

THE STATE OF TEXAS

BID # LC-R-0734-067-21161

ORDINANCE # 2006-1235

CONTRACT # 4600007365

COUNTY OF HARRIS

I. PARTIES

A. Address

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

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

City

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

Contractor

Prime Tree & Landscaping Services, Inc.
9911 C.E. King Pkwy
Houston, Texas 77044
Contact: R. Lance Bowe
Phone: 713 781 8733
Fax: 281 459 1818
Email: primetrees@ev1.net

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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- H. FEES AND COSTS

C. Parts Incorporated

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

D. Controlling Parts

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

E. Definitions

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

F. Signatures

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

ATTEST/SEAL (if a corporation):

PRIME TREE & LANDSCAPING SERVICES INC

WITNESS (if not a corporation):

By: *Sherlyn Cope*

Name: SHERLYN COPE

Title: OFFICE MGR

By: *[Signature]*

Name: LANCE BOWE PRIME TREE & LANDSCAPING

Title: President

Federal Tax ID Number: 76-0564481

ATTEST/SEAL:

[Signature]

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Bill White

Mayor

[Signature]

APPROVED:

[Signature]
City Purchasing Agent

COUNTERSIGNED BY:

[Signature]
City Controller *[Signature]*

DATE COUNTERSIGNED:

12-22-06

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

12-01-06
Date

[Signature]
Legal Assistant

II. DUTIES OF CONTRACTOR

A. Scope of Services

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

B. RELEASE

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.

C. 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 INCIDENTA TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

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

CONTRACTOR 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.

D. INDEMNIFICATION PROCEDURES

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

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

(2) Defense of Claims

- (a) 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.
- (b) 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.

E. Insurance

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

- (1) Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- (3) Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.
- (4) Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

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

- (1) immediately suspend Contractor from any further performance under this Agreement and begin

procedures to terminate for default, or

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

F. Warranties

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

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

- (1) that all items are free of defects in title, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

G. Licenses and Permits

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

H. Compliance with Equal Opportunity Ordinance

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

I. MWBE Compliance

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

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with

MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

J. Drug Abuse Detection and Deterrence

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

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

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

K. Environmental Laws

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

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

L. Contractor's Performance

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

M. Payment of Employees and Subcontractors

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

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

Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to

pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

A. Payment Terms

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

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

B. Taxes

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

C. Method of Payment

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

D. Method of Payment - Disputed Payments

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

E. Limit of Appropriation

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

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$138,825.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

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

DATE: [Date of notice]

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

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

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

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

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

F. Changes

- (1) At any time during the Agreement Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

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

DATE: [Date of Notice]

SUBJECT: Change Order under 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 upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent

may issue more than one Change Order, subject to the following limitations:

- (a) Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.
 - (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and expires one (1) year after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

B. Notice to Proceed

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

C. Renewals

If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

D. Time Extensions

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

E. Termination for Convenience by the City

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS 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.

F. Termination for Cause by City

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

by the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing Agent must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

G. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination

date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

H. Removal of Contractor Owned Equipment and Materials

Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

A. Independent Contractor

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

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The City may perform 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.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS

DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

C. Severability

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

D. Entire Agreement

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

E. Written Amendment

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

F. Applicable Laws

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

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

G. Notices

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

H. Non-Waiver

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

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

I. Inspections and Audits

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

J. Enforcement

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

K. Ambiguities

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

L. Survival

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

M. Parties In Interest

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

N. Successors and Assigns

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

O. Business Structure and Assignments

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

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

P. Remedies Cumulative

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

Q. Contractor Debt

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

**EXHIBIT "A"
DEFINITIONS**

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

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

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

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

"Director" means the Directors of the Department(s) 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 IIK (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.

"Diameter Breast Height" means

<u>CATEGORY</u>	<u>DIAMETER BREAST HEIGHT</u>
00	Less than or equal to 9.9"
10	10.0" to 14.9"
15	15.0" to 19.9"
20	20.0" to 24.9"
25	25.0" to 29.9"
30	30.0" to 34.9"
35	35.0" to 39.9"
40	40.0" to 44.9"
45	45.0" or Greater

“Normal Business Hours” means as the hours between 7:00 a.m. and 4:00 p.m., Monday through Friday, not inclusive of City Holidays. No Saturday or Sunday work will be permitted unless authorized by the Director.

“Set of Terms or Sets” means a list of trees to be removed prepared by the City. A set may contain not less than ten (10) trees or more than one hundred (100) trees. A set of trees may include any combination of species and diameter, sizes from the categories as noted in Diameter Breast Height definitions above.

