

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL TREE SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and The Tree Truckers, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide professional tree services throughout the County, as will be more specifically described in this Agreement (hereinafter "Services");

WHEREAS, Contractor represents that it is qualified and desires to perform such services;

WHEREAS, County has determined that this Agreement is not subject to competitive bidding requirements under Chapter 262.023 of the Texas Local Government Code because the Agreement does not require an expenditure exceeding \$50,000 by the County; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

- 1.1 Contractor shall provide professional tree services as directed by County's Parks and Recreation Director or his designee. Contractor will perform services on a "per job" basis.
- 1.2 A "job" under this Agreement shall consist of the completion of the following:
 - 1.2.1. Using Contractor's own equipment and personnel, the Contractor shall dig and transplant Live Oak trees from Bates Allen Park located at 639 Charlie Roberts Lane, Kendleton, TX 77451 to various sites within Fort Bend County as directed by the County's Parks and Recreation Director. Trees shall be selected on mutual agreement between Contractor and County Parks and Recreation Director.
 - 1.2.2 Contractor will then transport and deliver trees as provided below but as directed by the County Parks and Recreation Director by the County's Parks and Recreation Director:

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- a. Contractor will use truck-mounted tree spades to: (i) dig the receiving hole, (ii) transport soil to the tree farm to re-fill previous hole at farm, (iii) select and dig the tree (iv), fill the hole and level the area (v) transport to planting site and place in hole; and (vi) Contractor is not responsible for sanding, pruning, and mulching the trees once placed in the hole.
- b. Or, as instructed by the County Parks and Recreation Director and agreed to by Contractor, Contractor will (i) ball and burlap the trees to be moved at the County's tree farm, (ii) load the trees on flatbed trailers (iii) and transport the trees to planting sites and place in hole; (iv) plant loaded trees at receiving site. Contractor may, but is not responsible for, digging the receiving holes or unloading the trees at the planting sites. Contractor is not responsible for refilling the hole dug out to remove the tree from the tree farm.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the County, upon request of the County Parks and Recreation Director, shall immediately be removed from association with the County.

Section 3. Compensation

3.1 Contractor will be compensated for service by being granted six (6) "compensation trees" for every tree Contractor removes from Bates Allen (Tree Farm) Park in accordance with this Agreement. Contractor will not receive cash payment from County. County's is obligated to compensate Contractor for completion of a job upon confirmation that the requested services have been performed to the satisfaction of the County's Parks and Recreation Director. Under no interpretation of this Agreement shall Contractor be entitled to more than six (6) compensation trees per tree removed.

3.1.1 The compensation trees will be as selected from an Contractor from any area of the tree farm and as agreed to by the County's Parks and Recreation Director.

3.1.2 For every compensation tree, Contractor shall fill the hole and level the area. All holes shall be filled and level no later than the date stated in Section 3.

3.2 The Parties acknowledge and agree that it is the intent of this Agreement that trees removed (both as service and as compensation) be removed by Contractor on a timeline that maximizes transplant timespan of the trees. Accordingly, Contractor agrees to use

reasonable efforts to remove his compensation trees without delay during the term of this Agreement.

3.3 No later than ninety (90) days after the termination of this Agreement, Contractor shall redeem and remove from County property all trees owing to Contractor under the Agreement as compensation for Services. After this date, Contractor hereby releases and waives the right to any unredeemed trees and accepts those trees in his possession as full and final compensation that County is liable to pay to Contractor for Services under any conditions, circumstances, or interpretations of this Agreement. No further payment will be issued by County.

3.4 CONTRACTOR RECEIVES COMPENSATION TREES ON AN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED OF ANY KIND OR NATURE. WITHOUT LIMITATION, AND COUNTY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OR, AS TO, CONCERNING OR WITH RESPECT TO THE NATURE, QUALITY OR CONDITION OF THE TREES.

3.5 Contractor is responsible for selection and proper removal of the compensation trees. Therefore County does not agree to, and will not, replace any tree(s) that Contractor finds to be unsatisfactory upon removal or transplant of the tree.

3.6 In the event that Contractor fails to fill and level (or improperly fills and levels) any hole required by the Agreement to be filled and leveled, County may hire a Contractor to fill the hole(s) and level the area(s) and invoice Contractor for the cost, which will be payable no later than 30 days after the demand is made by County. The requirements of this Section include both trees removed for Services provided and trees removed for compensation to Contractor and extends through the 30 days allowed for final redemption after termination. The requirements of this Section do not apply to trees that are ball and burlapped as described in Section 1.2.2.B of this Agreement.

