

BEST VALUE INVITATION TO BID

LANDSCAPING MAINTENANCE SERVICES



HoustonfirstSM

LANDSCAPING MAINTENANCE SERVICES BEST VALUE INVITATION TO BID (“BID”)

ISSUE DATE: March 6, 2015

DUE DATE: **11:00 a.m. on March 24, 2015** (“Submission Deadline”)

INSTRUCTIONS: Bidders must submit five (5) paper copies of their Bid submittal and one (1) electronic copy of their complete Bid on a flash drive in a sealed envelope in person, via mail or courier. **Please write the Bidder’s name, phone number and email address on the outside of the sealed envelope.**

SUBMIT TO: Tom Smyer, Capital Project Manager, Houston First Corporation (“HFC”), George R. Brown Convention Center, Fl. 2.0, 1001 Avenida de las Americas, Houston, Texas 77010. Bids submitted by email or fax will be rejected. **Due to ongoing construction, Bidders who intend to submit a Bid in person are strongly advised to arrive early.**

CONTACT INFO: Questions concerning this Bid must be sent by e-mail to bids@houstonfirst.com no later than **noon on March 19, 2015**. Questions will be answered collectively, in the form of a Letter of Clarification, and made available online.

BID PACKETS

A complete copy of this Bid, including all forms, as well as the Agreement and its exhibits, is available on-line at www.houstonfirst.com/DoBusiness.aspx.

PRE-BID MEETING

A pre-bid meeting will be held for the benefit of all prospective Bidders at **10:00 a.m. on March 12, 2015** in Meeting Room 380 A at the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, Texas 77010. Although attendance at the meeting is not mandatory, Bidders are urged to be present.

LETTERS OF CLARIFICATION

Revisions incorporated into this Bid, if any, will be confirmed in a letter posted online at least 48 hours prior to the Submission Deadline at www.houstonfirst.com/DoBusiness.aspx (“Letter of Clarification”). When issued by HFC, Letters of Clarification automatically become part of the Bid and supersede any previous specifications or provisions in conflict therewith. By submitting a response, Bidders shall be deemed to have received all Letters of Clarification and to have incorporated them into their Bid. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of Bidders to monitor the foregoing link and ensure they receive any such Letters of Clarification.

INTERVIEWS AND BID OPENING

Bidders who timely submit a Bid will be interviewed during **March 25-30, 2015** (after the Submission Deadline, but before Bids are opened). Bidders should bring all appropriate executive management and their proposed Landscape Professional to the interview. Such interviews will be at no cost to HFC. Bids will be opened and publicly read in the George R. Brown Convention Center, Second Floor Conference Room at 8:00 a.m. on March 31, 2015.

BACKGROUND

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the business of conventions and the arts. HFC is responsible for management and operation of more than 10 city-owned buildings, plazas, and underground and surface parking for nearly 7,000 vehicles. Facilities include the George R. Brown Convention Center, Jones Hall, Wortham Theater Center, Miller Outdoor Theatre, Sunset Coffee Building, and certain outdoor venues such as Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and several other small landscaped properties.

ELIGIBILITY AND RESPONSE FORMAT

To be considered responsive, Bidders should carefully review the following criteria/information requests and respond, in order, to the best of their ability:

- a. **Transmittal Letter:** Include a brief cover letter signed by a person authorized to make representations on behalf of the Bidder, including his or her direct phone number and email address. Bidders **must** make a specific, clear, unambiguous statement agreeing to comply with the terms and conditions of this Bid (or identify any objections/exceptions **and** enclose same immediately following the letter).
- b. **Experience:** Using the Bidder Reference Form below, provide three references, including contact names, phone numbers, and a brief description of the services performed by Bidder. Bidders **must** have be a validly-formed entity in business for at least five years.
- c. **Key Personnel:** Using the Proposed Staffing Form below, identify the essential personnel who will be assigned to provide services for HFC; include a brief summary of their qualifications and copies of valid licenses/certificates. To be considered, each Bidder **must** have retained the services of at least one Certified Landscape Professional, Licensed Irrigator, and Pesticide Applicator.
- d. **Diversity:** Note the subcontractors Bidder reasonably expects to use to meet or exceed the Diversity Commitment for the Bid.
- e. **Costs:** Complete the official Excel worksheet entitled Landscape Pricing (available online). Do **not** alter the official worksheet. Submission or attachment of company quotation forms or other documents containing alternative/conflicting terms is **not** acceptable.

MANNER OF SELECTION

HFC intends to make a selection and enter into a contract with the Bidder providing the **Best Value** to HFC, as evaluated based on the following weighted criteria:

- | | |
|---|-----|
| • Experience of Bidder | 20% |
| • Willingness to agree to terms of contract | 20% |
| • Proposed fees for services | 20% |
| • Qualifications of key personnel | 20% |
| • Diversity participation | 10% |
| • Organization of Bid as submitted | 10% |

FORM OF AGREEMENT

By submitting a response to this Bid, Bidder agrees, upon notice of selection by HFC, to enter into a Contract which shall include the Landscaping Services Agreement set forth below; the Scope of Services; and completed Landscape Pricing worksheet (collectively referred to as the "Agreement").

RESTRICTIONS ON COMMUNICATIONS

From the date issued until the Submission Deadline, Bidders are directed not to communicate with HFC officers, directors or employees regarding any matter relating to this Bid, other than bids@houstonfirst.com and HFC representatives during the pre-bid meeting. HFC reserves the right to reject any Bid due to violation of this provision.

