

SERVICE AGREEMENT

This Service Agreement (this "Agreement") is effective as of December 21, 2011 (the "Effective Date") by and between Fort Bend County Toll Road Authority, a body politic and a political subdivision of the State of Texas, an instrumentality of the State of Texas under Subchapter D of the Texas Transportation Corporation Act, TEX. TRANSP. CODE ANN. §431 et seq., and the Texas Non-Profit Corporation Act, TEX CIV. STATE. Art 1396-1.01 et seq., as amended, (the "Authority"), and BIO Landscape and Maintenance, Inc., a Texas corporation (the "Contractor").

RECITALS

WHEREAS, the Authority has determined it is in the Authority's best interest to engage a professional service provider for the services described herein; and

WHEREAS, the Parties have read and understood the terms and provisions set forth in this Agreement, and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the Authority and Contractor agree as follows:

I. SERVICES

Section 1.01. Services. Contractor shall perform certain services (the "Services") for the Authority from time to time as approved in writing by the Board of Directors (the "Board"), and Contractor shall be compensated for such services as approved by the Board. Contractor may not deviate from approved Services without the prior written consent of the Authority. Approval of Services shall be evidenced by a written proposal or service order, which shall include the service to be performed, the location, and the fees. Currently approved proposals and service orders are attached hereto as **Exhibit A**. During the term of this Agreement, Contractor or Authority may recommend certain additions or changes to the Services. In such case, the additions or changes shall be submitted to the Authority for approval in the form of a new proposal or service order. When any new Services or changes to Services are approved, another exhibit shall be added to this Agreement, signed and dated by each Party. The exhibits added shall be sequenced in alphabetical order beginning with **Exhibit B** and shall be dated when approved by the Board.



II.
COMPENSATION

Section 2.01. Payment for Services. Contractor shall submit a detailed monthly invoice (together with any back-up documentation requested by the Authority) indicating the Services performed for that month under the terms of this Agreement. Contractor shall submit detailed invoices to the Authority's bookkeeper:

AVANTA Services
Attn: Pamela Logsdon
5635 Northwest Central Dr., Suite 104E
Houston, TX 77092

Payment shall be made within forty-five (45) days of the approval of Contractor's invoice by the Authority. Interest shall not be paid on service invoices.

Contractor agrees that upon completion of the work called for hereunder, it will furnish the Authority with proof, satisfactory to the Authority, that all labor, material, and equipment for which Contractor has been paid, have been satisfied and paid, unless the Authority waives such proof. Upon furnishing such proof, or waiver thereof, the amount billed by Contractor will be reviewed by the Authority for approval, and all undisputed amounts shall be paid to Contractor in accordance with this Section.

III.
GENERAL CONDITIONS

Section 3.01. Contractor's Duties. Contractor covenants with the Authority to furnish its best skill and judgment in performing the Services for the Authority. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workmen, materials, and equipment, and to perform the Services in the most expeditious and economical manner. Contractor agrees to exercise reasonable diligence in performing the Services, using the degree of care and skill that a prudent person in the same or similar profession would use.

Section 3.02. Relationship of Authority and Contractor. Contractor has been retained by the Authority for the sole purpose and to the extent set forth in this Agreement. It is understood and agreed that all work so done by Contractor shall meet with Authority approval, but that the detailed manner and method of performing the Services shall be under the control of Contractor. Contractor's relationship to the Authority during the term of this Agreement is that of an independent contractor. The relationship between the Authority and Contractor is not exclusive.



Section 3.03. Insurance and Indemnification. Before commencing any work hereunder, Contractor shall furnish certificates of its insurance and copies of any required endorsements to the Authority evidencing the following insurance coverage, which coverage shall be maintained throughout the term of this Agreement. Certified copies of each policy shall be furnished to the Authority upon the Authority's request. Contractor shall not violate or knowingly permit to be violated any condition of the insurance policies required by this Agreement. Nothing contained in this Section shall limit or waive Contractor's legal or contractual responsibilities to the Authority or others. Cancellation or expiration of any of said insurance policies shall not preclude the Authority from recovery thereunder for any liability arising under this Agreement.