“Standard Service” means service provided within normal business hours and meeting all other performance outlined in the scope of work and this contract.

“Traffic Engineer” means the City’s Director of Traffic and Transportation or his designate.

EXHIBIT "B"

SCOPE OF SERVICES

1.0 Services in General

The Contractor shall furnish all labor, tools, safety equipment, supervision and transportation necessary to provide tree removal services in accordance with the provisions of this Contract. The work shall be performed at the locations specified in the "work order". The Contractor shall coordinate its performance of the services with the department Director or designee.

2.0 Standard of Performance and Employees Qualifications

- 2.1 The Contractor's performance shall be in accordance with the highest standard prevailing in the industry. The Contractor shall be required to perform and complete the tree removal work described in this Contract in a thorough, professional, and safe manner. The Contractor shall employ individuals skilled in their respective trades. Any person the Director may deem incompetent or disorderly must be promptly removed by the Contractor and not allowed to work on a City project.
- 2.2 The Contractor must have a degreed Urban Forester and/or a certified arborist with at least five years experience on staff to oversee tree-removal work. The Contractor shall provide all applicable licenses to the City within five working days after receipt of the request from the City to do so.

3.0 Work Objectives

Work under this Contract has three broad objectives:

- 3.1 To provide for the safety of people and property.
- 3.2 To preserve trees and to maintain them in a healthy and vigorous condition.
- 3.3 To maintain the aesthetics of both the trees and the environment.

4.0 Assignment of Work

- 4.1 The Contractor shall be notified by the Director/designee, by telephone or E-mail, when a "work order" has been prepared. The Contractor shall pick up the "work order" within two (2) working days after receiving telephone notification. The work involved for a "work order" shall be completed within fifteen (15) Calendar days from the date the Contractor receives the "work order". If there is inclement weather or extenuating circumstances during the work period, the Director/designee may extend the time period in which the work is to be completed. All extensions shall be in writing and signed by the Director's representative.
- 4.2 All trees to be removed in a "work order" shall be located in only one of the following two (2) regions of the City of Houston.
 - REGION I Region I will be bounded by Interstate 10 on the South and include all City jurisdictions North of Interstate 10.
 - REGION II Region II will be bounded by Interstate 10 on the North and include all City jurisdictions South of Interstate 10.
- 4.3 A "Set of Terms" or "Sets" means a list of trees to be removed prepared by the City. The City estimates that it will assign not less than one nor more than four (4) sets per calendar month. The Director/designee shall schedule the Sets to be completed but he shall not assign more than four (4) Sets to be completed in any one month, unless the Contractor is capable and concurs with the assignment of additional Sets. There will be a maximum of 100 trees per set.

- 4.4 If a tree from an assigned Set falls at one of the areas after the Contractor receives the assignment, the City reserves the right to substitute a tree of equal diameter in that Set.

5.0 Performance of the Work

- 5.1 The Contractor shall fax, or e-mail its work locations for a particular day to the Director/designee between 7:00 a.m. and 9:00 a.m. each workday.
- 5.2 Work hereunder shall be performed on City property, which may include street right-of-ways, parks, esplanades, parkways, and other City properties.
- 5.3 The Contractor shall not allow any worker to perform work hereunder if there is a reasonable possibility of any limb or debris falling on vehicles or pedestrians. The Contractor shall be held liable for all damage to vehicles and pedestrians caused by falling debris.
- 5.4 All vehicles, which may interfere with the work, shall be moved by the owner of the vehicle. The Contractor shall make all necessary contacts with the vehicle owner in such cases.
- 5.5 All damaged vehicles and injuries to pedestrians shall be reported to the Director's representative within four (4) hours after incident.
- 5.6 The Contractor agrees that upon entering City park property to perform the work it shall adhere to the City Parks and Recreation Department rules, regulations and all other rules and regulations of the City. The Contractor shall not place its vehicles on park property except with the prior authorization of the Director's representative.
- 5.7 If a tree to be removed overhangs into residential property, the Contractor shall notify the homeowner in writing that a tree is to be removed, and there should be no activity under and immediately around the tree until it is removed. If the homeowner is not home, the Department's designated representative must be notified by Contractor after three (3) failed attempts to contact that homeowner.
- 5.8 The Contractor shall furnish and install all construction signs, pavement markings, barricades, and all other safety controls for the duration of each service. All control devices and installation shall be in conformance with the City of Houston drawings "Barricade Standard" (T&T #3723), "Typical Urban Construction Sign Standard" (T&T #3729), and part VI of the 1980 Texas Manual of Uniform Traffic Control Devices.
- 5.9 No direct compensation will be made to the Contractor for the work and materials involved in contracting for and maintaining barricades, signs, pavement markings, warning devices and lights or for providing any other incidental items necessary for the proper direction, safety and convenience of the traffic during any service.
- 5.10 Any deviation or change from the terms of subsection 5.5, 5.6, or 5.8, hereof, shall be subject to the written approval of the Traffic Engineer. In addition, if any portion of a major thoroughfare will have to be blocked off because of work to be performed, the Contractor shall submit a general traffic handling plan to the Director/designee following the Texas manual on Uniform Traffic Control Devices and obtain approval of that plan from the Traffic Engineer.
- 5.11 The Contractor will report any conditions foreseen before commencing or during the work that will adversely affect the performance of the work to the Director/designee in writing or by telephone.