COLLUSION

Bidders represent that the contents of their bids have not been communicated, directly or indirectly, to any potential Bidder and that their bids are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Bidder. This restriction is not, however, intended to preclude preliminary negotiations with diversity subcontractors.

CONFLICT OF INTEREST

Bidders are required to disclose affiliations or business relationship that might cause a conflict of interest with HFC. The disclosure form, if required, is available online at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a bid, Bidders represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

DIVERSITY COMMITMENT

The Bidder selected will be required to use good faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the attached HFC Diversity Program Instructions to Contractors. The specific goal for this project is **33%** of the total value of the Services. Bidders shall be required to comply with the HFC Diversity Program Instructions to Contractors and failure to comply may cause your response to be considered non-responsive. Bidders should note if they are certified as a diversity participant in their submittal; however, such certification shall **not** lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants.

PUBLIC INFORMATION

As HFC is subject to the Texas Public Information Act ("TPIA"), all information submitted by Bidders is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such by the Bidder clearly and unambiguously. Bidders will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their expense.

WITHDRAWAL OF BID; ERRORS

To withdraw a Bid due to an error or any other reason, a written request from the Bidder must be received at bids@houstonfirst.com prior to the Submission Deadline.

PROPOSED STAFFING FORM

Bidders must provide information on the personnel expected to perform services in the space provided below.

Landscape Professional

Full Name /Title: _____

Phone Number: _____ Email address: _____

Qualifications/Experience: _____

Licensed Irrigator

Full Name /Title: _____

Phone Number: _____ Email address: _____

Qualifications/Experience: _____

Commercial Pesticide Applicator

Full Name /Title: _____

Phone Number: _____ Email address: _____

Qualifications/Experience: _____



Attach copies of licenses/certifications (e.g., Texas Dept. of Agriculture-Commercial Pesticide Applicator License, Texas Comm. on Environmental Quality-Licensed Irrigator Certificate)

BIDDER REFERENCE FORM

Bidders must be able to demonstrate that they have performed services comparable in size and scope to those described in this Bid. Three references should be provided in the space provided below.

Company/Bidder Name: _____ **Years in Business:** _____

Reference #1

Business Name: _____

Address: _____

Contact Name/Title: _____

Phone Number: _____ Email address: _____

Description of Services _____

Reference #2

Business Name: _____

Address: _____

Contact Name/Title: _____

Phone Number: _____ Email address: _____

Description of Services: _____

Reference #3

Business Name: _____

Address: _____

Contact Name/Title: _____

Phone Number: _____ Email address: _____

Description of Services: _____

LANDSCAPING SERVICES AGREEMENT

This agreement for landscaping services (“Agreement”) is made by and between Houston First Corporation (“HFC”), a local government corporation created under Chapter 431 of the Texas Transportation Code, whose address is 1001 Avenida de las Americas, Houston, Texas 77010 and _____ (“Contractor”), whose address is _____. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

1.0 Scope of Services

1.1 Contractor agrees to and shall provide all labor, materials, equipment, insurance, fuel, tools, machinery, transportation, and other goods and services necessary to produce and maintain healthy and aesthetically-pleasing lawn, groundcover, annual and perennial plants, shrubbery, and trees in landscaped areas of the Facilities for the duration of the Term at the Facilities described in strict accordance with the Scope of Services attached hereto as Exhibit “A” (“Services”).

1.2 Contractor represents and warrants that the Services shall be performed in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, as may be amended from time to time, and in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for Services of this kind. Contractor shall obtain licenses Contractor shall secure and pay for any permits or licenses necessary for proper execution and completion of the Services.

1.3 Contractor shall supervise and direct the Services, using Contractor’s best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of the Services under the Agreement, except to the extent the Scope of Services sets forth other, specific instructions concerning such matters.

1.4 Contractor shall designate a representative who shall have express authority to bind Contractor with respect to all matters under this Agreement and provide a direct phone number and email address for such authorized representative.

1.5 Execution of the Agreement by Contractor is a representation that Contractor has visited the Facilities, become familiar with the conditions under which the Services are to be performed and correlated personal observations with the requirements of the Agreement.

1.6 Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Services. Contractor shall perform all Services using trained and skilled persons having substantial experience performing the work required under the Agreement. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

1.7 If any Services performed by Contractor do not meet the standards of this Agreement, as determined by HFC in its reasonable discretion, then Contractor shall correct or modify the Services promptly upon demand from, and at no additional cost to, HFC. If Contractor performs Services knowing it to be contrary to applicable laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, then Contractor shall be liable for such violation and shall bear the costs attributable to correction.

1.8 Contractor shall be liable to HFC for the negligent and intentional acts and omissions of Contractor’s employees, agents, contractors, subcontractors, and other persons or entities performing portions of the Services for, or on behalf of, Contractor. Contractor shall be solely responsible for conforming to the standards declared by OSHA, including, but not limited to, compliance with federal and state safety standards/directives for use of personal protective equipment and operation of equipment.