Section 4. Term of Agreement

The Term of this Agreement shall begin upon final execution by the County through December 31, 2025 unless terminated earlier in accordance with the Termination Section of this Agreement.

Section 5. Modifications and Waivers

5.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

5.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

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5.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 6. Termination

6.1 Termination for Convenience – County or Contractor may terminate this Agreement at any time upon thirty (30) days written notice. If County elects to terminate for convenience, Contractor shall be allowed 365 days after notification of Termination under this Section to remove any and all remaining compensation trees. Failure to remove compensation trees by the 366th day, will result on Contractor’s waiver of the compensation trees as described in Section 3.3 (except for the 90 day period stated in Section 3.3).

6.2 Termination for Default

6.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

6.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

6.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County’s reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

6.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 6.1 above.

6.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County.

6.4 If County terminates this Agreement as provided in this Section, no payment of any type, other than compensation trees owing to Contractor at the time of the Termination will be made available to Contractor in accordance with Section 3 of this Agreement on compensation.

Section 7. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County’s right to inspect survives the termination of this Agreement for a period of four years.

Section 8. Insurance

8.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

8.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

8.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

8.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

8.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

8.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

8.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

8.4 Contractor shall continue the same coverage and policy limit requirements for Insurance during the performance of duties under this Agreement as well through the thirty (30) days allowed after termination for the removal of any remaining but not removed trees identified for compensation in Section 3 of this Agreement.

Section 9. Indemnity

A. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF**

COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONTRACTOR'S LIABILITY, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

- B. PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS: THE CONTRACTOR SHALL BE RESPONSIBLE FOR INITIATING, MAINTAINING, AND SUPERVISING ALL SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK. HE SHALL TAKE ALL REASONABLE PRECAUTIONS FOR THE SAFETY OF, AND SHALL PROVIDE ALL REASONABLE PROTECTION TO PREVENT DAMAGE, INJURY OR LOSS TO (1) ALL EMPLOYEES ON THE WORK AND OTHER PERSONS WHO MAY BE AFFECTED THEREBY, (2) ALL THE WORK AND ALL MATERIALS AND EQUIPMENT TO BE INCORPORATED THEREIN, AND (3) OTHER PROPERTY AT THE SITE OR ELSEWHERE. CONTRACTOR SHALL BEAR ALL RISK OF LOSS TO THE WORK, OR MATERIALS OR EQUIPMENT FOR THE WORK DUE TO FIRE, THEFT, VANDALISM, OR OTHER CASUALTY OR CAUSE.

Section 10. Independent Contractor

10.1 In the performance of work or services hereunder, Contractor shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Contractor or, where permitted, of its subcontractors.

10.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 11. Notices

11.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

11.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:

Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

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With a copy to: Fort Bend County Purchasing Department
Attn: Purchasing Agent
401 Jackson Street
Richmond, Texas 77469

Fort Bend County
Attn: Parks and Recreation Director
301 Jackson Street
Richmond, TX 77469

Contractor: The Tree Truckers, Inc.
Attn: NANCY KELSHEIMER
5950 MEYER ROAD
NEEDVILLE, TX 77461

11.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 11.1 and 11.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

11.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

11.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 12. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 13. Performance Representation

13.1 Contractor represents to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the local professional standard of care.

13.2 Contractor represents to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the Scope of Services.

Section 14. Assignment

14.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

14.2 Neither party may delegate any performance under this Agreement.

14.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 15. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 16. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 17. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 18. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 19. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services

hereunder without the express written permission of County, except where required to do so by law.

Section 20. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 21. Certain State Law Requirements for Contracts

21.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

21.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 22. Human Trafficking.

BY ACCEPTANCE OF CONTRACT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

Section 23. Entire Agreement

This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2021.

FORT BEND COUNTY

THE TREE TRUCKERS

KP George, County Judge

Mark E. Evans
Authorized Agent - Signature

Date

MARK E. EVANS
Authorized Agent - Printed Name

ATTEST:

President
Title

Laura Richard, County Clerk

Feb. 1, 2021
Date

REVIEWED: :

Darren McCarthy, CPRP, CPSI
Fort Bend County
Parks and Recreation and Recreation Director

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APPROVED AS TO LEGAL FORM:

Michelle L. Turner
Michelle L. Turner
General Counsel Division Chief
County Attorney Office