19 Mulch
to crush, pulverize, or grind to a uniform consistency by mechanical means any organic matter two inches (2") in diameter or less, through the use of a mechanical mulcher or grinder meeting industry standards for on-site, heavy-duty recyclical grinding of organic materials. All mulched

residual material shall be returned to the lot and graded accordingly. If any other mechanical means achieves the same results as mulching, the Contractor is not required to utilize a mulcher.

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

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

1.22 Photographic Documentation
Digital photographs with .JPEG and capacity to be submitted electronically. Refer to Section 8.0 of Exhibit B-Scope of Services.

1.23 Priority Cut
Refer to *Weed Mowing*. Work orders issued and designated as 'Priority Cut' should be complete within timeframe requested upon issuance. Refer to Section 5.0 of Exhibit B-Scope of Services.

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

1.25 Special Waste
includes, but is not limited to, used batteries and medical waste.

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

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

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

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

1.29 Trees
a woody plant with a single trunk measuring at least 3" in diameter.

1.30 Weed Mowing.

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

1.31 Work Order

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

EXHIBIT B
SCOPE OF SERVICES

1.0 GENERAL SPECIFICATIONS

1.1 **Statement of Work**

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

1.2 **Intent**

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

1.2.2 For the purpose of this weed mowing and debris removal contract, the City of Houston has been divided into four (4) contract areas as listed in section 2.2.

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

2.0 DETAILED SPECIFICATIONS

2.1 **Minimum Resource Requirements**

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

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

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

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

2.5 A prospective contractor must have the ability to send and receive electronic

communications through computer software comparable to Microsoft Office 2003.

3.0 Minimum Required Manpower

3.1 At all times, the Contractor shall employ a sufficient number of capable and qualified employees to enable the Contractor to properly, adequately, safely and economically manage, operate and generally perform the scope of work under these specifications. The City requires (via full-time/part- time employment or sub-contracting) a minimum of two (2) crews per contract area. A typical crew would be comprised of four persons: three performing the actual cutting and clearing, and one (1) operating the dump truck.

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

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

4.0 Minimum Suggested Equipment

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

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

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

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

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

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

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

require more than the above-recommended minimum equipment per crew.

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

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

5.0 CONTRACTOR WORK PLAN WITH INSPECTIONS- Work Orders

5.1 The Contractor must pick up work orders assigned to Contract areas within 48 hours after issuance of a notice from the Director's representative. The Contractor shall be complete a work plan for all work orders received on a form approved by the City. The work order plan shall be returned to the Director's representative within three working days of the Contractor's receipt. Unless an exception is granted, or the City issues an amended work order, the Contractor shall complete the work within 30 working days with the exception of "Priority Cuts". The Contractor must report the status of completed work orders within two working days of service.

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

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

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

6.0 TIME OF WORK AND ORDER OF PROCESS

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

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

7.0 TECHNICAL SPECIFICATIONS

7.1 Cutting and Debris/Trash/Rubbish Removal

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

Contractor shall not perform any services on an assigned lot where there is a 'No Trespassing' sign. In instances where a lot was inspected and there was not a 'No Trespassing' sign, however, when contractor goes to service the lot via a work order a sign is there, Contractor shall not perform any services and notify the Department of Neighborhoods as soon as possible. If Contractor services a lot where there is a 'No Trespassing' sign, contractor will not be paid for any work done on that lot.

If lot has been previously serviced and/or maintained by someone other the Contractor, Contractor shall not service regardless of work order given to Contractor.

The Contractor will be required to work in wet conditions as the need arises.

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

Missed strands of grass or areas not uniformly cut shall be re-cut at no additional cost to the City.

Edge all curbs, walks and drives adjacent to mowed areas.

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

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

7.1.5 If the property has a concrete slab or foundation, the Contractor will mow around the slab or foundation. The Contractor shall also cut grass, weeds, etc., growing through cracks in the foundation or slab. All loose building materials are to be considered as trash/rubbish/debris and the Contractor shall clean and remove these from the property. The contractor shall reduce the square footage of the service area by the amount equivalent to the slab area, any area not serviced, or building square footage, if applicable.

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

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

sufficient lead-time to schedule site inspections.

Contractor shall be responsible for removal and disposal of both organic and inorganic debris.

There should be documentation of trash greater than 30 cubic yards prior to doing work.

7.1.8 The Contractor shall load, remove, transfer and properly dispose of all trash, rubbish, debris, organic debris, and municipal solid waste on the site to a State of Texas certified facility/landfill for the type of material removed. All debris shall be disposed of in an approved landfill or green waste recycling center. The City strongly encourages the use of green waste recycling centers.

Contractor shall stack non-debris/rubbish/trash, loose materials 19.5 inches, document with photographs, and leave for owner compliance.

Payment for debris removal shall be determined by quantities shown on the landfill or recycling center ticket provided to the City. The City reserves the right to inspect all collected debris before it is disposed of for verification of payment.

The contractor shall notify the director prior to servicing any lot/location where only debris removal is required. Contractor shall store the debris at the front of the lot until the Director's representative verifies the amount of debris. Upon verification by the Director's representative, the Contractor shall remove debris from the site as required by the contract. The Contractor shall communicate with the Director's representative within two working days of removal, giving the Department sufficient lead-time to schedule site inspections. The contractor must provide documentary evidence to include, but not restricted to all landfill receipts, used coupons or monthly statements that the disposal has in fact occurred at designated sited or processing facilities. The City cleans up battery leakage.