1.9 With no intent to limit Contractor's liability under the insurance indemnification provisions set forth herein, Contractor represents and warrants that it shall abide by (i) the Texas Water Code, (ii) the City of Houston Code of Ordinances, Chapter 47 provisions concerning discharges not composed entirely of storm waters, and (iii) the Cosmetic Water Wash Guidelines issued by the Director of Public Works and Engineering of the City of Houston as each may be amended from time to time.

2.0 Payment and Term

2.1 HFC agrees to pay Contractor for its Services in accordance with the fees set forth in Exhibit "B" to this Agreement.

2.2 Contractor will be paid on the basis of monthly invoices submitted by Contractor, and approved by HFC, detailing the services provided by Contractor during the previous month and the attendant fee. Invoices shall be submitted electronically by the fifth calendar day of the month following each month in which services are performed. HFC shall make payment to Contractor within 30 calendar days of the receipt and approval by HFC of such invoices. If any items in any invoices submitted by Contractor are disputed by HFC for any reason, including lack of supporting documentation, then HFC shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

2.3 Contractor acknowledges and agrees that HFC has not and shall not represent a guaranteed minimum payment or amount of Services to be awarded during the Term.

2.4 The term of this Agreement shall begin on **June 1, 2015** and end on **May 31, 2018** ("Term"). HFC may, in its sole discretion, renew the Term for two additional one-year terms ("Renewal Term") on the same terms and conditions as set forth herein. HFC may exercise such option by notifying Contractor in writing at least 30 days' prior to the expiration of the Term or first Renewal Term. HFC may also extend the Term or any Renewal Term by up to an additional 180 days, on the same terms and conditions as set forth herein, by notifying Contractor in writing of such extension.

3.0 Insurance

3.1 With no intent to limit Contractor's liability under indemnification provisions herein, Contractor shall provide and maintain in full force and effect, for the duration of the Term, at least the following insurance and limits of liability:

- | | |
|-----------------------------------|--|
| a. Commercial General Liability | Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000 |
| b. Automobile Liability Insurance | \$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage |
| c. Workers' Compensation | Statutory amounts for Workers' Compensation, Contractor is not allowed to self-insure Workers' Compensation |
| d. Employer's Liability | Bodily Injury by accident \$1,000,000 (each accident); Bodily Injury by disease \$1,000,000 (policy limit); and Bodily Injury by disease \$1,000,000 (each employee) |

3.2 Insurance may be in one or more policies of insurance, form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to insurance policies relieves Contractor from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving HFC's rights.

3.3 Each policy, except those for Workers' Compensation, must include an endorsement naming HFC as an additional insured.

3.4 Each policy except must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC.

3.5 The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.

4.0 Release ad Indemnification

4.1 CONTRACTOR AGREES TO AND SHALL RELEASE HFC AND THE CITY OF HOUSTON, THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, "INDEMNITEES") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY INDEMNITEES' CONCURRENT NEGLIGENCE AND/OR INDEMNITEES' STRICT

PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY AND INCLUDING ALL LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CONTRACTOR UNDER THIS AGREEMENT.

4.2 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC AND THE CITY OF HOUSTON, THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, "INDEMNITEES") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, CITATIONS, TICKETS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, FINE, LIABILITY, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT AND INCLUDING LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CONTRACTOR UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.

4.3 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY INDEMNITEES FOR THEIR SOLE NEGLIGENCE. CONTRACTOR SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO INDEMNITEES.

4.4 HFC SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF HFC HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

4.5 If HFC or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include a description of indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of indemnified loss.

4.6 This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

4.7 Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Contractor shall then control the defense and any negotiations to settle the claim. Within ten days after receiving written notice of the indemnification request, Contractor must advise HFC as to whether or not it will

defend the claim. If Contractor does not assume the defense, HFC may assume and control the defense, and all defense expenses constitute an indemnification loss.

4.8 If Contractor elects to defend the claim, HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require Indemnitees to comply with restrictions or limitations that adversely affect Indemnitees, (ii) would require Indemnitees to pay amounts that Contractor does not fund in full, (iii) would not result in Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 Force Majeure

Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term does not include changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within ten calendar days after the Force Majeure ceases. An occurrence of Force Majeure shall not extend the Term and does not entitle Contractor to extra payment.

6.0 Diversity Commitment

Contractor shall make good faith efforts to award subcontracts equal to **33%** of the value of this Agreement to certified, diverse suppliers of goods and services in accordance with the Contractor Diversity Program established by HFC, which is incorporated herein by this reference. Contractor shall, on a monthly basis, disclose to HFC the manner and extent it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC.

7.0 Termination

7.1 Either party may terminate this Agreement for cause if the other party defaults and fails to cure the default after receiving notice thereof. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, then the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 calendar days after receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, then the proposed termination shall be ineffective. If, however, the defaulting party does not cure the default before the proposed termination date, then the injured party may terminate this Agreement on the termination date.

7.2 HFC may terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Contractor. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to HFC showing in detail the Services performed under this Agreement up to the termination date. HFC shall then pay the amount due Contractor for Services actually performed, but not paid previously, in the same manner as prescribed herein.

7.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES ARE CONTRACTOR'S SOLE AND EXCLUSIVE REMEDIES FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES CONSTITUTE AND SHALL NOT BE CONSTRUED AS A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR SERVICES PERFORMED) IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM TERMINATION FOR CONVENIENCE BY HFC.

