

TREE PLANTING PROGRAM (LEVEL 3) GRANT AGREEMENT

THIS TREE PLANTING PROGRAM (LEVEL 3) GRANT AGREEMENT (“*Agreement*”) is made and is effective as of _____ (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 _____ (the “*Contractor*”).

RECITALS:

WHEREAS, pursuant to _____, the Jacksonville Tree Commission (“*Commission*”) established the Level 3 Community Organization Tree Planting Program (the “*Program*”), which program provides the process to apply for an appropriation by the City for project funding to local community and not-for-profit organizations to design, manage and implement tree planting projects on publically owned land within Duval County that will conserve and enhance the City’s tree canopy;

WHEREAS, the Contractor applied through the Commission to the City to receive project funding under the Program for the tree planting project more particularly described in Contractor’s project application; and

WHEREAS, the City has approved Contractor’s project application request and pursuant to Ordinance _____ has agreed to fund Contractor’s tree planting project 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, the parties hereto agree as follows.

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:

“*Application*” shall mean Contractor’s application under the Program as recommended for approval by the Commission, a copy of which is on file with the Commission.

“*City Tree Planting Standards and Specifications*” shall mean the City tree planting standards and specifications contained on **Exhibit F** attached hereto.

“*Construction Documents*” shall mean the Design Plans along with any modifications thereto.

“*Design Plans*” shall mean the City approved design plans and drawings for the Project.

“*Draw Request Form*” shall mean the draw request form attached hereto as **Exhibit G-2**.

“*Governmental Approvals*” shall mean 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.

“*Project Documents*” shall mean all documents executed and delivered in connection with this Agreement.

“*Project Funds*” shall mean the City funds provided to Contractor for the Project pursuant to this Agreement in the amount of \$ _____.

“*Project Budget and Cost Breakdown*” shall mean the Cost Breakdown approved in the Application and as contained on **Exhibit D** attached hereto.

“*Project Performance Schedule*” shall mean the performance schedule as approved in the Application and as contained on **Exhibit C** attached hereto.

“*Project Scope*” shall mean the project and scope of work to be performed by Contractor identified in Contractor’s Application, including but not limited to the Contractor’s approved Planting Plan, as more particularly described on **Exhibit B** attached hereto.

“*Project Location*” shall mean the Project location as more particularly described on **Exhibit A**.

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 Contractor. Contractor acknowledges and agrees that the Project Funds shall be disbursed on a reimbursement basis only 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 Contractor. The Project Funds shall be the City’s maximum indebtedness to the Contractor under this Agreement. The Project Funds shall be used by the Contractor to fund the Project.

2.2 **Project Scope**. The Contractor agrees to perform the Project Scope in accordance with the Design Plans, 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall immediately refund and return all such funds to the City without demand or further notice.

2.3.3 Reimbursement of Collection Costs. The Contractor 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.

ARTICLE III

Use of Project Funds; Other Requirements

3.1 Use of Project Funds. The Contractor shall expend the Project Funds solely and exclusively for the Project Scope, which shall be constructed on the Project Location. The Contractor 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.

3.2 Compliance with the City Tree Planting Standards and Specifications and Applicable Federal, State and Local Laws, Rules, Regulations and Policies. Contractor must comply with the City Tree Planting Standards and 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 Contractor 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 Contractor acknowledges and agrees that the Contractor has reviewed, understands and is familiar with all such applicable and governing federal, state and local laws, rules, regulations and policies.

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

ARTICLE IV
Project Performance Schedule

4.1 The Contractor and the City have jointly established the Project Performance Schedule. The Contractor 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 Contractor shall complete construction of the Project Scope by no later than _____ (the "***Project Completion Date***"). 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 Contractor shall furnish to the City certificate of substantial completion from the Design Consultant 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 Contractor 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. 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 Contractor thereunder without the prior written consent of the City.

5.3 Subcontractors. The Contractor 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 Contractor shall deliver to the City a fully executed copy of each of the agreements between the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall permit the City's Chief Executive Officer or his/her designated personnel, to monitor compliance by the Contractor 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 Contractor, representatives of the City shall have the right of access to the Contractor'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 Contractor 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 Contractor'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 Contractor deems appropriate; provided however, that to the extent that the City furnishes to Contractor the names and identities of Jacksonville-based vendors, including, without limitation, Jacksonville-based minority vendors, and to the extent that the Contractor has the need to enter into contracts with vendors outside of persons employed by Contractor or companies affiliated with or controlled by the Contractor, then the Contractor agrees to include all such Jacksonville-

based vendors in the process established by the Contractor 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 Contractor; and

