

## SALEM AMENDMENT

Council Member Salem offers the following amendment to File No. 2022-0764:

- (1) On page 1, line 11, after "PROPERTY;", insert "UPDATING THE LEVEL 3 TREE PLANTING PROGRAM AGREEMENT;" ;
- (2) On page 1, lines 23 and 24, strike "now therefore" and insert "and" ;
- (3) On page 1, line 24½, insert a new WHEREAS clause to read as follows:

"WHEREAS, the Jacksonville Tree Commission has reviewed, discussed and approved the update to the Level 3 Tree Planting Program Agreement, attached hereto as Exhibit 2; now therefore" ;
- (4) On page 2, line 2, strike "Exhibit 1" and insert "Revised Exhibit 1, labeled as "Rev Exhibit 1, Rev B.T., November 14, 2022 - NCSPHS"" ;
- (5) On page 2, lines 5 and 7, strike "Exhibit 1" and insert "Revised Exhibit 1" ;
- (6) On page 5, line 1, after "Agreement" insert ", as updated herein," ;
- (7) On page 5, line 4, strike ", now Contractor," ;
- (8) On page 5, line 8½, insert a new Section 3 to read as follows:

"Section 3. Updated Level 3 Agreement. The Level 3 Tree Planting Program Agreement is hereby updated to the version attached hereto as Exhibit 2, with the header on each page of "Pursuant to Ordinance 2022-764-E." ;
- (9) Renumber remaining Sections accordingly;
- (10) Remove Exhibit 1 and replace with Revised Exhibit 1,

attached hereto, which attaches the Revised B.T. to reflect revised appropriation sources;

(11) Attach **Exhibit 2**, attached hereto, which attaches the revised Level 3 Tree Planting Program Agreement;

(12) On **page 1, line 1**, amend the introductory sentence to add that the bill was amended as reflected herein.

Form Approved:

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Office of General Counsel

Legislation Prepared By: Susan C. Grandin

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# City of Jacksonville, Florida Request for Budget Transfer Form

Public Works / Mowing and Landscape Maintenance  
Department or Area Responsible for Contract / Compliance / Oversight

CW  
Council District(s)

Reversion of Funds: N/A  
(if applicable) Fund / Center / Account / Project \* / Activity / Interfund / Future

Fund 15304 is all-years  
Fiscal Yr(s) of carry over (all-years funds do not require a carryover)

Section of Code Being Waived (if applicable): N/A

CIP (yes or no): No

**Justification for Waiver**

N/A

**Justification for / Description of Transfer:**

To appropriate \$3,701,030.21 from Contingency and \$3,298,969.79 of the fund balance from the portion of the Tree Protection and Related Expenses Trust Fund that is generated from tree mitigation requirements in Part 12 of the Zoning Code (15304) for three purposes: \$4 million to the Remove and Replace Tree Planting Program activity, \$1 million to the Level 3 Tree Planting Program activity, and \$2 million to the 630-CITY Tree Planting Program.

Net Amount Appropriated and/or Transferred: \$7,000,000.00

\* This element of the account string is titled project but it houses both projects and grants.

## CITY COUNCIL

Requesting Council Member: Councilman Salem

CM's District: At-Large - Group 2

Requesting Council Member: \_\_\_\_\_

CM's District: \_\_\_\_\_

Prepared By: \_\_\_\_\_

Ordinance: \_\_\_\_\_

## OFFICE OF THE MAYOR

BUDGET ORDINANCE     TRANSFER DIRECTIVE

TD / BT Number: \_\_\_\_\_

Date Rec'd.	Date Fwd.	Approved	Disapproved

Department Head  
Mayor's Office  
Accounting Division  
Budget Division

Date of Action By Mayor: \_\_\_\_\_

Approved: \_\_\_\_\_

Division Chief: Dave McDaniel, Chief of Mowing and Landscape Maintenance

Date Initiated: 11/9/22

Prepared By: Lee Dupree, Assistant Financial and Administrative Manager

Phone Number: 255-8508

Submitted / Requested By (if other than Department): \_\_\_\_\_

November 14, 2022 - NCS/PHS  
Page 1 of 2  
Revised 11/1/21  
Submitted by: Lee Dupree, T.

704

**Budget Transfer Line Item Detail**

\* This element of the account string is titled project but it houses both projects and grants.

Budget Office approval does not confirm; whether or not a grant requires a new 1Cloud grant number nor the availability or use of prior-year revenue and/or the use of fund balance appropriations in all-years

\_\_\_\_\_ Budget Officer Initials

**TRANSFER FROM:** (Revenue line items in this area are being appropriated and expense line items are being de-appropriated.)

Rev Exp	Fund Title	Activity / Grant / Project Title	Line Item / Account Title	Amount	Accounting Codes						
					Fund	Center	Account	Project *	Activity	Interfund	Future
Total: \$7,000,000.00											
Rev	TREE PROTECTION & RELATED EXPENDITURES	Jax Citywide Activity	Transfer From Fund Balance	\$3,298,969.79	15304	191021	389010	000000	00000000	00000	0000000
Exp	TREE PROTECTION & RELATED EXPENDITURES	Tree Protection & Related Expenses	Contingency	\$1,434,654.35	15304	151004	599100	000000	00000982	00000	0000000
Exp	TREE PROTECTION & RELATED EXPENDITURES	Tree Protection & Related Expenditures Activity	Contingency	\$2,266,375.86	15304	191015	599100	000000	00000981	00000	0000000

**TRANSFER TO:** (Revenue line items in this area are being de-appropriated and expense line items are being appropriated.)

Rev Exp	Fund Title	Activity / Grant / Project Title	Line Item / Account Title	Amount	Accounting Codes						
					Fund	Center	Account	Project *	Activity	Interfund	Future
Total: \$7,000,000.00											
Exp	TREE PROTECTION & RELATED EXPENDITURES	County-Wide Tree Prog- Remove - Replace	Trust Fund Authorized Expenditures	\$4,000,000.00	15304	151004	549006	000000	00000378	00000	0000000
Exp	TREE PROTECTION & RELATED EXPENDITURES	630-City Tree Planting Prog - Other Physical Environment	Trust Fund Authorized Expenditures	\$2,000,000.00	15304	154007	549006	000000	00000000	00000	0000000
Exp	TREE PROTECTION & RELATED EXPENDITURES	Level 3 Tree Planting Program	Trust Fund Authorized Expenditures	\$1,000,000.00	15304	151004	549006	000000	00001623	00000	0000000

**TREE PLANTING PROGRAM (LEVEL 3) AGREEMENT**

( [Project Name] )

**THIS TREE PLANTING PROGRAM (LEVEL 3) AGREEMENT (“Agreement”)** is made and is effective as of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”), by and among the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “*City*”) and \_\_\_\_\_, a \_\_\_\_\_ (the “*Applicant*”).

