

EXHIBIT
"A"

**AGREEMENT BETWEEN THE CITY OF ROUND ROCK
AND BETTER TREES OF TEXAS
FOR PROFESSIONAL CONSULTING SERVICES RELATED TO
TREE BROKER SERVICES**

THE STATE OF TEXAS	§	
	§	
THE CITY OF ROUND ROCK	§	KNOW ALL BY THESE PRESENTS
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS	§	

THIS AGREEMENT for professional consulting services related to tree broker services (the "Agreement"), is made on this ____ day of _____, 2024, by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and BETTER TREES OF TEXAS, located at 5699 FM 2086, Temple, Texas 76501 (the "Consultant").

RECITALS:

WHEREAS, City has determined that it has a need for professional consulting services related to tree broker services hereinafter "Consulting Services"; and

WHEREAS, City desires to contract with Consultant for the Consulting Services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.0 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on the date set forth in the introductory paragraph above, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated as provided herein.

B. The term of this Agreement shall commence upon execution and terminate sixty (60) months from the date of execution.

C. City and the Consultant reserve the right to review the Agreement at any time and may elect to terminate the Agreement with or without cause.

2.0 SCOPE OF SERVICES

A. Consultant has provided its proposal for Consulting Services, such proposal for Consulting Services being attached hereto as **Exhibit "A"** titled "Scope of Services," which shall be referred to as the Scope of Services of this Agreement and incorporated herein by reference for all purposes.

B. Consultant shall satisfactorily provide all Consulting Services described herein and as set forth in **Exhibit "A."** Consultant's undertaking shall be limited to performing Consulting Services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform the Consulting Services in accordance with this Agreement in a professional and workmanlike manner pursuant to the Work Schedule agreed upon by both parties.

3.0 LIMITATION TO SCOPE OF SERVICES

Consultant's undertaking shall be limited to performing the Consulting Services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Scope of Services to be performed is enumerated in **Exhibit "A,"** and may only be modified by a written Supplemental Agreement executed by both parties as described in **Section 9.0.**

4.0 CONTRACT AMOUNT

A. In consideration for providing the Consulting Services, Consultant shall be paid on the basis of actual hours worked provided by Consultant in accordance with the Price Sheet attached hereto as **Exhibit "B,"** and incorporated herein by reference for all purposes.

B. Consultant's total compensation for Consulting Services hereunder shall not exceed **\$600,000.00.** This amount represents the absolute limit of City's liability to Consultant hereunder unless same shall be changed by Supplemental Agreement, and City shall pay, strictly within the not-to-exceed sum recited herein, Consultant's fees for work done on behalf of City.

5.0 INVOICE REQUIREMENTS AND TERMS OF PAYMENT

A. **Invoices:** To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for Consulting Services rendered. Such invoices for Consulting Services shall track the referenced Scope of Work, and shall detail the Consulting Services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

B. **Backup Material.** Should additional backup material be requested by the City relative to Consulting Services, Consultant shall promptly comply. In this regard, should the City

determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

C. **Payment of Invoices:** The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in **Section 7** herein.

D. **Taxes.** The City is exempt from Federal Excise and State Sales Tax. Therefore, such taxes shall not be included in Consultant's invoices.

6.0 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

7.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the performance of the Consulting Services under this Agreement are completed, or the date the City receives a correct invoice for the Consulting Services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (1) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the service performed that cause the payment to be late; or
- (2) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the service performed that causes the payment to be late; or
- (3) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (4) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

8.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal

year if the governing body of the City does not appropriate funds sufficient to purchase the Consulting Services as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Consultant a written notice of termination at the end of its then- current fiscal year.

9.0 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the Consulting Services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

10.0 TERMINATION AND DEFAULT

A. **Termination:** It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon written notice to Consultant (the "Date of Termination,") with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the Date of Termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this Project shall become the property of the City upon termination of this Agreement and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the Project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

B. **Default:** Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a

greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

11.0 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

12.0 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its Consulting Services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform Consulting Services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform Consulting Services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the Consulting Services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

13.0 CONFIDENTIALITY AND MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with the Consulting Services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient

without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of Consulting Services under this Agreement (other than Deliverables). Consultant shall have the right to retain copies of the Deliverables and other items for its archives. Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. "Working papers" shall mean those documents prepared by Consultant during the course of performing the Project including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Project. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates, dashboards, code and tools discovered, created or developed by Consultant during the performance of the Project that are of general application and that are not based on City's Confidential Information hereunder (collectively, "Consultant's Building Blocks"). To the extent any Deliverables incorporate Consultant's Building Blocks, Consultant gives City a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions mentioned above, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required by law or court order, City will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant's Building

Blocks.