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

ARTICLE VI **Draws**

6.1 Maximum Amount. Provided that the Contractor has performed all obligations of the Contractor then due and subject to compliance by the Contractor with the terms and conditions of this Agreement, the City shall make Draws (each, a “**Draw**” and collectively, the “**Draws**”) to Contractor for the Project Scope, up to the maximum amount of the Project Funds in accordance with the Approved Draw Schedule attached hereto as **Exhibit G-1**. Prior to Draw, the Contractor must hold a current occupational license to do business in the City of Jacksonville. However, in no event shall the City be obligated to make Draws of the Project Funds in excess of 50% of the costs to perform the verified Project Scope cost, or the aggregate direct construction costs actually incurred and paid by the Contractor in connection with the construction of the Project Scope in accordance with the terms of this Agreement.

6.3 Draw Procedures. All Draws shall be made from time to time upon written application of the Contractor pursuant to a Draw Request. The Contractor shall submit Draw Requests to the City in accordance with the Approved Draw Schedule attached hereto as **Exhibit G-1**, covering work performed since the prior Draw Request. Each Draw Request shall constitute a representation and warranty by the Contractor to the City that (a) the work performed and the materials supplied as of the date thereof are in accordance with the Construction Documents, 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 made by the Contractor, (f) such Draw Request is consistent with this Agreement, and (g) 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.

6.4 Requests for Draw. For each request for a Draw, the Contractor shall submit to the City a completed written Draw request (each, a “**Draw Request**”) on a copy of the Draw Request Form attached hereto as **Exhibit G-2**. In each Draw Request, the Contractor shall certify and describe in detail reasonably acceptable to the City (a) the cost of the labor that has been performed and the materials that have been incorporated into the Project Scope, (b) the amount actually paid by the Contractor for such labor and materials and (c) the amount that the Contractor is seeking pursuant to the Draw Request. The Contractor shall attach to each Draw Request such invoices, receipts, cancelled checks (or evidence that payment has cleared Contractor’s banking account), and other documents required by the City evidencing that the

costs and expenses were actually incurred and paid for by the Contractor and were expended on and pertain to the Project Scope.

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 Contractor shall have no right to claim any loss or damage against the City or the City inspector arising from any alleged (x) negligence in or failure to perform such inspections, (y) failure to monitor Draws or the progress or quality of construction or (z) 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 Contractor shall have provided to the City, in form and substance satisfactory to the City, evidence that the Contractor 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 Contractor shall have provided to the City proof of insurance coverage as required in this Agreement;

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

(d) The Contractor 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 Contractor on particular items and the remaining costs of the Project Scope; and

(e) The Contractor 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 Contractor 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 Contractor 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 Contractor acknowledges that the Contractor 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 _____ () years following the date of final inspection and acceptance by the City, 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 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 shall be false or misleading in any material respect.

(d) The application by Contractor 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 Contractor under any other agreement or transaction between the Contractor 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 Contractor of a default shall not be deemed to be a waiver by the City as to its rights on such default of the Contractor and shall not be deemed to be a waiver of the City's right to notify the Contractor 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 Kathleen McGovern, City Aborist, 609 St. Johns Bluff, Jacksonville, FL 32225; Phone Number: (904) 255-8202, and Contractor's Contract Manager is _____ . The City and Contractor 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 e-mail.

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 Contractor shall, and the Contractor 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 Contractor and each of its general contractors, subcontractors, materialmen, laborers and other persons performing Project Scope in any way.

9.2 Prohibited Use. The Contractor 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 The Contractor shall act as an independent contractor, and not as an employee, agent, partner, joint venturer, representative or associate of the City or City, in operating the aforementioned services set forth in this Agreement. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

10.2 The Contractor, its subsidiaries, and subcontractors of any tier (collectively the "***Indemnifying Parties***") shall hold harmless, indemnify, and defend the City and the City and its current and past officers, directors, members, representatives, affiliates, agents, employees, successors and assigns (collectively the "***Indemnified Parties***") against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and cost and expense of whatsoever kind or nature (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties, arising directly or indirectly out:

(i) any of the Contractor's operations, work or services performed in connection with this Agreement including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Contractor, its employees, representatives, agents, affiliates or assigns, regardless of where the damage, injury or death occurred;