**RECITALS:**

**WHEREAS**, pursuant to Section 94.106, *Ordinance Code*, the Jacksonville Tree Commission (“*Commission*”) established the Level 3 Tree Planting Program (the “*Program*”), which provides the process to apply to the City for project funding for local community and not-for-profit organizations to design, manage, construct, maintain and warranty tree planting projects on publicly owned land within Duval County that will conserve and enhance the City’s tree canopy; and

**WHEREAS**, funding for the Program is generated by the development of land that causes a loss in the City’s tree canopy, which loss may be mitigated by the payment into the Tree Protection and Related Expenses Trust Fund (“*Tree Fund*”) pursuant to both Article 25 of the Jacksonville Charter, and Part 12 of the Zoning Code (656.1201, et. seq., *Ordinance Code*); and

**WHEREAS**, the Applicant applied through the Commission to the City to receive project funding under the Program for the tree planting project more particularly described in this Agreement (the “*Project*”); and

**WHEREAS**, the approval by MBRC was for the schematic design for the tree planting and associated tasks, estimated project cost, proposed project team, and estimated project performance schedule. Those items will form the basis of the preparation of the construction documents by the project landscape architect, which in turn will be bid out to landscape contractors for implementation of the plans and specifications; and

**WHEREAS**, pursuant to Ordinance 2020-213-E the City has appropriated funds for the Program to be utilized by the Department of Public Works for applications approved by the Mayor’s Budget Review Committee (“*MBRC*”) after receiving a recommendation from the Tree Commission; and

**WHEREAS**, MBRC has approved the Project proposed by the Applicant, subject to the terms and conditions provided herein,

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**ARTICLE I**  
**Incorporation of Recitals; Definitions**

1.1 The parties hereto acknowledge and agree that the recitals above are correct and incorporated herein by this reference.

1.2 All capitalized terms shall have the meanings given to them in this Agreement, including, but not limited to, the capitalized terms defined below:

***Administrative Costs*** – expenses incurred by the Applicant for general coordination of the application process, but not the management of the design or construction.

***Applicant*** - an eligible not-for-profit or organization that submits an Application for funding through the Program.

***Application*** - the Jacksonville Tree Commission Level 3 Tree Planting Program Application. The Application may be accessed on the Tree Commission webpage.

***City*** - the City of Jacksonville.

***Conceptual Planting Plan*** - shows location of proposed trees, identified by number, symbol or acronym; approximate quantity of trees; tree size; and tree type. This information is to be prepared on a base sheet, indicating existing structures and trees, and where new trees are to be provided. Base sheet may be a plan drawing or aerial photo and should be generally to scale, but this is not an absolute requirement.

***Contingency amount*** – the amount stated in the Agreement payable on a prospective estimate of the cost, rather than a percentage of the contract amount, for changes in the Scope of Work. Note: if the contingency amount raises the cost to above the statutory or ordinance code threshold for procurement bidding, then the Project must follow the procurement procedures for the total amount, including the contingency.

***Contractor*** – the Landscape Contractor responsible for the execution of the Project.

***Construction Documents*** – the set of bid documents prepared by the landscape architect including, but not limited to, the planting and removal plans, irrigation plan, Specifications, construction details, Plant Schedule and legends for the Project including any modifications thereto.

***Contract Manager, City*** - an employee of, or agent for, the City that oversees the Project through the Program requirements from the Applicant's initial contact with the City through completion of the Project, including review and approval of bid documents prepared by the Landscape Architect, bidding and construction phases, inspections and maintenance during the warranty period.

***County*** - Duval County, Florida.

***Department*** - the City of Jacksonville, Department of Public Works.

**Design Plan** - the City approved documents as provided in the Application for the Project, or as modified by the Tree Commission or MBRC, including but not limited to the Schematic Planting Plan, the Plant Schedule, the City's Specifications, and the Project Performance Schedule.

**Draw Request Form** - the draw request form, available from the City and on the Tree Commission website, for use by the Applicant requesting payment for completed tasks of the Scope of Work.

**Final Acceptance** – The point when the requirements of the construction contract including installation and maintenance have been completed in accordance with the contract documents and to the satisfaction of the City and the City has issued to the Applicant a letter of Final Acceptance.

**Florida Fancy** – the highest grade of plant material pursuant to the latest edition of “Florida Grades and Standards for Nursery Plants” produced by the Florida Department of Agriculture and Consumer Services.

**Governmental Approvals** - all necessary approvals and consents from all governmental or quasi-governmental authorities having jurisdiction over the Project, including, but not limited to, street openings or closings, zoning and use and occupancy permits, sewer permits, environmental permits and approvals, building permits, highway occupancy permits, subdivision and land development approvals, and approvals of fire underwriters.

**Initial Acceptance** – The point when the Landscape Contractor has completed the requirements of the construction portion of the contract in accordance with the contract documents to the satisfaction of the City and the City has issued to the Applicant a letter of Initial Acceptance. The Maintenance Period begins on the date of Initial Acceptance.

**Landscape Architect** – a Florida registered landscape architect licensed pursuant to Ch. 481, Part II, F.S., who has at least 5 years of experience in the design, construction oversight, and inspection of public and private tree planting projects, including tree planting in road rights-of-way. Experience must include preparing schematic design drawings, construction drawings, bid documents, and technical specifications; obtaining bids; providing contractor oversight; and inspecting and preparing inspection reports of the contractors' work. This definition includes the landscape architect's landscape architecture firm, including their employees.

**Landscape Contractor** – contractor, with a minimum of five years of experience in landscape and irrigation system construction.

**Maintenance Period** – The time established in the Agreement when the Landscape Contractor performs maintenance of the installed landscaping described in the Contract between the Applicant and the Landscape Contractor. The Maintenance Period begins upon Initial Acceptance and ends when the City issues a letter of Final Acceptance.

**Plant Schedule** – description of each plant in a table format prepared by the Landscape Architect listing:

- a) The common and botanical name (genus and species) of each tree type;
- b) The quantity of each type of tree;
- c) The size, including branch height and spread, the number of trunks, the caliper of each, and the height of clear trunk (“C.T.”);
- d) Associated notes for each tree, such as balled and burlapped (“B&B”), container grown, etc.;
- e) Plant quality (Florida Fancy); and
- f) The explanation of symbols or acronyms used on the Planting Plan.

**Program** - the City of Jacksonville Tree Commission Level 3 Tree Planting Program.

**Project** - a tree planting effort, which may include an automatic irrigation system, provided by an Applicant, utilizing the Tree Fund as defined below, for the benefit of the citizens of Duval County by increasing the tree canopy on public property.

**Project Cost** - the total of all estimated eligible costs associated with design, preparation of construction documents, project coordination, procurement of materials, planting, irrigation, warranty, and maintenance of the Project submitted by the Applicant in accordance with the Application Instructions and Process Guide (available on the Tree Commission webpage).