8.0 Miscellaneous

8.1 Inspections and Audits. Upon reasonable notice, either party shall have the right to examine and review the other party's books, records and billing documents which are directly related to performance or payment under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

8.2 Notice. Notice to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.3 Independent Contractors. HFC and Contractor agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. Services provided under this Agreement are non-exclusive and may be supplemented or augmented by HFC at any time, without prior notice, in its sole and absolute discretion. With respect to each other, the parties shall be independent contractors for all purposes.

8.4 Venue and Laws. Contractor shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Contractor hereunder. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

8.5 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of the Term

8.6 Assignment and Severability. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

8.7 Entire Agreement. This Agreement, including the exhibits, represents the entire, integrated agreement between HFC and Contractor and supersedes all prior negotiations, representations or agreements, written or oral. In the event of a conflict between the terms of this portion of the Agreement and the Scope of Services, this portion of the Agreement shall control. This Agreement may not be altered or amended except in writing executed on behalf of all of the parties.

_____, "Contractor"

[Not for signature]

By: _____
Name:
Title:

Date: _____

Houston First Corporation, "HFC"

[Not for signature]

By: _____
Name:
Title:

Date: _____

EXHIBIT “A”
SCOPE OF SERVICES

Contractor agrees to and shall provide all labor, materials, equipment, insurance, fuel, tools, machinery, transportation, and other goods and services necessary to produce and maintain healthy and aesthetically-pleasing lawn, groundcover, annual and perennial plants, shrubbery, and trees in landscaped areas of the Facilities for the duration of the Term at the Facilities described in strict accordance with this Scope of Services (“Services”).

I. Definitions

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

“Facility” or “Facilities” means the following parks, plazas, and landscaped areas on the grounds of, or in close proximity to, George R. Brown Convention Center, the Hanging Tree, Jones Hall, Jones Plaza, Miller Outdoor Theatre, Root Memorial Square Park, Sabine Promenade, Sweeney Clock Triangle, and Wortham Theater Center.

“General Manager” means the HFC employee designated as manager for one or more Facilities, as defined herein, or their respective designees.

“George R. Brown Convention Center” means the convention and meeting facility in downtown Houston fronting on Avenida de las Americas and adjacent grounds; the median of Avenida de las Americas between Polk and Dallas Streets; Parking Lot 2, bounded by Polk, Clay, Hamilton, and Chenevert Streets; and the employee/contractor lot fronting on Hamilton Street between Polk and Clay Streets. Landscaped areas at this Facility include turfgrass, trees, shrubs, groundcover, roses, perennial plants, and seasonal color.

“The Hanging Tree” means the historic oak tree and area underlying its canopy near the corner of Capitol and Bagby Streets in downtown Houston.

“Jones Hall” means the performing arts facility in downtown Houston bounded by Milam, Capitol, and Louisiana, Capitol, and Milam Streets, and Texas Avenue. Landscaped areas at this Facility include eighteen trees with ground-covered tree wells and street-level/courtyard perennial plants and seasonal color near the corner of Louisiana and Capitol Streets.

“Jones Plaza” means the downtown plaza in downtown Houston bounded by Louisiana, Capitol, and Smith Streets, and Texas Avenue. Landscaped areas at this Facility include trees, shrubs, groundcover, roses, perennial plants, and containerized plants.

“Lots H and C” means the two surface parking lots located on the east and west sides of Houston Avenue at Memorial Drive. Landscaped areas at this Facility include turfgrass, trees, groundcover, and perennial plant beds.

“Miller Outdoor Theatre” means the outdoor performing arts facility and adjacent grounds located in Hermann Park in Houston. Landscaped areas at this Facility include turfgrass, trees, shrubs, perennial plants, and seasonal color.

“Root Memorial Square Park” means the park located in downtown Houston bounded by Clay, Bell, Austin, and La Branch Streets. Landscaped areas at this Facility include turfgrass, trees, shrubs, azaleas, and perennial plants.

“Sabine Promenade” means the hike-and-bike trails and adjacent park areas in downtown Houston along both banks of Buffalo Bayou between Sabine and Bagby Streets. Landscaped areas include turfgrass, trees, shrubs, groundcover, and perennial plants.

“Sweeney Clock Triangle” means the small landscaped area located on a triangular esplanade on Bagby Street between Capitol and Rusk Streets. Landscaping includes trees, shrubs, groundcover, perennial plants, and seasonal color.

“Wortham Theater Center” means the performing arts facility in downtown Houston fronting on Texas Avenue, including, for the purposes of this definition, Fish Plaza and Sesquicentennial Parks I and II. Landscaping includes turfgrass, trees, shrubs, groundcover, perennial plants, seasonal color, containerized plants, and hanging baskets.

II. Labor, Equipment and Materials

2.1 Services shall be performed between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, excluding holidays; provided, however, that the Contractor shall coordinate its Service schedule with the General Managers to avoid any disruption of business or recreational use of the Facilities. Further, the General Managers shall have the right, in their reasonable discretion, to suspend, delay or interrupt the Services due to such disruption of business or use and Contractor shall not be entitled to additional compensation for such reason.

2.2 Contractor shall be liable for any damage caused by a negligent or intentional act or omission of Contractor, its employees, agents, contractors, or subcontractors. Contractor shall promptly remedy such damages and restore any property thereby affected to the condition existing prior to such damage, to the satisfaction of HFC, at its sole cost and expense.