6.0 Tree Removal Specifications

- 6.1 The trees to be removed will be plainly marked by the Director/designee with a painted "X", using fluorescent orange paint.
- 6.2 In locations where ordinary felling operations might cause damage to property, the trees shall be suitably dismembered and felled using recognized forestry rigging practices (encompassing OSHA regulation), ensuring that any severed portion of the tree is under control at all times.
- 6.3 After all limbs have been removed which might contact utility lines or cause damage to other trees or property, trees shall be felled directly away from power or communications lines, structures, vehicular or pedestrian rights-of-way, or horticultural plantings. If a tree must be felled toward a power or telephone line, it shall be topped low enough to clear all conductors, poles, guys, and similar installations.
- 6.4 If there is danger that the trees being felled may fall in the wrong direction or damage property, guide ropes shall be used. All limbs shall be removed from trees to a height and width sufficient to allow the tree to fall clear of any wires and other objects in the vicinity.
- 6.5 The Contractor shall take special precautions in roping rotten or split trees because of the danger that such trees may fall in an unexpected direction even though the cut is made on the proper side.
- 6.6 Under no circumstances shall pike poles be used for the purpose of holding or pushing trees during felling operations.
- 6.7 Ropes shall be used to lower all limbs of size sufficient to cause damage to other trees or surrounding public or private property.
- 6.8 Before any trees are felled, workmen, other than those operating the saw or giving directions to the workmen involved, shall move and remain clear of the danger zone. The danger zone is that sector of the felling area in which the tree could fall. The size of the danger zone shall be determined by the job supervisor upon consideration of all pertinent factors relative to the tree removal operation. Ample warning shall always be given before a tree is expected to fall and the workmen must stand clear in case the tree springs from the stump while falling. The Contractor shall clear away all brush and other debris or equipment that would hamper free movement when using sharp tools or when getting clear in case of emergency.
- 6.9 Under no circumstances shall a partially cut tree or debris be left standing during rest breaks, lunch breaks, or overnight. All debris created must be removed from the jobsite within a 24-hour period.
- 6.10 When removing a tree that is split or a tree with twin trunks, chains or cable with adequate strength shall be placed tightly around the tree before commencing the back cut. At least one chain or cable shall be placed above and as close as practical to the back cut to prevent separation of the trunk.
- 6.11 Except as otherwise provided in this Contract, the stumps of all removed trees will be lowered to a point no more than two inches (2") above grade.
- 6.12 When swelling, bumps, depressions, or branches occur at diameter breast height, diameter breast height measurements shall be taken just above or below the irregularity at a point where it ceases to affect normal stem form. If a tree forks immediately above diameter breast height, it is measured below the swell resulting from the double stem. Stems that fork below diameter breast height shall be considered two separate trees. Diameter breast height for all species with large buttresses or elevated root matting shall be measured just above the pronounced

swelling at a point where it ceases to affect normal stem form.

- 6.13 Palm trees and tree trunks are included in a grouping separate from other tree removals. "Tree Trunks" for purposes of this grouping shall include trees with little or no remaining crown.
- 6.14 The Contractor shall take special precautions in that some tree(s) will have item(s) in and around them before being cut. The Contractor must encompass this situation within their bid.