Contractor shall obtain the following insurance from companies having a Best's rating of B+/VII or better and licensed to transact business in the State of Texas:

- A. Workers' Compensation Insurance covering liability arising out of Contractor's employment of workers and anyone for whom the employer may be liable for workers' compensation claims at limits as imposed by statute. Workers' compensation insurance is required, and no alternative forms of insurance shall be permitted.
- B. Employer's Liability Insurance Limitations with limits of not less than \$500,000.
- C. Commercial General Liability Insurance with limits not less than:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products-Completed Operations Aggregate - \$2,000,000
 - d. Personal & Advertising Injury -\$1,000,000
- D. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 (combined)
- E. Excess Liability: \$1,000,000/\$1,000,000.

Contractor's insurance shall include the following endorsements:

- A. The Authority and the Authority's agents and employees shall be added as additional insureds to all coverage required under this Agreement for all liability arising out of Contractor's work under this Agreement, except for workers' compensation insurance, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).
- B. All required insurance shall be endorsed to provide that coverages afforded under the policy will not be canceled or modified without at least seven days prior written notice to the Authority. Renewal certificates shall be provided at least 30 days prior to the termination date of the current certificates of insurance during the term of this Agreement.



- C. All policies written on behalf of Contractor shall contain a waiver of subrogation in favor of the Authority and the Authority's agents and employees. In addition, all of the aforesaid policies shall be endorsed to provide that the coverage provided to the Authority as an additional insured will be on a primary basis, and not in excess of other insurance coverage available to the Authority, and that neither Contractor nor its insurer will seek contribution or recovery from the Authority or such other insurance available to the Authority.
- D. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to be added as additional insureds to all coverage required under this Agreement, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).

AS PART OF THE CONSIDERATION FOR THIS AGREEMENT, THE CONTRACTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS, FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT, OR LIABILITY OF EVERY KIND OR CHARACTER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM THE CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS, OR NEGLIGENT (WHETHER ACTIVE, PASSIVE, OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS AGREEMENT. THIS INDEMNITY AND HOLD HARMLESS PROVISION WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE CONDUCTED BY THE CONTRACTOR OR ANY SUBCONTRACTOR OR AGENT OF THE CONTRACTOR.

Section 3.04. Term and Termination. Either party may terminate this Agreement at any time, upon thirty (30) days written notice to the other party. Contractor shall not be entitled to any payment or further payment other than for work performed or material, equipment, or supplies furnished prior to such termination. The Authority does not waive any other remedy allowed under Texas law.

Section 3.05. Agreement Controls. To the extent that there is any inconsistency between the provisions of this Agreement and any attachments or exhibits hereto, the terms of this Agreement shall control.

Section 3.06. Regulatory Requirements. All work will be done in strict compliance with all applicable city, county, and state rules, regulations and laws, and any codes which may apply to the Services being provided. Contractor will obtain all permits and licenses required to perform the Services and will be responsible for



securing inspections and approvals of its work from any authority having jurisdiction over Contractor's Services.

Section 3.07. Safety and Health Standards. Contractor shall observe and comply with all applicable federal, state and local health and safety laws and regulations.

Section 3.08. Inspection. The Authority and its duly authorized representatives shall have the right to inspect all Services being performed hereunder at any time. Contractor agrees to maintain adequate books, payrolls, and records satisfactory to the Authority in connection with any and all Services performed hereunder and to maintain such books, payrolls, and records for at least four years. The Authority and its duly authorized representatives shall have the right to audit such books, payrolls, and records at any reasonable time or times.

Section 3.09. Warranty. In addition to other common law and statutory warranties, whether implied or express, Contractor's warranty applies to materials, parts, labor and workmanship for one year from the date of completion of the Project. Contractor shall transfer all manufacturers' warranties to the Authority.

Section 3.10. Assignability. Contractor shall not assign its rights or obligations or any sum that may accrue to it hereunder without the written consent of the Authority, which shall be granted or denied in the Authority's sole discretion.

Section 3.11. Modifications. This Agreement shall be subject to amendment, change or modification only with the prior mutual written consent of the Authority and Contractor, except to add any future exhibits pursuant to Section 1.01.