**Project Design** – the compilation of the Schematic Planting Plan drawings, the City’s Specifications, and the construction drawings and specifications for the irrigation and planting of the trees prepared by the Landscape Architect. The Conceptual Project Plan prepared by the Landscape Architect as well as the Project Team, Project Performance Schedule, and general Scope of Work.

**Project Documents** - all documents executed and delivered in connection with this Agreement.

**Project Funds** - the funding provided by the City to the Applicant for the Project pursuant to the Agreement.

**Project Location** – A map showing the location of the tree planting project within the County and showing, on a smaller scale, the surrounding context of the project site. See **Exhibit A-1**.

**Project Manager, Applicant** – an employee of, or agent for, the Applicant that administers the Project through the Program requirements from the initial contact/pre-application meetings with the City to completion of the Project, including draw requests, and maintenance during the warranty period.

**Project Performance Schedule** - the performance schedule as approved in the Application and as contained as part of **Exhibit B** of this Agreement. The schedule must include a timeline for:

1. the development of the Landscape Plan and other associated Construction Documents based upon the approved Schematic Planting Plan and Plant Schedule, including the timeframe for bidding that professional service if required by Sec. 255.20, F.S., Sec. 287.055, F.S. and Chapter 126, *Ordinance Code*;



2. Bidding the Construction Documents to qualified bidders;
3. Removal of obstructions;
4. Installation of the irrigation (if any);
5. Installation of the trees; and
6. Maintenance and warranty period.

**Project Scope** - the project and scope of work to be performed by Applicant identified in Applicant's Application, including but not limited to the Applicant's approved Planting Plan, and irrigation plan if any, as more particularly described in **Composite Exhibit A** attached hereto.

**Publicly Owned Property** – property located in Duval County owned by a local, state, federal, or other governmental entity, which includes land within public rights-of-way; parks, preserves, Duval County School Board property, and other publicly owned property accessible to the public.

**Schematic Planting Plan** - scaled drawings provided as part of the Application showing: graphic scale and north arrow for each drawing, Site Location Maps, project limits within the property, property lines and right-of-way lines, surrounding context, overhead utilities, location and identification of all existing and proposed plant material utilizing standard symbols or acronyms, a legend of the symbols or acronyms, and boundaries of irrigation, if included.

**Scope of Work** - the description of work required to implement the Project.

**Specifications** - a document entitled "Specifications for Jacksonville Tree Commission Level 3 Community Organization Tree Planting Program" ("Specifications"), a copy of which is available from the City.

**Tree Commission** - the advisory body created in Chapter 94, *Ordinance Code*.

**Tree Commission Staff** - the staff assigned by the Mowing and Landscape Maintenance Division of the Jacksonville Department of Public Works to support the efforts of the Tree Commission.

**Tree Fund** - the monies deposited within the Tree Protection and Related Expenses Trust Fund, pursuant to Sec. 111.760, *Ordinance Code*, and Sec. 25.04, *Jacksonville Charter*.

**Tree Planting Plan** – The final planting plan that is incorporated into the Construction Documents prepared by the Landscape Architect that is derived from and closely resembles the Schematic Planting Plan approved as part of the Application. Existing conditions such as overhead and underground utilities, existing vegetation to remain and to be removed, existing signage, existing hardscape such as roadways and sidewalks, and existing tree

canopy adjacent to the Project site shall be shown on the drawing. Provide Drawings in a high-resolution electronic format.

***Warranty and Maintenance*** – the minimum time established in the construction contract when the Landscape Contractor provides maintenance and a warranty that the installed project will remain in healthy condition and in conformance with the Specifications until Final Acceptance.

## **ARTICLE II** **Project**

2.1 **Project Funds.** Subject to the terms and conditions set forth in this Agreement, City agrees to pay and disburse the Project Funds to Applicant in the amount of [\_\_\_\_\_ **DOLLARS AND NO CENTS (\$\_\_\_\_\_.**00).] as shown in the Project Budget and Cost Breakdown on **Exhibit C**. **The City will provide the Cost Breakdown form.** Applicant acknowledges and agrees that the Project Funds shall be disbursed on a work performed and invoiced basis, subject to the Draw requirements in Article VI herein. In no event shall the City be required to advance any or all of the Project Funds to Applicant. The Project Funds shall be the City’s maximum indebtedness to the Applicant under this Agreement. The Project Funds shall be used by the Applicant to fund the Project.

2.2 **Project Scope.** The Applicant agrees to perform the Project Scope in accordance with the Design Plans, Specifications, Project Performance Schedule, and Project Budget. If any services, functions, or responsibilities not specifically set forth in this Agreement are necessary for the proper performance of the Project Scope, then such services, functions and responsibilities shall be deemed implied by and included within the Project Scope.

### 2.3 **Refund and Return of Project Funds; Reimbursement of Collection Costs.**

2.3.1 **No Entitlement to Project Funds.** In the event the Applicant receives any portion of the Project Funds to which it is not entitled as of the date of Draw of the same, whether by accident or otherwise, then such funds shall automatically revert to the City, and the Applicant shall immediately refund and return all such funds to the City without demand or further notice.

2.3.2 **Misuse of Project Funds.** In the event the Applicant expends any portion of the Project Funds in a manner inconsistent with the terms of this Agreement, the City Tree Planting Standards and Specifications, or any applicable and governing federal, state or local law, rule regulation or policy, then the Applicant shall immediately refund and return all such funds to the City without demand or further notice.

2.3.3 **Reimbursement of Collection Costs.** The Applicant shall reimburse the City for all costs, expenses and fees, including attorneys’ fees and court costs, incurred or expended by the City in connection with any collection efforts to recover any funds due to the City pursuant to this Agreement.

2.4 **Tree Planting Standards, Specifications, and Other Requirements.** A document entitled “Specifications for Jacksonville Tree Commission Level 3 Community Organization Tree

Planting Program” (“Specifications”) is one document that is provided to potential Landscape Contractors in the bidding process, and the applicant is familiar with these requirements. It includes the standards for the individual Project.

2.5 The Project Team is listed in **Exhibit D** of this Agreement. Should any replacement of a team member be necessary, the City shall be notified immediately, and an eligible replacement named.

### **ARTICLE III** **Use of Project Funds; Other Requirements**

3.1 Use of Project Funds. The Applicant shall expend the Project Funds solely and exclusively for the Project Scope, which shall be constructed on the Project Location. The Applicant shall not expend or otherwise use any or all of the Project Funds for any other purpose without the prior written consent of the City, which consent may be withheld in its sole discretion. Release of any liens must be obtained within 30 days of Applicant’s receipt of Project Funds.