(ii) any allegation that the Project Scope, any product generated by the Project Scope, or any part of the Project Scope, constitutes an infringement of any copyright,

patent, trade secret or any other intellectual property right, regardless of whether such injury or damage is caused by negligence, errors and omissions, recklessness, or intentionally wrongful conduct. If in any suit or proceeding, the Project Scope, or any product generated by the Project Scope, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall, immediately, make every reasonable effort to secure for the City a license, authorizing the continued use of the Project Scope or product. If the Contractor fails to secure such a license for the City, then the Contractor shall replace the Project Scope or product with a non-infringing Project Scope or product or modify such Project Scope or product in a way satisfactory to the City at no additional cost to the City, so that the Project Scope or product is non-infringing;

(iii) any violation of any federal, state, or municipal laws, statutes, resolutions, or regulations, by the Contractor or those under its control;

(iv) any breach of any covenant, obligation, representation or warranty made by the Contractor in this Agreement or in any certificate, document, writing or other instrument delivered by the Contractor pursuant to this Agreement;

(v) any actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the Indemnifying Parties at any time on or prior to the day and year first above written, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Contractor relating to an environmental claim.

(vi) In event that any provision in this section 10.2 shall be deemed to be in violation of Section 725.06 and 725.08, Florida Statutes, such provision shall be modified to be in compliance with Section 725.06 and 725.08, Florida Statutes.

This section shall survive the term of the Agreement and any holdover and/or contract extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement. To the extent an Indemnified Party exercises its rights under this section, the Indemnified Party will (1) provide reasonable notice to the Contractor of the applicable claim or liability, and (2) allow the Contractor to participate in the litigation of such claim or liability (at Contractor's expense) to protect its interests. Each Indemnified Party will cooperate in the investigation, defense and settlement of claims and liabilities that are subject to indemnification hereunder, and each Party will obtain the prior written approval of the other Indemnified Party before entering into any settlement of such claim or liability, which consent shall not be unreasonably withheld, delayed or conditioned.

10.3 Without limiting its liability under this Agreement, the Contractor shall procure and maintain at its sole expense, or require its contractors and subcontractors of any tier (collectively, "Contractors") 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 Contractor**

Without limiting the representations, warranties and covenants of Contractor set forth elsewhere in this Agreement, as a material inducement for the City to enter into this Agreement, the Contractor 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 Contractor is a _____ corporation duly incorporated and validly existing under the laws of the State of _____ and authorized to conduct business and in good standing in the State of _____. The Contractor 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 Contractor have 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 Contractor have been duly authorized and approved by the shareholders, members, partners, or Board of Directors of the Contractor (as the case may be).

11.3 This Agreement and all documents contemplated hereby each constitute a legal, valid and binding obligation of the Contractor, 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 Contractor, any judgment, order, decree, writ or injunction to which the Contractor is bound, or any provision of any applicable law or regulation to which the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Attention: Government Operations Department

To Contractor: _____

Attention: _____

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 affect 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 deemed to be not a part of this Agreement.

12.7 Independent Contractor. The parties hereto acknowledge and agree that the Contractor 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 Contractor 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 Contractor 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 Contractor represents and warrants to the City that Contractor has adopted and will maintain a policy of nondiscrimination, as defined by such ordinance, throughout the Term of this Agreement. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, the Contractor shall incorporate the provisions of this section into and shall become a part of the subcontract.

12.17 Ethics. The Contractor represents and warrants to the City that Contractor 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 contractor 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 Contractor shall guarantee to the City that in the event the Contractor'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 Contractor'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.

_____, a _____
corporation

By: _____

Print Name: _____

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

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: _____

Account #:
Sub-Object:
Amount: \$

FORM APPROVED:

By: _____
Office of General Counsel

LIST OF EXHIBITS

<u>Exhibit A</u>	Project Location (attach Schematic Planting Plan from Application)
<u>Exhibit B</u>	Project Scope (include Plant Schedule from Application)
<u>Exhibit C</u>	Project Performance Schedule (attach Performance Schedule from Application)
<u>Exhibit D</u>	Project Budget and Cost Breakdown (attach Cost Breakdown from Application)
<u>Exhibit E</u>	Additional Terms
<u>Exhibit F</u>	Landscape Specifications and Planting Details
<u>Exhibit G-1</u>	Approved Draw Schedule
<u>Exhibit G-2</u>	Draw Request Form
<u>Exhibit H</u>	Insurance and Bond Requirements

EXHIBIT A

Project Location

(attach Schematic Planting Plan from Application)

SAMPLE

EXHIBIT B

Project Scope

(include Plant Schedule from Application)

SAMPLE

EXHIBIT C

Project Performance Schedule
(attach Performance Schedule from Application)

SAMPLE

EXHIBIT D

Project Budget and Cost Breakdown

(attach Cost Breakdown from Application)