2.3 Contractor shall use all tools, equipment, materials, and supplies used in the performance of the Services in accordance with the manufacturer's instructions.

2.4 HFC shall not be liable for damage, loss, wear, or breakage of tools, equipment, materials, supplies, or other personal property belonging to the Contractor, its employees, agents, contractors, or subcontractors.

2.5 Contractor shall store all tools, equipment, materials, and supplies necessary for the performance of the Services off-site at its sole cost and expense. Contractor acknowledges that HFC shall not provide any storage areas to Contractor at the Facilities.

2.6 Prior to employment, all permanent personnel performing Services under this Agreement on a routine basis shall be drug tested at Contractor's expense. Subsequent drug testing, whether at random or for reasonable suspicion, shall also be conducted at Contractor's expense. Any employee or applicant testing positive for drugs shall not be permitted to perform Services for HFC under this Agreement.

2.7 As a safety precaution in Service areas accessible by Facility users or the public, Contractor shall be responsible for the placement and removal of temporary warning and hazard signs.

2.8 General Managers shall have the right to require Contractor to check-in and check-out with a General Manager upon arrival at, and just prior to departure from, a Facility. Further, General Managers shall have the right to require Contractor to complete and sign a statement noting, at a minimum, the date and specific tasks completed during each Service visit, in a form approved by HFC.

III. Turfgrass Maintenance and Groundskeeping

3.1 Contractor shall mow, trim, edge and maintain turfgrass areas at the Facilities in accordance with the provisions of this Article so as to produce a neat, well-kept appearance of all such areas.

3.2 Before mowing, Contractor shall collect and remove litter, leaves, twigs, and debris from areas to be mowed.

3.3 Contractor shall mow turfgrass to a height of two inches, or as specified by the General Managers.

3.4 Contractor shall ensure that mowing is done in such a way that clippings do not drift and are not blown into beds, tree rings, or storm sewers. To prevent fraying, Contractor shall keep mower blades sharp and replace blades as needed.

3.5 After mowing, Contractor shall remove all clippings and debris from paved areas, vehicles, structures, equipment, and lighting systems.

3.6 Contractor shall manicure edge all turfgrass areas adjacent to walks, curbs, drives, and tree-wells using a blade edger to maintain an aesthetically-pleasing appearance.

3.7 Using a string trimmer, Contractor shall trim turfgrass around all obstacles (e.g., signs, posts, trees, etc.) at a level to

match grass height in open turfgrass areas; provided, however, that Contractor shall hand-trim turfgrass away from sprinkler heads to eliminate deflection.

3.8 Throughout the turfgrass areas, Contractor shall hand-pull weeds to remove the entire plant and roots and dispose of same.

3.9 Contractor shall use due diligence to control fire ants at the Facilities by chemically (i.e., “spot”) treating ant mounds after each mowing throughout turfgrass and all other landscaped areas; lowering ant mounds by tamping such mounds to the existing grade once infestations have been controlled; and, as a preventative measure, treating such areas with fire ant insecticide two-to-three times per year. Except as noted in the immediately preceding sentence, Contractor shall apply pesticide treatments to control insects or disease affecting the turfgrass and all other landscaped areas as needed, after notice to the General Manager.

3.10 Contractor shall use due diligence to control weeds by applying pre- and post-emergent herbicide as needed throughout the Facilities, including all turfgrass, other landscaped areas, and the cracks/expansion joints of paved and gravel areas. Except as noted in the immediately preceding sentence, Contractor shall apply herbicide to control invasive or unwanted vegetation affecting the turfgrass and all other landscaped areas as needed, after notice to the General Manager.

3.11 All litter, clippings, trimmings, weeds, dead or diseased plants/branches, or other trash resulting from the Services are the property and responsibility of Contractor, who shall be solely and exclusively liable for their transportation and disposal in a responsible manner so as to ensure the safety of the environment and public health, and in accordance with applicable law.

3.12 At Miller Outdoor Theatre, once annually Contractor shall evenly and mechanically spread twenty cubic yards of sharp sand on the hill area within the concrete sidewalk.

3.13 At Miller Outdoor Theatre, once annually Contractor shall evenly and mechanically spread a sports field root zone mix with organic amendments on the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level).

3.14 At Miller Outdoor Theatre, once annually Contractor shall top dress twenty cubic yards of ¼” minus decomposed granite (red-pink in color) on pathways leading to the Facility, or as directed by the General Manager. Contractor shall compact decomposed granite mechanically. To ensure compliance with such requirements, Contractor shall obtain written approval from the General Manager prior to ordering decomposed granite for this task.

3.15 At Miller Outdoor Theatre, four times annually (Feb., Apr., Jun., and Aug.), Contractor shall aerate the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level) to alleviate surface compaction, promote thatch removal and decomposition, and improve water and fertilizer penetration. Contractor shall aerate such turf areas using a hollow tine core aerator that will pull plugs not less than six inches apart and three inches deep.

3.16 At Miller Outdoor Theatre, four times annually (Feb., Apr., Jun., and Aug.), Contractor shall apply a balanced fertilizer (16-4-8) that contains 5% iron, 13% elemental sulfur, .3% zinc with the nitrogen source consisting of 30% quick release, 50% Nitroform, and 20% Milorganite (or acceptable substitutes); ensure that all turfgrass areas receive 3-6 lbs. of nitrogen per year, applied at a rate of .75 to 1.5 lbs. N/1,000 square feet during each application; modify these specifications as necessary if deficiencies are identified in the results of soil analysis, and/or according to specific turfgrass needs; distribute applications uniformly over all lawn areas and have them watered immediately; take care not to apply fertilizer to paved areas and in the event this does occur, remove all residue before the end of the day; and adjust fertilization schedules as needed in accordance with temperature and weather conditions, or as directed by the General Manager.