3.2 Compliance with the Specifications and Details, and Applicable Federal, State and Local Laws, Rules, Regulations and Policies. Applicant must comply with the Specifications with respect to the performance of the Project Scope. The Design Plans shall be approved by the City’s landscape architect prior to the commencement of the Project Scope. The Applicant shall use the Project Funds in a manner consistent with all applicable and governing federal, state and local laws, rules, regulations and policies, and any subsequent amendment thereto, during the Term of this Agreement. The Applicant acknowledges and agrees that the Applicant has reviewed, understands and is familiar with all such applicable and governing federal, state and local laws, rules, regulations and policies. All expenses for which reimbursement is sought, including the landscape architecture fees for the Schematic Planting Plan, Landscape Plan, or other services, must comply with Sections 255.20 and 287.055, Florida Statutes and Chapter 126, Ordinance Code.

3.3 Compliance with the Additional Terms and Conditions. In addition to the requirements, limitations and restrictions set forth elsewhere in this Agreement, the Applicant shall strictly follow and comply with the additional terms and conditions contained on **Exhibit E**.

### **ARTICLE IV** **Project Performance Schedule**

4.1 The Applicant and the City have jointly established the Project Performance Schedule, as described on **Exhibit B**. The Applicant shall timely perform its obligations set forth on the Project Performance Schedule. The Project Performance Schedule shall not be modified without the prior written consent of the City, which consent may be withheld in its sole discretion.

**ARTICLE V**  
**Completion of Project**

5.1 **Completion of the Project.** The Applicant shall complete construction of the Project Scope by no later than the time calculated pursuant to **Exhibit B** (the “***Project Performance Schedule***”). For purposes of this Agreement, completion of the Project Scope shall be deemed to have occurred only when the following conditions (the “***Project Completion Conditions***”) shall have been satisfied:

(a) The Applicant shall furnish to the City certificate of substantial completion from the Landscape Architect to establish to the City's satisfaction that the Project Scope has been properly completed and is not subject to any violations or uncorrected conditions noted or filed in any City department;

(b) The Applicant shall submit to the City a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the City, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Project Scope;

(c) The Project Scope shall have been finally completed in all respects in accordance with the Design Plans, as verified by a final inspection report satisfactory to the City, certifying that the Project Scope has been constructed in a good and workmanlike manner and is in satisfactory condition. In the event the City determines that there is a deficiency with the Project Scope, the City reserves the right to require that an escrow be established in an amount satisfactory to the City to remedy such deficiency.

5.2 **Change Orders.**

(a) No material amendment shall be made to the Design Plans or the Construction Documents executed in connection with the Project Scope nor shall any material change orders be made by Applicant thereunder without the prior written consent of the City.

(b) In the event of change orders requested by the City or requested by the Applicant or its contractors and approved by the City, Applicant shall be paid for its reasonable time in implementing or supervising the execution of the change order. Such compensation shall be at the hourly rates for Applicant, set forth in Exhibit “C” of this Contract.

5.3 **Subcontractors.** The Applicant agrees that it will not engage or continue to employ or permit any of its general contractors to engage or continue to employ, any contractor, subcontractor, or materialman or any other third party who may be reasonably objectionable to the City. If requested by the City, the Applicant shall deliver to the City a fully executed copy of each of the agreements between the Applicant and such third parties and between any such general contractor and any contractor, subcontractor or materialman or any other third party, each of which shall be in form and substance reasonably satisfactory to the City. The City's approval of a construction contract is specifically conditioned upon the following: (a) the total contract price

thereof does not exceed the fair and reasonable cost of the Project Scope to be performed thereunder and (b) the contractor or subcontractor is of recognized standing in the trade, has a reputation for complying with contractual obligations and is otherwise reasonably acceptable to the City.

5.4 Liens and Lien Waivers. The Applicant shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against any real property contemplated by this Agreement released or transferred to bond within ten (10) days of the date the Applicant receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any Draws (as defined herein) until it is bonded over or removed and a copy of the recorded release thereof is received and accepted by the City. The City shall not be obligated to disburse any funds to Applicant if, in the opinion of the City, any Draw, real property contemplated by this Agreement or any other collateral for the Project Funds would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. The Applicant shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

5.5 Authority of City to Monitor Compliance. During all periods of design and construction of the Project Scope, the Applicant shall permit the City's Chief Executive Officer or his/her designated personnel, to monitor compliance by the Applicant with the provisions of this Agreement and any Construction Documents. During the period of construction of the Project Scope and with prior notice to the Applicant, representatives of the City shall have the right of access to the Applicant's records and employees, as they relate to the Project Scope, during normal business hours.

5.6 Construction and Operation Management. Except as otherwise expressly provided herein, the Applicant shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project Scope, provided that the same shall, in any event, conform to and comply with the terms and conditions set forth in this Agreement, the Construction Documents, and all applicable and governing federal, state and local laws, rules, regulations and policies (including without limitation, applicable zoning, subdivision, building and fire codes). The Applicant's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

(a) the construction and design of the Project Scope, subject to the express terms and conditions of this Agreement;

(b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively, the "Vendors") on such terms and conditions as the Applicant deems appropriate; provided however, that to the extent that the City furnishes to Applicant the names and identities of Jacksonville-based vendors, including, without limitation, Jacksonville-based minority vendors, and to the extent that the Applicant has the need to enter into contracts with vendors outside of persons employed by Applicant or companies affiliated with or controlled by the Applicant, then the Applicant agrees to include all such Jacksonville-

based vendors in the process established by the Applicant for obtaining bids for any of the Project Scope;

(c) the negotiation and execution of contracts, agreements, and other documents with third parties, in form and substance satisfactory to Applicant; and

(d) the preparation of such budgets, cost estimates, financial projections, statements, information and reports as Applicant deems appropriate.

5.7 Guarantee of Plant Material and other Improvements. Applicant guarantees that the plant material and all other systems provided will meet the Tree Program specifications, as required in the **Specifications** for a minimum period of [\_\_\_\_\_] months] or [\_\_\_\_\_] years] and until Final Acceptance.

5.8 Survival of Agreement after Project Completion. This Agreement shall not terminate until the Project has completed a successful inspection by the City after the guarantee period, and any extension thereof pursuant to the terms of this Agreement.

## ARTICLE VI **Draws**

6.1 Maximum Amount. Provided that the Applicant has performed all obligations of the Applicant then due and subject to compliance by the Applicant with the terms and conditions of this Agreement, the City shall make Draws (each, a “**Draw**” and collectively, the “**Draws**”) to Applicant for the Project Scope, up to the maximum amount of the Project Funds in accordance with the Approved Draw Schedule attached hereto as Exhibit F. Prior to Draw, the Applicant must provide a local business tax receipt to do business in the City of Jacksonville.