7.0 Grinding Procedures

- 7.1 The Contractor shall provide stump-grinding machinery with a cutter head designed to grind stumps approximately six (6) inches below ground level.
- 7.2 The cutter head shall have solid fixed teeth equipped with carbide insert cutters (swinging teeth will not be acceptable). The machine must have a guard to protect flying debris and be capable of working next to traffic, at a distance of five (5) feet.
- 7.3 All loose material (chips and soil) or any mixture created by the grinding process shall be removed by the Contractor before leaving the premises.
- 7.4 Upon completion of this operation, the terrain is to be left in condition to allow mowers to pass over and safely cut over the previous fallen tree(s) and grinded stump(s) area(s).
- 7.5 The Contractor shall be responsible for locating all underground utilities, which can include, but are not limited to electrical, water, gas, cable, irrigation, etc. In the event a utility is interrupted, the Director's Designee must be contacted within 2 to 4 hours of incident verbally and followed up in writing.
- 7.6 The Contractor shall also be responsible for grinding and removing roots up to one (1) inch away from pavement within the right-of-way.
- 7.7 The Contractor shall repair any damage to structure(s) sidewalk, curb, underground utilities, and turf or surrounding vegetation at its own cost.
- 7.8 Once the stump has been ground topsoil shall be placed within the area of excavation. The topsoil shall be fertile, friable, natural and a sandy loam. Surface soil obtained from excavation or borough operations shall have the following characteristics:
 - 7.8.1 PH value of between 5.5 and 6.5
 - 7.8.2 Liquid limit: 50 or less
 - 7.8.3 Plasticity index: 20 or less
 - 7.8.4 Gradation: maximum of 10 percent passing the No. 200 sieve
- 7.9 Topsoil shall be free of subsoil, clay lumps, rocks, weeds, non-soil materials, and other litter or contamination. Topsoil shall not contain roots, stumps, or stone. The City Forester or designee must approve topsoil before use.

8.0 Topsoil and Sodding Procedures for Stump Grinding

- 8.1 Once topsoil has been placed, the Contractor shall restore existing lawn areas disturbed by stump grinding by the installation of new sod. Sod is defined as blocks, squares, and strips of turf grass, and adhering soil used for vegetative planting. Sod shall be placed edge to edge for complete coverage. Lawn is defined as ground cover with fine textured grass kept neatly

mowed.

- 8.2 The Contractor shall sod only when weather and soil conditions are deemed suitable for proper placement.
 - 8.2.1 Species: Bermuda (*Cynodon dactylon*) or Buffalo (*Buchloe dactyloides*) or St. Augustine (*Stenotaphrum secundatum*).
 - 8.2.2 Contents: 95 percent permanent grass suitable to climate in which it is to be placed; no weeds and undesirable grasses; good texture, free from obnoxious grasses, roots, stones and foreign materials.
 - 8.2.3 Size: 12-inch wide strips, uniformly 2 inches thick with clean-cut edges.
 - 8.2.4 Sod is to be supplied in a healthy condition as evidenced by the grass being a normal green color.
 - 8.2.5 Sod will be replaced according to existing turf grass species.

9.0 Preparation, Application and Cleanup of Topsoil and Sod

- 9.1 The Contractor shall be responsible for all preparation, application and cleanup of topsoil and sod while meeting the minimum requirements listed below. The contractor shall not start work until conditions are satisfactory. During inclement or impending inclement weather, the Contractor shall not begin work until conditions are dry and suitable for topsoil application.
- 9.2 Verify that soil placement and compaction have been satisfactorily completed. Verify that soil is within allowable range of moisture content.
- 9.3 That topsoil shall be free of weeds and foreign material immediately before sodding.
- 9.4 Rake areas to be sodded smooth, free from unsightly variations, bumps, ridges or depressions.
- 9.5 Lay sod with closely fitted joints leaving no voids and with ends of sod strips staggered. Sod shall be laid within 24 hours of harvesting.
- 9.6 Tamp and roll sod with approved equipment to eliminate minor irregularities and to form close contact with the soil bed immediately after planting and watering. The Contractor shall submit in writing the type of tamping and rolling equipment to be used to the City Forester for approval, prior to commencing the work.
- 9.7 During the course of planting, the Contractor shall remove excess and waste materials, keep lawn areas clean and take precautions to avoid damage to existing structures, plants, grass, and streets.
- 9.8 The Contractor shall remove barriers, signs, and other Contractor material and equipment from the project site at the end of each work day.
- 9.9 Contractor shall be responsible for removal and disposal of unused materials from curb(s), pavement and gutter(s) and dispose of the materials in accordance with federal, state and local regulations and laws.
- 9.10 The Contractor shall protect topsoil from wind and water erosion until planting is completed.