Section 3.12. Force Majeure. In the event either party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of government of the United States or the State of Texas or any civil or military authority (other than a party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that party shall give written notice of such act to the other party as soon as possible after the occurrence of the cause relied on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

Section 3.13. Agreement Subject to Applicable Law. This Agreement and the obligations of the parties hereunder are subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any other regulatory agency having jurisdiction.



Section 3.14. Governing Law. This Agreement is governed in accordance with the laws of the State of Texas and shall be enforceable in the county in which the Authority is located.

Section 3.15. Waiver. No waiver or waivers of any breach or default by a party hereto of any term, covenant or condition or liability hereunder of performance by the other party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 3.16. Intended Beneficiaries. This Agreement is for the sole and exclusive benefit of the Authority and Contractor and will not be construed to confer any benefit upon any other party.

Section 3.17. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date set forth on the first page hereof.

[EXECUTION PAGE FOLLOWS]



FORT BEND COUNTY TOLL ROAD
AUTHORITY


Chairman, Board of Directors

ATTEST:


Secretary, Board of Directors

(SEAL)

BIO LANDSCAPE AND MAINTENANCE, INC.


By: 
Name: ROBERT JAYNES
Title: MANAGER



EXHIBIT A





CONTRACT/ESTIMATE

CLIENT #:		DATE:	12/05/11
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PHONE NUMBERS:

BILLED TO:	Fort Bend Toll Road	HOME:		WORK:	281.242.9740
	Attn: Chad Essex	FAX:		MOBILE:	
	19875 Southwest Frwy, Ste. 270	EMAIL:			
	Sugar Land, TX 77479				

SERVICE ADDRESS:	Tree Farm – FBTR @ Highway 6
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WORK TO BE PERFORMED:	COST
Provide labor and material to prune all trees and remove all dead trees	1,440.00
Fall 2011 – Root stimulate and bio pack all remaining trees.	964.00
Spring 2012 – Root stimulate and bio pack all remaining trees.	964.00
Provide inventory after completion of above services.	
If acceptable please sign and fax back to our office. Thank you, Jim Sivils	

BIO Landscape & Maintenance, Inc., will not be held liable for damage to existing structure, utilities, cables, pipes, and all other improvements located under the surface of the property, or unmarked easements - *unless owner or owner's agent identifies and locates, with sufficient markers, all possible hazards prior to commencement of the work being performed.* **BIO Landscape & Maintenance, Inc.** will not be responsible for confirming ownership of property or trees located on property where requested work is to be completed. **Work may be performed at different intervals therefore explaining several invoices from one contract. Payment is due upon receipt of invoice.** A service charge of 1.5% per month or 18% APR will be added to all overdue accounts. You will also be liable for all legal and collection fees.

Subtotal _____
 Sales Tax _____ Exempt
 Total _____

Approved By: _____

Date: _____



EXHIBIT B

SCOPE OF SERVICE:

To provide right-of-way mowing, string trimming, and herbicide application services for the Fort Bend County Toll Road Authority (FBCTRA) on the Westpark Tollway between Gaston Road and the Fort Bend County line and the Fort Bend Parkway between State Highway 6 and Beltway 8. FBCTRA estimates that approximately 261 acres of right-of-way on the Westpark Tollway (94) and Fort Bend Parkway (167) will require right-of-way mowing, string trimming, and herbicide application services during the period of the contract.

BIO LANDSCAPE RESPONSIBILITIES:

The period of mowing, string trimming, and herbicide application services will begin on or about October 1, 2012, and will continue through September 30, 2013.

The Contractor will furnish the necessary labor, equipment, fuel, supplies and supervision to mow or shred turf and plant growth, string trim, and apply herbicide in the right-of-ways. Right-of-way is defined as right-of-way line to right-of-way line.

The Contractor shall use the following minimal equipment in the provision of right-of-way mowing, string trimming, and herbicide application services:

- Tractors with slope mowers for use in mowing ditches and back slopes
- 15' mowers to be used in wide areas and on slight slopes
- 5' or 6' mowers to be used in narrow areas or areas with established turf
- Gas string trimmers, edgers
- Herbicide chemical solution
- Herbicide applicator

The Contractor will be allowed to perform mowing, string trimming, and herbicide application services between the hours of 7:00 am - 6:00 pm daily unless otherwise approved.