6.2 Reserved.

6.3 Draw Procedures. All Draws shall be made from time to time upon written application of the Applicant pursuant to a Draw request (each, a “**Draw Request**”). The Applicant shall submit Draw Requests to the City in accordance with the Approved Draw Schedule attached hereto as Exhibit F, covering work performed since the prior Draw Request. By submitting a Draw Request, the Applicant warrants to the City that:

(a) the work performed and the materials supplied as of the date thereof are in accordance with the Construction Documents and this Agreement,

(b) the work and materials for which payment is requested have been physically incorporated into the Project Scope,

(c) the value is as stated,

(d) the work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction,

(e) payment for the items described in such Draw Request has been invoiced to the Applicant by those providing the labor or materials, and the invoices, receipts and other documents required by the City are provided as evidence that the costs and expenses were actually incurred by the Applicant,

(f) evidence in the form of receipts, vouchers, invoices and waivers of mechanic's and materialmen's liens and other documents required by the City shall be included with Draw Requests showing that the previous progress payment, if any, has been applied to pay in full its obligations incurred for the Work covered by the prior Draw Request,

(g) such Draw Request is consistent with this Agreement, and

(h) no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing.

The proceeds of each payment of City funds (each, a "Reimbursement" of the previous progress payment) shall be used by the Applicant solely as reimbursement for the obligations for which the Reimbursement is sought,

6.4 Requests for Draw. For each request for a Draw, the Applicant shall submit to the City a completed written Draw request on a copy of the Draw Request Form as provided by the Department of Public Works.

6.5 Inspection. Upon receiving the Draw Request, the City staff shall determine (a) whether the work completed as of the date of such Draw Request has been done satisfactorily and in accordance with the Construction Documents, and this Agreement, and (b) whether the costs actually incurred is a part of the Project Scope to be performed under this Agreement. All inspections by or on behalf of the City shall be solely for the benefit of the City, and Applicant shall have no right to claim any loss or damage against the City or the City inspector arising from any alleged negligence in or failure to perform such inspections; failure to monitor Draws or the progress or quality of construction; or failure to otherwise properly administer the Project Funds.

6.6 Conditions to Draws.

6.6.1 General Conditions. The City shall have no obligation to make any Draw (a) unless the City is satisfied, in its sole and absolute discretion, that each and every condition precedent to the making of such Draw has been satisfied or (b) if an Event of Default or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred or is continuing.

6.6.2 Conditions to Initial Draw. The obligation of the City to make the initial Draw is conditioned upon the occurrence of each of the following:

(a) The Applicant shall have provided to the City, in form and substance satisfactory to the City, evidence that the Applicant has applied for and has obtained, or is pursuing and will obtain, all governmental approvals and consents required for the construction of the Project Scope;

(b) The Applicant shall have provided to the City proof of insurance coverage as required in this Agreement;

(c) The Applicant shall have submitted to the City a Draw Request pursuant to Section 6.4 hereof;

(d) The Applicant shall have provided to the City, in form and substance satisfactory to the City, an updated Project Budget showing the amount of money actually spent by the Applicant on particular items and the remaining costs of the Project Scope; and

(e) The Applicant shall have provided to the City, in form and substance satisfactory to the City, any such other document, instrument, information, agreement or certificate the City may require.

6.6.3 Conditions to Final Draw. The obligation of the City to make the Final Draw is conditioned upon the occurrence of the Applicant having completed the Project Completion Conditions set forth in Section 5.1 hereof.

6.7 No Warranty by the City. Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by the City regarding: (a) the accuracy or reasonableness of the Project Budget; (b) the feasibility or quality of the Construction Documents; (c) the proper application by the Applicant of the Project Funds; (d) the quality or condition of the Project Scope; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project Scope. The Applicant acknowledges that the Applicant has not relied and will not rely upon any experience, awareness or expertise of the City, or the City's inspector, regarding the aforesaid matters.

## **ARTICLE VII** **Term and Termination**

7.1 Term. This Agreement shall be effective for the period beginning on the Effective Date and shall terminate upon the City's Final Acceptance. Final Acceptance occurs at the point when the landscape maintenance work required after the Initial Inspection, including any punch list items from the Final Inspection, has been completed to the satisfaction of the City's Contract Manager, unless terminated sooner pursuant to the provisions hereunder (the "***Term***").

### 7.2 Events of Default; Termination.

7.2.1 Events of Default. The occurrence of any one or more of the following events prior to the expiration of the Term shall constitute an "***Event of Default***" hereunder:

(a) Failure to perform or observe any material term, agreement, covenant or condition of this Agreement or any of the agreements or other instruments attached hereto as Exhibits, which such default continues for ten (10) business days after written notice thereof; provided that, if such failure cannot be



reasonably cured within ten (10) business days, no Event of Default shall be deemed to occur so long as the defaulting party has commenced and is diligently implementing a cure within such ten (10) business day period, notifies City of the reasonable time period to cure, and pursues such cure to a timely conclusion.

(b) A violation of any applicable and governing federal, state or local law, rule, regulation or policy with respect to the subject matter hereof.

(c) Any representation or warranty contained in this Agreement that is false or misleading in any material respect.

(d) The application by Applicant for, or consent to, the appointment of a receiver, trustee, liquidator or custodian (or similar official) of its or all or a substantial part of its assets, or if any party shall be unable or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors or agrees to take advantage of any insolvency law, file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding or if any corporate action shall be taken by it for any purpose of effecting any of the foregoing, or if any order, judgment or decree shall be entered by a court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, trustee, liquidator or custodian (or other similar official) of any party hereto or of all or a substantial part of its assets, and such other judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days.

(e) An event of default of the Applicant under any other agreement or transaction between the Applicant and the City of Jacksonville or the City.

7.2.2 Termination upon Event of Default. Upon the occurrence of an Event of Default, the non-defaulting party, at its sole and absolute election, may terminate this Agreement and exercise all rights and remedies it may have at law or in equity. Additionally, each party shall have the right to prosecute any proceedings at law or in equity against any defaulting party hereto, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. Such rights shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

7.2.3 No Waiver. Failure on the part of the City to notify the Applicant of a default shall not be deemed to be a waiver by the City as to its rights on such default of the Applicant and shall not be deemed to be a waiver of the City's right to notify the Applicant of such default at a subsequent time, and such a notice shall have the same effect as if promptly made.

## **ARTICLE VIII** **Contract Managers**

8.1 Contract Managers. Each party to this Agreement will designate a Contract Manager whose responsibility shall be to oversee that party's performance of its duties and obligations under this Agreement. As of the Effective Date, the City's Contract Manager is Justin Gearhart, City Arborist, 609 St. Johns Bluff, Jacksonville, FL 32225; Phone Number: (904) 255-4327; email: [JGearhart@coj.net](mailto:JGearhart@coj.net), and Applicant's Project Manager is \_\_\_\_\_ [Name]\_\_\_\_\_, \_\_\_\_\_ [Title]\_\_\_\_\_, \_\_\_\_\_ [Address]\_\_\_\_\_; \_\_\_\_\_ [Phone Number]\_\_\_\_\_; \_\_\_\_\_ [email]\_\_\_\_\_. The City and Applicant shall each provide prompt written notice to the other party of any changes to its Contract Manager or his or her contact information, provided such changes shall not be deemed contract amendments and may be provided by email.