SAMPLE

EXHIBIT E
Additional Terms

Contractor agrees to adhere to the following additional terms during this Agreement:

1. Contractor will abide by the City of Jacksonville specifications for the planting of trees, incidental landscaping and design and installation of irrigation;
2. Contractor's tree planting project ("Project") will be reviewed by a City Landscape Architect and designed by a qualified professional such as a Florida Landscape Architect, urban forester, Certified Arborist, landscape designer, or other professional who has at least five (5) years of experience in the design, administration and inspection of public tree planting projects;
3. Contractor will provide the City with a warranty for a time period of either three (3) months one (1) year, or two (2) years to maintain all Project trees after planting. The City shall determine the required length of the warranty period on a per project basis;
4. Contractor 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. After the planting is completed, inspected and approved by the City, Contractor shall secure the Project with a performance bond for warranty of the project material in an amount of 15% of the total cost of the job for a time period not to exceed two (2) years, based upon the time period determined in the above Paragraph 3 of this Exhibit E. The City shall determine the required length of the performance and payment bond on a per project basis;
5. Contractor 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, and contract administration.
6. Contractor shall provide copies of at least three (3) bid responses from subcontractors. No bid response from a subcontractor may be considered a response for purposes of satisfying the three (3) bid response requirement in this section. The City has the right to compare the cost of the bids to the cost proposed by the City's Continuous Tree Contractor, and determine, at its sole discretion, to utilize the City's Continuous Tree Contractor for construction of the project.
7. Unless otherwise approved by the Tree Commission, Contractor agrees that the Project trees shall be contained on the Tree Commission's Approved Tree Planting List.
8. Unless otherwise approved by the Tree Commission, Contractor agrees that only Florida Fancy or Florida #1 grade specimens shall be planted <https://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Business-Services/Florida-Grades-and-Standards-for-Nursery-Plants-2015>.
9. As part of the final task, Contractor shall upload the as-built design in to the Plan-It GEO application/software which may be accessed by: <https://pg-cloud.com/JacksonvilleFL/>.
10. Contractor shall adhere to the specifications for the installation are attached as "Specifications for Jacksonville Tree Commission's Level 3 Community Organization Tree Planting Program"

EXHIBIT F

Landscape Specifications and Planting Details

SAMPLE

EXHIBIT G-1

Approved Draw Schedule

(to be determined and provided by the City and Contract Manager)

SAMPLE

EXHIBIT G-2

DRAW REQUEST FORM

Name: _____ Request/Draw Number: _____
Address: _____ Document Number: _____
Phone: _____ Date Submitted: _____
Tax ID #: _____

In order to receive payment, Contractor must submit this completed Draw Request Form to the City's Contract Manager: Kathleen McGovern, City Arborist, 609 St. Johns Bluff Rd., Jacksonville, FL 32225; kmcgovern@coj.net; (904) 255-4327.

- | | | |
|----|--|----------|
| 1. | Amount of this request: | \$ _____ |
| 2. | Project Funds received to date: | \$ _____ |
| 3. | Project Funds disbursed to date: | \$ _____ |
| 4. | Project Funds previously requested but not yet received: | \$ _____ |

Draws will be provided based on 100% completion of the Total Project Cost. Once the project is 100% complete, a final inspection by the City must be performed.

CONTRACTOR PAYMENT REQUEST

Project Location Address: _____ Payment # _____ = 100 % Complete

Total Project Cost: \$ _____

Amount Requested in this Draw: \$ _____

Contractor: _____ Including this Draw
Total Draws To Date: \$ _____

Contractor: I hereby request an inspection to receive Payment # _____ for the amount of \$ _____. I certify that I have satisfactorily completed the necessary work to justify this request and that all bills incurred for labor used and materials furnished in making said repairs and improvements have been paid in full to this date.

Attached is a description of the work completed, the amount of payment requested by work item and such invoices, receipts, cancelled checks (or evidence that payment has cleared Contractor's banking account), and other documents required by the City evidencing that the costs and expenses were actually incurred and paid for by the Contractor and were expended on and pertain to the Project.

Contractor Signature: _____ Date: _____

EXHIBIT H

Insurance and Bond Requirements

[To be determined by Risk Management Division]

Insurance will be provided reasonably commensurate with the hazards and magnitude of the Project. All entities physically participating in the installation or maintenance of the Project shall be required to procure and maintain insurance. (If the Project is being installed and/or maintained exclusively by the City's Countywide Tree Planting and Miscellaneous Landscaping contractor, then no additional insurance will be required of the Applicant.)

SAMPLE