3.17 At Miller Outdoor Theatre, Contractor shall mow the entire hill area (i.e., the seated area within the concrete sidewalk and the back/sides of the hill down to grade level) using a commercial grade reel mower, such as a John Deere 7200 Precision Cut model.

IV. Perennial Plant, Shrub and Groundcover Maintenance

4.1 Contractor shall prune and trim perennial plants, shrubs and groundcover at the Facilities in accordance with the provisions of this Article to maintain their natural appearance, with branches and stems cut at slightly varying lengths, in order to extend the life of the plant and to stimulate future growth, or to remove limbs from obstructing walkways, pathways, signs, lights, sprinklers, etc.

4.2 Throughout the perennial plant beds and shrub and groundcover areas, Contractor shall, as needed, collect and remove litter, leaves, twigs, and debris; hand-pull weeds to remove the entire plant and roots; remove expired blooms and dead/discolored leaves; cut-back ornamental grasses; fertilize shrubs and groundcover; and divide or thin plants that have become overgrown or crowded.

4.3 Using sharp pruners or loppers, Contractor shall prune all free-form shrubs as needed to create and promote dense, uniform, and aesthetically-pleasing growth.

4.4 Using sharp hedge trimmers, Contractor shall shear all formal shrubs as needed to create and promote dense, uniform, and aesthetically-pleasing growth.

4.5 Contractor shall not use string trimmers to prune shrubs, vines, ivy, or groundcover.

4.6 Contractor shall prune azaleas immediately after blooms have expired and trim branches to no more than one-third of their existing length. Once annually, in the spring or fall, Contractor shall apply a specially-formulated fertilizer to all azalea beds (15-9-9 with 10% sulfur and 5% iron) at a rate of one pound per 100 square feet), irrigate immediately after application, and ensure no residue remains on paved areas.

4.7 If severe cutting-back of shrubs is necessary, in accordance with best horticultural practices, then Contractor shall perform same during the early spring, prior to the emergence of new growth.

4.8 After pruning and trimming of perennial plants, shrubs and groundcover, Contractor shall remove all clippings and debris from paved areas, vehicles, structures, equipment, and lighting systems.

4.9 Twice annually (Jun. and Sep., or as specified by the General Managers), Contractor shall evenly apply an organic, pest- and disease-free mulch on all perennial plant beds and shrub and groundcover areas. Mulch shall be layered at a depth of one-to-two inches, but kept at least two inches from the base of trees and woody plants in such beds or areas. Contractor shall periodically rake mulch to loosen it and break up any water-impermeable layers.

4.10 Twice annually, Contractor shall apply an approved fertilizer (such as NutriStar or an equivalent) at a rate of two pounds per 100 square feet to all perennial plants and shrub and groundcover areas (except azaleas and roses), irrigate immediately after application, and ensure no residue remains on paved areas.

4.11 Contractor shall keep all hanging baskets and containerized plants at the Facilities first-class condition in a manner substantially similar to Services performed on in-ground plantings to ensure their health and vitality.

4.12 At Jones Plaza, bimonthly Contractor shall hand-prune the ivy at the nodes, with the cut hidden, to maintain a neat and manicured appearance.

4.13 At Sabine Promenade, bimonthly Contractor shall hand-prune the ivy at the nodes, with the cut hidden, to maintain a neat and manicured appearance.

4.14 At Wortham Theater Center, bimonthly Contractor shall hand-prune the ivy at the nodes, with the cut hidden, to maintain a neat and manicured appearance.

V. Seasonal Color Installation and Maintenance

5.1 Contractor shall install and maintain seasonal color plantings in the manner and to the extent provided in this Article to produce and maintain aesthetically-pleasing color installations at defined areas of the Facilities.

5.2 In the performance of its seasonal color installation Services, Contractor shall, as needed, remove and dispose of existing annuals; cultivate soil in beds to a depth of six inches; provide necessary soil amendments based on test results or field observation; apply a time-release fertilizer; and apply one inch of organic, pest- and disease-free mulch with each installation.

5.3 Throughout the seasonal color beds, Contractor shall, as needed, collect and remove litter, leaves, twigs, and debris; hand-pull weeds to remove the entire plant and roots; remove expired blooms and dead/discolored leaves; and promptly replace seasonal color that die or appear to be dying prior to the end of their typical growing season or expected lifespan, at Contractor's sole cost and expense, except in instances beyond the control of Contractor, such as vandalism or an occurrence of Force Majeure.

5.4 Thrice annually, (Mar., Jul., and Nov., or as specified by a General Manager), Contractor shall install new seasonal color, consisting of four-inch plants spaced eight inches apart of a variety pre-approved by the General Managers. Contractor represents and warrants that all seasonal color plants installed shall be healthy, vibrant and true to name.