## **ARTICLE IX** **Records**

9.1 Maintenance, Retention and Examination of Records. In addition to the audit provisions set forth in this Article and elsewhere in this Agreement, the Applicant shall, and the Applicant shall require and cause each of its general contractors, subcontractors, materialmen, laborers and other persons performing Project Scope to, (a) maintain and retain all books, records, papers and other documentation or evidence pertaining to costs or expenses incurred in construction or furtherance of the Project Scope throughout the Term of this Agreement and for a period of five (5) years thereafter and (b) make available to the City, and permit the City to examine, inspect and have access to, at all reasonable times during the Term of this Agreement and for a period of five (5) years thereafter, such books, records, papers and other documentation or evidence. This covenant applies at every local and corporate office of the Applicant and each of its general contractors, subcontractors, materialmen, laborers and other persons performing Project Scope in any way.

9.2 Prohibited Use. The Applicant shall not use any portion of the Project Funds to pay for any costs or expenses associated with the reporting requirements, financial or otherwise, set forth in this Article or elsewhere in this Agreement.

**ARTICLE X**  
**Indemnification; Insurance**

10.1 See **Exhibit G**, attached hereto, for Indemnification requirements.

10.2 Without limiting its liability under this Agreement, the Applicant shall procure and maintain at its sole expense and require its contractors and subcontractors of any tier to procure and maintain, during the term of this Agreement, the insurance coverage and bond requirements contained on **Exhibit H**, attached hereto.

**ARTICLE XI**  
**Representations and Warranties by Applicant**

Without limiting the representations, warranties and covenants of Applicant set forth elsewhere in this Agreement, as a material inducement for the City to enter into this Agreement, the Applicant represents and warrants to the City (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the Term of this Agreement as if continuously reiterated) that:

11.1. The Applicant is a \_\_\_\_ [entity type] \_\_\_\_ [Use if a corporation: duly incorporated and validly existing under the laws of the State of Florida and authorized to conduct business and in good standing in the State of Florida]. The Applicant has full power and authority to execute and deliver this Agreement and all documents contemplated hereby and perform its obligations arising hereunder and thereunder. The individual signing on behalf of the Applicant has full power and authority to do so.

11.2. The making, execution and delivery of this Agreement and performance of all obligations hereunder by the Applicant have been duly authorized and approved by the shareholders, members, partners, or Board of Directors of the Applicant (as the case may be).

11.3. This Agreement and all documents contemplated hereby each constitute a legal, valid and binding obligation of the Applicant, enforceable in accordance with their respective terms, assuming execution of the same by the City.

11.4. This Agreement and all documents contemplated hereby do not and will not contravene any provision of the governing documents of the Applicant, any judgment, order, decree, writ or injunction to which the Applicant is bound, or any provision of any applicable law or regulation to which the Applicant is bound. The execution and delivery of this Agreement and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party.

11.5. The Applicant and each of its general contractors, subcontractors, materialmen, laborers and other persons performing Project Scope hold all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities as a condition to conduct business in the State of Florida and to work on the Project Scope.

11.6. The Applicant has not employed or retained any third party having a relationship with the City to solicit or secure this Agreement and has not paid or agreed or promised to pay any such person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

11.7. The Applicant has obtained for the construction of the Project Scope the Governmental Approvals, and all Governmental Approvals are or will be final, unappealed, and unappealable, and remain in full force and effect without restriction or modification.

11.8. No notice of taking by eminent domain or condemnation of any part of the Project Location has been received, and the Applicant has no knowledge that any such proceeding is contemplated with respect to the Project Scope.

**ARTICLE XII**  
**Miscellaneous Provisions**

12.1 Amendment. This Agreement shall not be amended or modified in any way except by an instrument in writing executed by both parties hereto.

12.2 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent facsimile, by registered or certified mail, return receipt requested, or delivered by a courier service utilizing return receipts, to the party at the following addresses and such notice shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, the date actually received if sent by personal delivery or courier service, or the date shown on the facsimile transmission receipt if sent by facsimile.

To City:                   Public Works Department  
                                  Mowing and Landscape Maintenance Division  
                                  609 St. Johns Bluff Rd.  
                                  Jacksonville, Florida 32225  
                                  Attention: Chief

With Copy to:           City of Jacksonville  
                                  Office of General Counsel  
                                  Tree Commission Attorney  
                                  117 West Duval Street, Suite 480  
                                  Jacksonville, Florida 32202  
                                  Attention: Government Operations Department

To Applicant:           \_\_\_\_\_ [Applicant Name] \_\_\_\_\_  
                                  \_\_\_\_\_ [Applicant address] \_\_\_\_\_  
                                  \_\_\_\_\_ [Title or name] \_\_\_\_\_  
                                  Attention: \_\_\_\_\_ [Title or name] \_\_\_\_\_

12.3 TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE in the performance by any party of its obligations hereunder. If any date of significance hereunder falls upon a Saturday, Sunday, or legal holiday, such date shall be deemed moved forward to the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be considered business days.

12.4 Waiver. No waiver of any term of or obligation pursuant to this Agreement may occur or be enforced unless it is signed by both parties hereto. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default or any other default or of related rights or remedies.

12.5 Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

12.6 Severability. Except as expressly provided to the contrary herein, each section, part, term or provision of this Agreement shall be considered severable, and, if for any reason, any section, part, term or provision herein is determined to be invalid, contrary to or in conflict with any existing or future law, rule or regulation by a court or governmental agency having competent jurisdiction, such determination shall not impair the operation of or have any other effect on the remaining sections, parts, terms or provisions of this Agreement, which shall continue to be given full force and effect and bind the parties hereto, and such invalid sections, parts, terms or provisions shall be deemed to be not a part of this Agreement.

12.7 Independent Contractor. The parties hereto acknowledge and agree that the Applicant shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, representative or associate of the City. The Applicant shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

12.8 No Third Party Beneficiaries. This Agreement and the rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the parties hereto. This Agreement is for the sole and exclusive benefit of the parties hereto, and no third party is intended to or shall have any rights or benefits hereunder.

12.9 Venue; Applicable Law. The Applicant acknowledges, consents and agrees that all legal actions or proceedings arising out of or related to this Agreement shall lie exclusively in a state or federal court in Duval County, Florida. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

12.10 Non-Discrimination. In conformity with the requirements of Section 126 Part 4, Jacksonville Ordinance Code, the Applicant represents and warrants to the City that Applicant has adopted and will maintain a policy of nondiscrimination, as defined by such ordinance, throughout the Term of this Agreement. The Applicant agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and

other pertinent data and records by the executive director for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; provided, that the Applicant shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the date of this Agreement. The Applicant agrees that, if any of the obligations of this contract are to be performed by a subcontractor, the provisions of subsections (a) and (b) of Section 126.404, Jacksonville Ordinance Code, shall be incorporated into and become a part of the subcontract.