MOWING:

The unit of measure for mowing shall be on a per acres basis, at a current cost of \$16.06 / acre. Contractor will be compensated for actual acres mowed or one complete cycle of total acres mowed contingent upon the directive from the FBCTRA. The cost per acre includes total compensation for the Contractor providing the labor, equipment, fuel, supplies and supervision to complete the mowing.

The Contractor will be notified five (5) days in advance of the requested mowing cycle. The FBCTRA will direct the mowing locations, time frame for mowing and acres to be mowed. A mowing cycle must be completed within five (5) days of receiving the directive unless weather, act of God, or notification by the FBCTRA has prevented the work from being accomplished. The Contractor shall notify the FBCTRA upon completion of a cycle.

Any FBCTRA assets identified as damaged or destroyed as a consequence of Contractor mowing shall be replaced by the FBCTRA at the expense of the Contractor.

STRING TRIMMING:

The unit of measure for string trimming shall be on a per acres basis, at a current cost of \$12.94 / acre. The Contractor will be compensated for actual acres that have been trimmed or one complete cycle of total acres mowed contingent upon the directive from the FBCTRA. The cost per acre includes total compensation for the Contractor providing the labor, equipment, fuel, supplies and supervision to complete the string trimming.

The Contractor will be notified five (5) days in advance of the requested string trimming cycle. The FBCTRA will direct the string trimming locations, time frame for string trimming and acres to be string trimmed. A string trimming cycle must be completed within five (5) days of receiving the directive unless weather, act of God, or notification by the FBCTRA has prevented the work from being accomplished. The Contractor shall notify the FBCTRA upon completion of a cycle.

HERBICIDE APPLICATION:

The unit of measure for applying herbicide shall be on a linear foot basis, at a current cost of \$.28/linear foot with a 5,500 linear foot minimum. The Contractor will be compensated for actual linear feet of herbicide applied or one complete cycle of total linear feet of applied herbicide contingent upon the directive from the FBCTRA. The cost per linear foot includes total compensation for the Contractor providing the labor, equipment, fuel, supplies and supervision to complete the herbicide application. The Contractor will need to furnish the FBCTRA proof of State or Federal certifications or licenses to apply herbicide chemicals on FBCTRA roadways.

The Contractor will be notified five (5) days in advance of the requested herbicide application cycle. The FBCTRA will direct the locations to be herbicided, time frame for herbicide and linear feet to be herbicided. A herbicide application cycle must be completed within five (5) days of receiving the directive unless weather, act of God, or notification by the FBCTRA has prevented the work from being accomplished. The Contractor shall notify the FBCTRA upon completion of a cycle.

TREE PRUNING:

The unit of measure for tree pruning will be based on a rate of \$1,080.00 a day for a three (3) man crew. The Contractor will be compensated for the amount of actual days to complete tree pruning contingent upon the directive from the FBCTRA. The daily rate includes total compensation for the Contractor providing the labor, equipment, fuel, supplies and supervision to complete the tree pruning cycle.

The Contractor will be notified five (5) days in advance of the requested tree pruning cycle and will direct the locations and time frame of areas to be pruned. A tree pruning cycle must be completed within five (5) days of receiving the directive unless weather, act of God, or notification by the FBCTRA has prevented the work from being accomplished. The Contractor shall notify the FBCTRA upon completion of a cycle.

MULCHING:

The unit of measure for applying mulch will be on a flat rate basis of \$1,950.00 a cycle. The Contractor will be compensated for the completion of applying mulch for one cycle contingent upon the directive from the FBCTRA. The flat rate includes total compensation for the Contractor providing the labor, equipment, fuel, supplies and supervision to complete the mulching cycle.

The Contractor will be notified five (5) days in advance of the requested mulching cycle and will direct the locations and time frame of areas to be mulched. A mulching cycle must be completed within five (5) days of receiving the directive unless weather, act of God, or notification by the FBCTRA has prevented the work from being accomplished. The Contractor shall notify the FBCTRA upon completion of a cycle.