10.0 Grinding Coding To Be Used on Workorders

- 10.1 Grind Stump and Plant Grass = Code 1
- 10.2 Grind Stump and Leave Chips = Code 2
- 10.3 Grind Stump and Remove Chips = Code 3
- 10.4 No Stump Grinding at Address = Code 4

11.0 Site Clean Up

- 11.1 At the end of each work day, the Contractor shall be responsible for cleaning the site and all grounds that it has occupied, of all rubbish, debris, downed tree limbs, and branches caused by it; and all parts of the work shall be left in a neat, orderly, and presentable condition. The removal of all rubbish and debris generated as a result of the Contractor's work under this contract will be the responsibility of the Contractor. No debris will be allowed to remain in or on any roadways at any time.
- 11.2 Once the tree(s) is (are) removed, all wood chips, brush, limbs, and logs, unless otherwise specified in this Contract, will be considered the property of the Contractor who shall dispose of them in a manner consistent with applicable municipal, state, and federal Laws. No part of any tree shall remain on the site and the Contractor shall not permit any third party to claim the wood.
- 11.3 In all industrial, residential, commercial, park, and similarly maintained areas, all grass, gravel and garden areas shall be left "fan rake clean". All driveways, walkways, roads, curbs, patios, and other asphalt, concrete, stone and similar surfaces shall be "broom clean" when the site is vacated at the end of each shift and at the end of each day.
- 11.4 Once the work on a Set is complete and ready for inspection, the Contractor shall notify the Director or designee by phone or in writing. The Director or designee shall make the necessary inspection and if it is found the work has been properly performed and completed in accordance with all terms of this Contract, the work shall be accepted and the invoice approved.
- 11.5 The Director or Designee shall have the right to perform, or have performed, inspections of all places where work is undertaken in connection with this contract.

12.0 Damage to City and City Property

- 12.1 Damages to trees, shrubbery, and other features will result in an assessment of liquidated damages. The parties hereto recognize and agree that the exact amount of such damages to the City is difficult to ascertain but the following formula will render a reasonable pre-estimate of the City's probable loss:
- 12.2 Tree valuation will be based on the 1983 edition of the Guide for Establishing Values of Trees and Other Plants printed formula shall be as follows:
- 12.3 $\text{Tree Value} = \text{Cross Sectional Area} \times \text{Basic Value } \$38.00 \text{ square inch} \times \text{Condition Class} \times \text{Location Class} \times \text{Species Class}$.
- 12.4 This amount shall in no event be considered a penalty, but as liquidated and adjusted damages due the City which damages the City will deduct and retain from its final payment to the Contractor per work order issued. On partially damaged trees, liquidated damages shall equal a percentage of the above figure based on the percentage of the circumference of the stem that is damaged through the bark to the sapwood. Added to this will be damage done to the tips and

crown. All damaged or destroyed trees will remain property of the city.

- 12.5 Damaged turf areas will be leveled and re-sodded and all horticultural plantings damaged beyond repair will be replaced. Damage to structures, utilities, signs, light fixtures, landscape furniture, or other City property will be repaired or replaced. It is understood that all damage caused by workmen engaged in work under this Contract will be repaired by the Contractor without delay at its sole cost and expense. Repair work will be carried out by skilled workmen acceptable to the Director/designee and all repair and replacements must be approved by the Director/designee prior to final payment hereunder.

13.0 Utilities

The Contractor shall be responsible at its own cost for any and all work, expense, or special precautions caused or required by the existence or proximity of utilities encountered in performing the work. All workers working in the vicinity of utility lines will be fully briefed and instructed in safe working procedures appropriate to the voltage of the electrical apparatus on or near the work site. The contractor's site supervisor or supervisors in charge of any group or groups shall be fully aware of the safety procedures to be followed in case of an accident involving utility lines.

14.0 Equipment

- 14.1 OSHA must approve all safety equipment for the purpose for which it is being used. OSHA – approved hard hats will be worn at all times at the work site.
- 14.2 No ladder or ladders will be allowed at the work site.
- 14.3 The Contractor shall provide the Director or designee with one (1) cellular phone/with 2-way communication with 100 minutes per 30 days of free airtime to the City.
- 14.4 Safety ropes, tools, severed limbs, equipment and aerial lifts shall be handled in such a way as to ensure they do not come into contact with any utility lines.
- 14.5 The Contractor shall inspect any climbing ropes in use on the site, from end to end, before the start of each day's work, to ensure that there is no weakening, fraying, stressing, or other damage that constitutes a danger to the climber or its co-workers. Similarly, all other safety equipment will be checked regularly to ensure that it is in safe working condition. Any equipment defect shall be rectified immediately.
- 14.6 All aerial lifts will be insulated, maintained, and tested so as to ensure the safety to an employee in the bucket or at any controls should the lift come into contact with any energized utility line on the work site.