5.5 Contractor acknowledges and agrees that seasonal color plants shall be procured, at the direction of the General Managers in their discretion, in one or more of the following methods:

- a. Supplied by Contractor directly at the rates specified in Exhibit "B";
- b. Purchased by HFC from a third party and conveyed to Contractor at a reasonable location determined by HFC; or
- c. Supplied by a vendor offering the lowest of three bids received by Contractor (to be included in Contractor's invoice to HFC at actual cost).

VI. Irrigation System Operation and Maintenance

6.1 Contractor shall maintain irrigation systems at the following Facilities in accordance with this Article: George R. Brown Convention Center, the Hanging Tree, Sweeney Clock Triangle, Jones Plaza, Miller Outdoor Theatre, Root Memorial Square Park, Sabine Promenade, and Wortham Theater Center.

6.2 Contractor shall monitor the irrigation systems for leaks, inoperative sprinkler heads, improper spray patterns, appropriate water volume and watering schedule for zone-specific plant material. Contractor shall promptly make adjustments to eliminate deflection and ensure complete and proper coverage of all landscaped areas in accordance with best industry practices.

6.3 Contractor shall be responsible for replacing damaged, worn, or malfunctioning sprinkler heads with like parts and repairing above-ground leaks at no additional cost to HFC. Any other repairs shall require the prior authorization of the General Managers.

6.4 Except as provided in Section 6.3, Contractor acknowledges and agrees that irrigation system parts shall be procured, at the direction of the General Managers in their discretion, in one or more of the following methods:

- a. Purchased by HFC from a third party and conveyed to Contractor at a reasonable location determined by HFC; or
- b. Supplied by a vendor offering the lowest of three bids received by Contractor (to be included in Contractor's invoice to HFC at actual cost).

6.5 The installation of new irrigation lines or repairs requiring underground excavation are excluded from the Services, but may be performed by a third-party contractor selected by HFC, or by Contractor as part of an SSA. (See Article X.)

6.6 Contractor shall turn irrigation systems on and off in accordance with a schedule prepared by Contractor and approved by the General Managers, or as requested by the General Managers, during normal business hours (7:00 a.m. to 7:00 p.m., Monday through Friday, excluding holidays).

6.7 When there is risk of frost damage, Contractor shall winterize the automated irrigation system using a high-volume air compressor to evacuate water from all main, lateral lines, valves and heads. All zones must be turned on in sequence until water is evacuated and the process must be repeated a second time. Contractor shall repair any damage to the system caused by its operation at no cost to HFC.

6.8 Contractor shall charge the system after the last threat of frost, depending on weather conditions. All zones must be operated from the controller and the system must be visually checked for leaks, broken heads, head adjustment, and for properly functioning electric valves. Contractor shall notify the appropriate General Manager of any repairs required.

6.9 At Jones Hall, Contractor shall hand-water all trees and plants (street and courtyard level) once per week, or as needed to maintain their health and vitality. To avoid inconvenience to lunchtime crowds, Contractor shall water such areas outside of the 11:00 a.m. to 2:00 p.m. window.

VII. Tree Maintenance

7.1 Contractor shall maintain trees at the Facilities to the limited extent set forth in this Article. For the avoidance of doubt, tree topping, tree felling, and stump grinding are excluded from the Services, but may be performed by a third-party contractor selected by HFC, or by Contractor as part of an SSA. (See Article X.)

7.2 Contractor shall keep trees and the areas within tree grates free of trash and debris as part of the regularly scheduled debris removal services under this Agreement.

7.3 Contractor shall prune and trim existing trees at the Facilities as needed or as directed by the General Managers, to (i) ensure unobstructed passage to pedestrians and motor vehicles; (ii) prevent concealment of signs or fixtures; (iii) remove dead/diseased branches less than three inches in diameter; (iv) remove sucker growth; and (v) allow reasonable clearance from buildings. Tree maintenance on the four live oak trees at Miller Outdoor Theatre and The Hanging Tree shall further include pruning and trimming to prevent or remediate cracked or broken limbs, subject to the pre-authorization and approval requirements set forth in this Article VII.

7.4 In addition to the foregoing, Contractor shall prune crepe myrtles annually to remove remaining seedpods and to selectively remove the terminal portion of secondary branches.

7.5 Contractor is responsible for the application of pesticide treatments to control insects or disease affecting the trees.

7.6 Contractor shall stake young trees as needed or as directed by the General Managers in an inconspicuous manner using natural-colored materials to ensure root protection and straight growth.

7.7 At Jones Hall, twice annually (May and Nov.), Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

7.8 At Miller Outdoor Theatre, no work shall be performed on the four live oak trees (to the immediate left of the stage, to the immediate right of the stage, city-designated Oak #18, and city-designated Oak #19) without the prior written approval of the General Manager and its designated arborist and/or the appropriate City of Houston representative.

7.9 At Miller Outdoor Theatre, twice annually, Contractor shall deep-root fertilize four live oak trees (to the immediate left of the stage, to the immediate right of the stage, city-designated Oak #18, and city-designated Oak #19).

7.10 At Root Memorial Square Park, twice annually (May and Nov.), Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

7.11 At The Hanging Tree, no work shall be performed without the prior written approval of the General Manager and its designated arborist and/or the appropriate City of Houston representative

7.12 At The Hanging Tree, twice annually (Jun. and Sep., or as specified by the General Manager), Contractor shall evenly apply an organic, pest- and disease-free mulch on all shrub and groundcover areas. Mulch shall be layered at a depth of one-to-two inches, but kept at least two inches from the base of the tree. Contractor shall periodically rake mulch to loosen it and break up any water-impermeable layers.