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

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

7.1.8.3 Contractor shall notify the Director's representative prior to removal of 50 or more tires.

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

7.1.10 Upon arrival at the work order site, if the Contractor finds hazardous or unidentifiable materials, a locked gate, a no trespassing (or similar) sign, or is

denied entry, it shall leave the site, and immediately notify the Director's representative and await further instructions. The Contractor shall not make any attempt to handle or remove the hazardous or unidentifiable waste.

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

7.1.12 At no additional cost to the City, the Contractor is responsible for damage to both the City's property and private property caused by the debris removal operation.

7.1.13 If the Contractor falsely inflates the amount of debris taken from a lot, this Agreement shall be promptly terminated.

8.0 Photographic Documentation

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

8.2 At least one "before" (measuring the height s of the weeds and showing the City of Houston Posting, if applicable), "during" (showing a crew or crew member cutting weeds on the site), and "after" photograph of the property being cut;

8.3 At least one "before", "during" (showing a crew or crew member removing trash/debris/rubbish on the site) and "after" photograph of the trash/debris/rubbish accumulations on the property.

8.4 At least one "before" (showing the location of any tires), "during (showing a crew or crewmembers placing tires in stacks of five at the front of the lot being serviced), and "after" (showing all tires removed from lot serviced) photograph.

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

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

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

9.0 Boundaries

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

10.0 Invoice Requirements

10.1 Contractor's invoice must be submitted within 14 working days of site completion. Invoice shall include the amount of cubic yards of trash removed from the site. The quantity of tires and/or debris listed in the Contractor's invoice must be consistent with that quantity reflected in the tire manifest and/or landfill receipt (excluding the first 30 cubic yards of trash).

10.2 Invoices require the following supporting documents: photo documentation, original tire manifest and original landfill receipts.

Mail invoices in triplicate to: City of Houston
Department of Neighborhoods
7125 Ardmore, 3rd floor
Houston, Texas 77054

11.0 Community Organizations:

11.1 The City may from time to time direct the contractor to subcontract weed mowing services to community organizations. If so directed, the contractor shall be paid at the rate identified in Category F.

11.2 Contractor shall pay subcontractor the sum of $100 for each lot mowed. Contractor shall add subcontractors to all of Contractor's insurance policies as an additional insured and shall provide all supervision, inspection, and debris removal for these lots. The Subcontractors shall be designated by the Director to perform second mowing services on designated lots. Contractor shall submit with its invoice, proof of payment to subcontractors in a form approved by the department.

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

12.0 Non-Performance/Reassignment of Work Orders:

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

13.0 Additions & Deletions:

13.1 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.

14.0 Estimated Quantities Not Guaranteed:

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

15.0 Warranty of Services:

15.1 *Definitions:*

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

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

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

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

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

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

EXHIBIT "D"
MWBE REQUIREMENTS

EXHIBIT "E"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

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

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director")

2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:

   a. Upon the decision of the Director or upon written notice to the Director form either party that a dispute ahs arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.

   b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as other wise required by the City's contract with American Arbitration Association on file in the Office of the City's Office of Business Opportunity.

   c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

   d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

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

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

EXHIBIT "F"

CITY OF HOUSTON
AFFIRMATIVE ACTION & CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT

Report Period _____

PROJECT NAME & NUMBER: _____ AWARD DATE: _____

PRIME CONTRACTOR: _____ CONTRACT No.: _____

ADDRESS: _____ CONTRACT AMOUNT: _____

LIAISON/PHONE No.: _____ M/WBE GOAL: _____

M/WBE SUB/VENDOR NAME	DATE OF AA CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE

Use additional pages if needed. Submit by the 15th day of the following month.
Provide support documentation on all revenues paid to end of the report period to:
M/WBEs to reflect up/down variances on contract amount

Office of Business Opportunity
ATTN: Carlecia Wright 713-837-9018
611 Walker, 20th Floor
Houston, Texas 77002

EXHIBIT "G"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____(Contractor)
(Name of Company)

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.

4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

Date _____

Contractor Name_____

Signature _____

Title _____

EXHIBIT "J"
FEES AND COSTS

Category	Unit	Price
A – Mowing and debris removal up to 30 cubic yards	0 – 5,000 sq. ft.	$0.079/sq. ft.
B – Mowing and debris removal up to 30 cubic yards	5,001 – 10,000 sq. ft.	$0.073/sq. ft.
C – Mowing and debris removal up to 30 cubic yards	10,001 – 15,000 sq. ft.	$0.058/sq. ft.
D – Mowing and debris removal up to 30 cubic yards	15,001 sq. ft. and over	$0.053/sq. ft.
E – Priority cuts	All Size Lots	$104 plus Category Charge
F – Community organizations	0 – 5,000 sq. ft.	$107 plus Category A charge
G – Debris removal greater than 30 cubic yards	Over 30 cu. yd.	$23.00/cu yd.
H – Tire removal	per tire	$13.00 per tire

EXHIBIT "K"
PAY OR PLAY PROGRAM

FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: _____ $ _____
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: _____

Project No.: [GFS/CIP/AIP/File No.] _____

Project Name: [Legal Project Name] _____

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

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

[ ] Yes [ ] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:

(1) the employer will contribute no less than $150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

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

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

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

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

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

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

_____ _____
CONTRACTOR (Signature) DATE

_____
NAME AND TITLE (Print or type)