15.0 Pest Control – Bee and Wasp Swarm Control/Extermination

- 15.1 The Contractor shall remove, trap and/or exterminate bee(s) and wasp(s) that interfere with work to be performed. The Director or designee shall be notified verbally by phone/2 way communication and followed up in writing, of a bee or wasp problem before the Contractor issues instructions to remove and exterminate the bees and or wasps.
- 15.2 The removal and/or extermination shall not pose a potential human health hazard, or pose a threat to property or the environment.

16.0 Time and Term of Performance

All services shall be completed within a reasonable time in accordance with Section 4.1. It is understood and agreed that timely performance by the contractor is essential and that damages to 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.

20.0 ESTIMATED QUANTITIES NOT GUARANTEED

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

21.0 WARRANTY OF SERVICES

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

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

b) 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.

c) 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.

d) 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 SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE 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. D.H. Tire, Inc. (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

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

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

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

Upon submittal of the matter to arbitration 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.

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.

e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to a different location.

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, LANCE BOWE, PRESIDENT as an owner or officer of
(Name) (Print/Type) (Title)
PRIME TREE & LANDSCAPING SERVICES, INC. (Contractor)
(Name of Company)

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

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

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

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

Date 8/22/06

Contractor Name PRIME TREE & LANDSCAPING SERVICES, INC

Signature 

Title PRESIDENT

EXHIBIT "F"
Contractor's Certification Of No Safety Impact Positions
In Performance Of A City Contract

I, LANCE BOWE PRESIDENT
(Name)(Print/Type) (Title)

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

8/22/06
Date

PRIME TREE & LANDSCAPING SERVICES, INC
Contractor Name

[Signature]
Signature

PRESIDENT
Title

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

I, LANCE BOWE _____ as an
(NAME) (PRINT/TYPE)

owner or officer of PRIME TREE & LANDSCAPING SERVICES, INC (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.

8/22/06
DATE

PRIME TREE & LANDSCAPING SERVICES, INC
CONTRACTOR NAME

[Signature]
SIGNATURE

PRESIDENT
TITLE

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, LANCE BOWE PRESIDENT as an owner or officer of
(Name) (Print/Type) (Title)

PRIME TREE & LANDSCAPING SERVICES, INC. (Contractor or Vendor)
(Name of Company)

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

This reporting period covers the preceding 6 months from 02/22/06 to 08/22, 2006

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

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

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

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

LB Initials From 02/22/06 to 8/22/06 the following test has occurred
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	21	3	0	24
Number Employees Positive	0	0	0	0
Percent Employees Positive	0	0	0	0%

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

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

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

08/22/06
(Date)

LANCE BOWE
(Typed or Printed Name)
[Signature]
(Signature)
PRESIDENT
(Title)

EXHIBIT "H"

FEES AND COSTS

All Years Region 1 and 2

Item #	Description	Unit of Measure	Unit Price
1	Tree Removal Diameter Breast Height: 10.0" to 14.9" Category: 10	Each	\$35.00
2	Tree Removal Diameter Breast Height: 15.0" to 19.9" Category: 15	Each	\$95.00
3	Tree Removal Diameter Breast Height: 20.0" to 24.9" Category: 20	Each	\$225.00
4	Tree Removal Diameter Breast Height: 25.0" to 29.9" Category: 25	Each	\$245.00
5	Tree Removal Diameter Breast Height: 30.0" to 34.9" Category: 30	Each	\$410.00
6	Tree Removal Diameter Breast Height: 35.0" to 39.9" Category: 35	Each	\$415.00
7	Tree Removal Diameter Breast Height: 40.0" to 44.9" Category: 40	Each	\$520.00
8	Tree Removal Diameter Breast Height: 45.0" or Greater Category: 45	Each	\$605.00
9	Stump Grinding with Topsoil and Sod Per inch as measured 4'.6" off the ground.	Per Inch	\$4.95
10	Stump Grinding Only (leaving Chips) Per inch as measured 4'.6" off the ground.	Per Inch	\$3.50
11	Stump Grinding Only (Remove the Chips) Per inch as measured 4'.6" off the ground.	Per Inch	\$3.95