City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

14.0 WARRANTIES

Consultant represents that all Consulting Services performed hereunder shall be performed consistent with generally prevailing professional or industrial standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

15.0 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such Consulting Services to the City's reasonable satisfaction at no additional charge, or (b) if such deficient Consulting Services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

Neither party's liability, in contract, tort (including negligence) or any other legal or equitable theory, (a) shall exceed the professional fees paid or due to Consultant pursuant to this Agreement or (b) include any indirect, incidental, special, punitive or consequential damages, even if such party has been advised of the possibility of such damages. Such excluded damages include, without limitation, loss of data, loss of profits and loss of savings of revenue.

16.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, which are caused by or which result from the negligent error, omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

Consultant shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys' fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City as a result of such negligent activities by Consultant, its agents, or employees.

17.0 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

18.0 LOCAL, STATE, AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing Consulting Services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

19.0 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the Consulting Services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of a contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract

has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.0 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

21.0 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Katie Baker
Manager – Parks Development
301 West Bagdad Avenue
Suite 250
Round Rock, Texas 78664
(512) 341-3355

22.0 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address or email address as below; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated below.

Notice to Consultant:

Better Trees of Texas
5699 FM 2086
Temple, Texas 76501

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

23.0 APPLICABLE LAW, ENFORCEMENT, AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

24.0 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

25.0 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27.0 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the Consulting Services, responsibilities and duties specified herein and that such Consulting Services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

28.0 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

29.0 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

30.0 MISCELLANEOUS PROVISIONS

(A) **Time is of the Essence.** Consultant agrees that time is of the essence and that any failure of Consultant to complete the Consulting Services for each Phase of this Agreement within the agreed Project schedule may constitute a material breach of the Agreement.

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

(B) **Force Majeure.** Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

(C) **Section Numbers.** The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

(D) **Waiver.** No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

(E) **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas

By: _____
Craig Morgan, Mayor

Date Signed: _____

For City, Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Better Trees of Texas

By: Kyle Letbetter
Printed Name: Kyle Letbetter
Title: Owner
Date Signed: 7.24.24

Exhibit "A"
Scope of Services

SCOPE OF WORK

SECTION 01 – GENERAL

1.01 PROJECT INFORMATION

- A. Project Identification: Contract Tree Growing – Bond Projects
 - 1. Project Location: To be delivered to multiple sites in Round Rock
- B. Owner: City of Round Rock
- C. Owner's Representative: Ricci Strayhorn, 301 W. Bagdad Ave., Suite 250, Round Rock, Texas, 78664, (512) 341-3151

1.02 General Instructions to Respondents

- A. The City of Round Rock Standard Terms and Conditions and Insurance Requirements are hereby incorporated into this Request for Quote by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these documents are available, on the Internet at the following hyperlink:
<https://www.roundrocktexas.gov/departments/purchasing/>
- B. The City reserves the right to determine "or equal" status. Quotes may be withdrawn at any time prior to the official closing by written notification. Quotes may not be altered, amended, or withdrawn after the official closing.
- C. The city is exempt from Federal Excise and State Sales Tax; therefore, tax must not be included in the quoted price.
- D. The City reserves the right to accept or reject, in part or whole, any quote submitted and to waive any minor technicalities that are in the best interest of the City.
- E. If there is a conflict between the unit price and extended price, the unit price will take precedence.
- F. To do business with the City of Round Rock, please register with the City's Vendor Database. To register, go to:
<https://roundrock.munisselfservice.com/Vendors/default.aspx>

1.03 SCOPE OF WORK

- A. The Work included in this Contract will generally consist of acquiring high quality tree stock and growing to the specified sizes outlined below.
 - 1. Tree Quality
 - a. All trees are to be the caliper size and height as specified in ANSI Z60.1 – American Standard for Nursery Stock by American Association of Nurserymen.
 - b. Plants that are weak, lack proper proportions, or have been injured will not be accepted.
 - c. Plants shall have well-developed branches and have vigorous fibrous root systems.
 - d. All plants shall be free from defects, disfiguring roots, bark abrasions, disease, and insect infestations.
 - e. Contractor shall be required to provide photographs of each tree purchased for the City demonstrating all of the above criteria are met prior to approval by Owner's Representative
 - f. Plants will be subject to inspection for quality, size and color

2. Tree Growing Methods
 - a. All trees shall be container grown. In the event container grown trees are not available, containerized trees will be considered, but only if it is declared upfront and trees are inspected for quality of rooting structure.
 - b. No Balled and Burlap grown trees will be accepted unless otherwise noted.

1.04 REQUIRED CONTRACTOR EXPERIENCE

- A. To better ensure expected quality of trees, Contractor shall be required to provide information and qualifications of the supplier of the nursery stock and tree grower.
 1. Contractor / tree broker shall have minimum ten (10) years' experience sourcing and growing trees.
 2. Nursery Stock shall be single sourced, unless prior approval from Owner's Representative
 - a. If trees are sourced from more than one nursery, Contractor shall provide information and qualifications from all nurseries for approval by Owner's Representative
 3. Tree Grower must have minimum fifteen (15) years' experience growing trees similar in species, size, and quantities provided in this Request for Proposal.
 - a. All trees shall be contracted to be grown at a single location.
 4. All tree farms (stock and grower) are subject to site visits / inspections by Owner's Representative prior to approval
- B. Contractor shall guarantee that specified trees species shall be of appropriate size by and delivered to site at the times specified in the schedule below.
- C. Contractor and grower must be able to demonstrate knowledge in horticulture and agronomy, including experience in resolving aggressive plant-related diseases, insects and other growth impediments.