7.13 At Wortham Theater Center, twice annually (May and Nov.) Contractor shall fertilize all trees at recommended rates according to best horticultural industry practices and manufacturer's recommendations.

VIII. Reporting Requirements

8.1 Contractor shall immediately report to the appropriate General Manager any accident, injury, or near miss occurring during the performance of the Services and provide all reasonable assistance in the preparation of a written incident report.

8.2 Damage caused in whole or in part by Contractor, its employees, agents, contractors or subcontractors during the performance of the Services shall be reported promptly by Contractor immediately to the appropriate General Manager.

8.3 If Contractor observes graffiti or vandalism at the Facilities during the performance of the Services, then Contractor shall report same promptly to the appropriate General Manager and provide all reasonable assistance in the preparation of a written incident report.

8.4 Due to its age and historic significance, Contractor shall immediately contact the General Manager to report any material change to the condition of the Hanging Tree (e.g., storm damage, vandalism, or insect infestation).

8.5 During the performance of the Services, Contractor shall be diligent and continuously alert for signs and presence of insects or disease at the Facilities and, if suspected or observed, report same in writing to the appropriate General Manager and take such remedial action as reasonable and necessary under the circumstances (e.g., application of insecticide, herbicide, or fungicide, and/or removal of affected plants). If Contractor fails to observe or report such presence, then Contractor shall be liable for the cost of replacing plants damaged due to such omission.

8.6 On a monthly calendar basis, Contractor shall conduct a maintenance check of the entire irrigation system located at each Facility and provide a written report to the appropriate General Managers. Contractor shall include in its reports all controller settings for watering start times, station run times, and watering days.

8.7 On a monthly calendar basis, Contractor shall submit a landscaping report to each General Manager detailing the current condition of each Facility and a list of suggested recommendations for corrective actions and/or enhancements, if any.

8.8 During the performance of the Services, Contractor shall be diligent and continuously alert for any indication that soil amendments may be needed to improve vibrancy and vitality of landscaped areas and, if suspected or observed, report same in writing to the appropriate General Manager with a recommendation for soil testing in specified areas and/or immediate remedial action in such areas.

8.9 As needed, upon approval from or at the request of the General Managers, Contractor shall collect separate composite soil samples in accordance with Texas A&M University methods and submit them to an accredited laboratory for testing. Contractor agrees that the cost to HFC for each such soil test shall not exceed the amount stated in Exhibit "B" for soil testing. Contractor shall promptly relay written soil-testing reports to the appropriate General Managers and take such remedial actions (e.g., soil amendments), as they may approve.

IX. Additional Services; Special Service Authorizations

9.1 During the Term, HFC may issue a Special Service Authorization ("SSA") directing Contractor to perform additional services related to, but outside of the scope of Services set forth in the Agreement (e.g., felling of trees, stump grinding, disaster recovery, etc.).

9.2 Before issuing an SSA, a General Manager will send written notice to Contractor detailing the specific services requested from Contractor. Within five business days of the receipt of such request, Contractor shall respond in the form of a written quote, or be deemed to have declined the request.

9.3 Quotes from Contractor shall include a description of the services to be performed, estimated labor hours, performance schedule, total estimated fees, and other requirements set forth in the written request for additional services.

9.4 Upon receipt of Contractor's proposal, the General Manager has the option to reject Contractor's proposal and seek other proposals from third parties, require resubmission with revised or additional information, or issue an SSA. Should General Manager reject Contractor's proposal and require resubmission, Contractor shall resubmit a modified proposal within three days of the rejection.

9.5 Upon approval of a modified proposal by the General Manager, an SSA will be issued. Contractor shall commence Services as stated in the SSA. Contractor shall diligently Services to completion in accordance with the terms and conditions of the Agreement and the approved SSA.

9.6 Labor costs must not exceed the rates stated in Exhibit "B". Contractor represents and warrants that such rate is inclusive of supervision, fuel, transportation, tools, and equipment.

9.7 When Special Services have been completed, a copy of the approved SSA and all supporting documentation, such as receipts, if applicable, must accompany the invoice for the Special Services.

9.8 Contractor shall submit to HFC copies of purchase orders and invoices evidencing Contractor's acquisition costs. Failure to submit evidence of Contractor's acquisition costs will result in no payment to Contractor.

X. Additions and Deletions

At any time during the Term, upon notice to Contractor, HFC shall have the right to add (or delete) similar facilities, and/or services to (or from) those set forth in this Agreement. Contractor covenants to be bound by such notices and expressly agrees that any such additions shall be on the same terms and conditions as set forth in this Agreement, including pricing (e.g., maintenance of turfgrass or shrubs/groundcover per square foot). If, however, the parties agree that an additional service is materially and substantially dissimilar to the scope of services in this Agreement, then the charges therefor will be determined by mutual agreement between the parties.

XI. Quantities/Frequencies Not Guaranteed

Contractor acknowledges that the quantities/frequencies set forth in this Agreement are estimates only. HFC has not and shall not guarantee any minimum payment, profit, or quantity/frequency of Services. HFC shall not be held liable for contractual agreements/obligations or damages incurred by Contractor relating to such quantities/frequencies in any manner or to any extent.