12.11 Further Assurances. The Applicant shall, on request of the City, (a) promptly correct any defect, error or omission in this Agreement and the Security Documents; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Security Documents and to identify and subject to the liens of the Security Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property; (c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Security Documents against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Security Documents.

12.12 Construction. Unless otherwise expressly provided herein, in the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern to the extent of such conflict. All parties acknowledge and agree that they have had meaningful input into the terms and conditions contained in this Agreement. The Applicant acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Should any provision of this Agreement require judicial interpretation, there shall be no presumption that the terms hereof shall be more strictly construed against either party.

12.13 Headings. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

12.14 Conflict of Interest. The parties hereto shall follow the provisions of Section 126.112, Jacksonville Ordinance Code, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

12.15 Survival. All representations, warranties, indemnities and other covenants set forth herein shall be deemed continuing in nature and shall survive the expiration or early termination of this Agreement.

12.16 Conformity to Applicable Laws. The Applicant shall comply with all applicable federal, state and local laws, rules, regulations and policies as the same exist and as may be amended from time to time, including, but not limited to, the "Public Records Law", Chapter 119, Florida Statutes, and Section 286.011, Florida Statutes. If any of the obligations of this Agreement

are to be performed by a subcontractor of Applicant, the Applicant shall incorporate the provisions of this section into and shall become a part of the subcontract.

12.17 Ethics. The Applicant represents and warrants to the City that Applicant has received, reviewed, understands, is familiar with and will comply with the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, Jacksonville Ordinance Code, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, Jacksonville Ordinance Code.

12.18 Public Entity Crimes Notice. The parties hereto acknowledge and agree that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity, in excess of Twenty Five Thousand Dollars (\$25,000) for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

12.19 Assignment. This Agreement and the rights and obligations herein may not be assigned, in whole or part, by either party without the prior written approval of both parties. Additionally, the Applicant shall guarantee to the City that in the event the Applicant's recipient homeowner sells, assigns, conveys, or otherwise transfers any interest in the Project Location at any time, the full amount of the Project Funds disbursed to Applicant's homeowner recipient shall be due and payable to the City at the time of such transfer.

12.20 Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

12.21 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations, agreements and understandings, oral or written, between them with respect to such subject matter.

12.22 Exhibits. The Exhibits attached to this Agreement are all incorporated herein by reference.

**[The remainder of this page was intentionally left blank by the parties. Signature pages to follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_[APPLICANT'S NAME]\_\_\_\_\_, a  
\_\_\_\_\_[Type of Entity]\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTEST:

CITY OF JACKSONVILLE

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

**Encumbrance and funding information for internal City use:**

Funding Account: Level 3 Tree Planting Program  
15304.151004.549006.00000.0001623.00000.0000000

PO Number:

Amount.....\$ \_\_\_\_\_ .00

**TOTAL MAXIMUM INDEBTEDNESS: \$ \_\_\_\_\_ .00**

The above-stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one or more subsequently issued purchase orders that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such purchase orders are issued.

In compliance with the Section 24.103(e) of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is or will be an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for payment of the monies provided therein to be paid.

\_\_\_\_\_  
Director of Finance  
Contract Number: \_\_\_\_\_



Pursuant to Ordinance 2022-764-E

**FORM APPROVED:**

By: \_\_\_\_\_  
Office of General Counsel

*GC-#1443883-v14-Level\_3\_Revised\_7\_21.docx*

**LIST OF EXHIBITS**

- Exhibit A-1: Project Location Map
- Exhibit A-2: Narrative Project Scope
- Exhibit A-3: Schematic Planting Plan
- Exhibit A-4: Plant Schedule
- Exhibit B: Project Performance Schedule
- Exhibit C: Total Project Budget Summary and Cost Breakdown
- Exhibit D: Project Team
- Exhibit E: Additional Terms
- Exhibit F: Approved Draw Schedule
- Exhibit G: Indemnification
- Exhibit H: Insurance and Bond Requirements

**EXHIBIT A-1**

**Project Location Map**

[Insert Map(s)]

**EXHIBIT A-2**

**Narrative Project Scope**

[Insert Narrative of Scope]

**EXHIBIT A-3**

**Schematic Planting Plan**

[Insert 1 or more pages to show Project]

**EXHIBIT A-4**

**Plant Schedule**

<b>Botanical name</b>	<b>Common Name</b>	<b>Description</b>	<b>Quant.</b>	<b>Notes</b>
<i>Betula nigra</i>	River Birch	__ Gal. or __ B&B, __ Caliper, __ Ht., __ Spd., Min trunks, __ C.T	5	EXAMPLE

**Note: Increase table based on number of species provided.**

**EXHIBIT B**

**Project Performance Schedule**

<b>Task</b>	<b>Schedule</b>
Construction Drawings and Specifications	___ days after execution of Agreement
Bid Documents sent to 3 bidders	___ days after execution of Agreement
Bid Opening, Bid Award	___ days after delivery of bid documents to bidders
Selection of Contractor, Execution of Contract	___ days after construction contract award
Construction Completion, Initial Acceptance	___ days after contract execution
Maintenance Completion, Final Acceptance	___ months of maintenance after Initial Acceptance if not extended to cover warranty of replacement trees

**EXHIBIT C**

**Project Budget Summary and Cost Breakdown**

<b>Project Budget Summary</b>	<b>Amount</b>
General Administrative Services	\$_____.00
Project Management Services	\$_____.00
Design Services	\$_____.00
Inspection Services	\$_____.00
Construction & ___ months maintenance/warranty	\$_____.00
<b>TOTAL PROJECT</b>	<b>\$_____.00</b>



**EXHIBIT D**

**Project Team**

1. Applicant
2. Applicant's Project Manager
3. Landscape Architect
4. Others as needed

## **EXHIBIT E**

### **Additional Terms**

Applicant agrees to adhere to the following additional terms of this Agreement:

1. Applicant shall adhere to the “Tree Program Specifications” as provided by the City.
2. Applicant’s tree planting project (“Project”) will be reviewed by a City Landscape Architect and designed by a Florida Landscape Architect, who has at least five (5) years of experience in the design, administration and inspection of tree planting projects;
3. Applicant will provide the City with maintenance and a warranty for either three (3) months one (1) year, or two (2) years for all Project trees after planting. The City shall determine the required length of the warranty period on a per project basis.
4. Applicant agrees that the Project shall be secured by a performance and payment bond as required by Sec. 255.05, Florida Statutes, in an amount not less than the total amount of the Project. The bond shall not be released until Final Acceptance. The City shall determine the required length of the performance and payment bond on a per project basis.
5. Applicant will be paid from the awarded funds on monthly basis according to invoices presented and the percentage complete of each task, such as design, construction, contract administration, and maintenance.
6. Applicant shall solicit bids from at least 3 Landscape Contractors and provide the City with a copy of each bid response. A No-Bid response from a Landscape Contractor will be considered a “response” for purposes of satisfying the three (3) bid solicitation requirement in this section.
7. Applicant agrees that the Project trees shall be included on the Tree Commission’s Approved Tree Planting List unless otherwise approved by the Tree Commission.
8. Applicant agrees that only trees conforming to the “Florida Fancy” grade as set forth in the latest edition of the Florida Grades and Standards for Nursery Plants shall be planted unless otherwise approved by the Tree Commission. For a copy of the Grades and Standards, go to <https://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Business-Services/Florida-Grades-and-Standards-for-Nursery-Plants-2015>. If the Landscape Contractor can prove that Florida Fancy material cannot be provided for a certain plant, then Florida No.1 grade material may be used if approved by the City’s Contract Manager.
9. As part of the final task, Applicant shall upload the as-built design into the Plan-It GEO application/software which may be accessed by: <https://pg-cloud.com/JacksonvilleFL/>.

**EXHIBIT F**

**Approved Draw Schedule**

1. Draws for administration, project management, and design services can be submitted monthly based upon the percent of services satisfactorily completed.
2. The Landscape Contractor's contract amount is divided between construction and maintenance in accordance with the Specifications and are paid separately. Draws for the construction portion of the contract can be submitted monthly based upon the percent of construction satisfactorily completed, less 20%. The draw request for an additional 10% can be submitted upon the Initial Acceptance of the Construction.
3. The schedule for maintenance draws may differ depending on the warranty period. The following is the default unless specified in the Agreement, and all are subject to approval by the City Contract Manager:
  - a. 3-month warranty – end of the 3-month period;
  - b. 1-year warranty – 6<sup>th</sup> month, and end of the 1-year period;
  - c. 2-year warranty – every 6 months.
4. Final Draw for 10% to cover maintenance can be made after the satisfactory completion of maintenance and the issuance of Final Acceptance.

## EXHIBIT G

### Indemnification

**Applicant and its contractors and subcontractors** (the “Indemnifying Party”) shall hold harmless, indemnify, and defend the City of Jacksonville and their respective members, officers, officials, employees and agents (collectively the “**Indemnified Parties**”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. **General Tort Liability**, for any negligent act, error or omission, recklessness, or intentionally wrongful conduct on the part of the Indemnifying Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the **Agreement**, operations, services or work performed hereunder; and

2. **Environmental Liability**, to the extent this **Agreement** contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the **Agreement**; and

3. **Intellectual Property Liability**, to the extent this **Agreement** contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services provided under this **Agreement** (the “**Service(s)**”), any product generated by the Services, or any part of the Services as contemplated in this **Agreement**, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Party shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties, a license, authorizing the continued use of the Service or product. If the Indemnifying Party fails to secure such a license for the Indemnified Parties, then the Indemnifying Party shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the City, so that the Service or product is non-infringing.

If an Indemnified Party exercises its right under this **Agreement**, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Party of the applicable claim or liability, and (2) allow Indemnifying Party, at its own expense, to participate in the litigation of such claim or liability to protect its interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

Pursuant to Ordinance 2022-764-E

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**EXHIBIT H**

**Insurance and Bond Requirement**

Without limiting its liability under this **Agreement**, **Applicant** and its subcontractors shall always during the term of this **Agreement** procure prior to commencement of work to maintain coverages for the life of this **Agreement** and shall be endorsed to name the City of Jacksonville and their respective members, officers, officials, employees, and agents as additional insured as indicated in the insurance provisions.

Schedule	Limits
<b>Worker’s Compensation Employer’s Liability</b>	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover the Applicant name (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000 General Aggregate \$2,000,000 Products & Comp. Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence \$ 50,000 Damage to Rented Premises \$ 5,000 Medical Expenses
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City’s Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

**Automobile Liability** **\$500,000** Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**If subcontractors do not use EPA approved products the following coverages are required**

**Pollution Liability** \$1,000,000 per Loss  
\$2,000,000 Aggregate

Any entity hired to perform services as part of this **Agreement** for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this **Agreement** and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

**Pollution Legal Liability** \$1,000,000 per Loss  
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this **Agreement** that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this **Agreement**. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this **Agreement** and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

**Additional Insurance Provisions**

- A. Certificates of Insurance. **Applicant shall** deliver to the City of Jacksonville Certificates of Insurance that shows the corresponding City Contract, Bid Number or PO if applicable in the Description, Additional Insured, Waivers of Subrogation and s t a t e m e n t as provided below. The certificates of insurance shall be insurance certificate shall be made available upon request of the City of Jacksonville.
- B. Additional Insured: All insurance except Worker's Compensation, shall be endorsed to name the City of Jacksonville and their respective members, officers, officials, employees, and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and, if products and completed operations is required, CG2037, Automobile Liability in a form no more restrictive than CA2048.
- C. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville its respective members, officers, officials, employees and agents.
- D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- E. **Applicant** Insurance Primary. The insurance provided by **Applicant shall** apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City of Jacksonville and their respective members, officers, officials, employees and agents
- F. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this **Agreement** shall remain the sole and exclusive responsibility of the named insured **Applicant**. Under no circumstances will the City of Jacksonville its respective members, officers, officials, employees and agents be responsible for paying any deductible or self-insured retention related to this Contract.
- G. **Agreement** Insurance Additional Remedy. Compliance with the insurance requirements of this **Agreement** shall not limit the liability of the **Applicant** or its subcontractors, employees or agents to the City of Jacksonville its respective members, officers, officials, employees and agents and shall be in addition to and not in lieu of any other remedy available under this **Agreement** or otherwise.
- H. Waiver/Estoppel. Neither approval by City of Jacksonville nor its failure to disapprove the insurance furnished by **Applicant** shall relieve **Applicant** of **Applicant's** full responsibility



to provide insurance as required under this Contract.

- I. Notice. The **Applicant** shall provide an endorsement issued by the insurer to provide the City of Jacksonville thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including through expiration or non-renewal. If such endorsement is not provided, the **Applicant**, shall provide said thirty (30) days written notice of any change in the above coverages or limits, or of coverages being suspended, voided, cancelled, including through expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the **Applicant** under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City of Jacksonville may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City of Jacksonville and its respective members, officers, officials, employees and agents also be named as an additional insured.
- L. Special Provision: Prior to executing this Agreement, **Applicant** shall present this **Agreement** and insurance requirements to its Insurance Agent Affirming: 1) that the agent has personally reviewed the insurance requirements of the **Agreement** Documents, and (2) that the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contract.

**Bond Requirements.**

Landscape Contractor must provide Applicant with a 100% performance bond and 100% labor and materials bond, pursuant to Sec. 255.05, F.S., in the amount not less than the amount of the total project award.