1.05 SCHEDULE OF WORK

- A. The Successful Bidder/Contractor agrees to begin procurement within the stipulated time from the date on the Notice to Proceed in accordance with necessary growth times/requirements for delivery dates detailed below.
- B. Trees shall be delivered in phases as follows:
 1. Phase 1: May 2025 (Lakeview Area, Harrell Parkway Phase 1)
 - a. Qty. 25 - 65 Gallon: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 - b. Qty. 150 – 100 Gallon: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 - c. Qty 18 – 300 Gallon or 60" Box: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 2. Phase 2: October 2025 (Harrell Parkway Phase 2)

- a. Qty. 70 – 100 Gallon: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
- 3. Phase 3: October 2025 (Tennis / Pickleball Area, Maintenance Area)
 - a. Qty. 45 – 65 Gallon: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 - b. Qty. 10 – 200 Gallon or 42" Box: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
- 4. Phase 4: April 2026 (Recreation Center / Rock'N River)
 - a. Qty. 150 – 65 Gallon: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 - b. Qty. 15 – 300 Gallon or 60" Box: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
- 5. Phase 5: December 2025 (Downtown Park)
 - a. Qty. 10 – 200 Gallon or 42" Box: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak
 - b. Qty. 6 – 300 Gallon or 60" Box: Live Oak, Monterrey Oak, Cedar Elm, Chinquapin Oak

2 **SECTION 02 – PRODUCTS**

2.01 Trail / Sidewalk trees

- A. 45 Gallon Trees
 - 1. All trees to be container grown.
 - 2. Trees shall be 2.5"-3" minimum caliper size, unless otherwise approved by Owner's Representative
 - 3. Trees shall be 10'-12' tall with 6'-8' canopy spread, unless otherwise approved by Owner's Representative
 - 4. Trees shall be pruned to have minimum 4' foot clear trunks space to allow safe pedestrian travel

2.02 Parking Lot / Play Area Tree

- A. 65 Gallon Trees
 - 1. All trees to be container grown.
 - 2. Trees shall be 3" minimum caliper size, unless otherwise approved by Owner's Representative
 - 3. Trees shall be 12'-14' tall with 6'-8' canopy spread, unless otherwise approved by Owner's Representative
 - 4. Trees shall be pruned to have minimum 4'-5' clear trunks space to allow safe pedestrian travel

2.03 Street Trees

- A. 95 Gallon or 36" Box Trees
 - 1. All trees to be container grown.
 - 2. Trees shall be 3.75"-4" minimum caliper size, unless otherwise approved by Owner's Representative
 - 3. Trees shall be 14'-18' tall with 6'-8' canopy spread, unless otherwise approved by Owner's Representative
 - 4. Trees shall be pruned to have minimum 5'-6' clear trunks space to allow safe pedestrian travel
- B. 200 Gallon or 42" Box Trees

1. All trees to be container grown.
2. Trees shall be 5-6" minimum caliper size, unless otherwise approved by Owner's Representative
3. Trees shall be 16'-18' tall with 8'-10' canopy spread, unless otherwise approved by Owner's Representative
4. Trees shall be pruned to have minimum 5'-6' clear trunks space to allow safe pedestrian travel

2.04 Impact Trees

- A. 300 Gallon or 60" Box Trees
 1. All trees to be container grown.
 2. Trees shall be 6-8" minimum caliper size, unless otherwise approved by Owner's Representative
 3. Trees shall be 20'-22' tall with 12' canopy spread, unless otherwise approved by Owner's Representative
 4. Trees shall be pruned to have 5'-6' clear trunks space to allow safe pedestrian travel

Exhibit "B"
Price Sheet

Price Sheet

Total contract price shall be "not to exceed" \$600,000.00

No.	Description	Unit Cost
1	65 Gallon Live Oak	\$450.00
2	65 Gallon Cedar Elm	\$395.00
3	65 Gallon Monterrey Oak	\$450.00
4	95 Gallon Live Oak	\$625.00
5	95 Gallon Monterrey Oak	\$625.00
6	95 Gallon Chinquapin Oak	\$695.00
7	200 Gallon Live Oak	\$1,895.00
8	200 Gallon Monterrey Oak	\$1,995.00
9	200 Gallon Cedar Elm	\$1,995.00
10	300 Gallon Live Oak	\$2,995.00
11	300 Gallon Cedar Elm	\$2,995.00
12	300 Gallon Chinquapin Oak	\$3,350.00

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