

**SERVICE AGREEMENT BETWEEN
PROCARE TREE SERVICE, LLC, d/b/a CHOP
AND THE CITY OF ANN ARBOR
FOR STREET TREE PRUNING**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 ("CITY") and, PROCARE Tree Service, LLC ("CONTRACTOR"), a Michigan Limited Liability Corporation d/b/a CHOP, with its address at 673 Clyde Ct., Byron Center, MI 49315, agree as follows on this 7th day of July, 2016.

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means the Public Services Area, Systems Planning Unit.

Contract Administrator means Kerry Gray, Systems Planning Unit, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Project means "***City of Ann Arbor Street Tree Pruning 2016.***"

II. DURATION

This Contract shall become effective on July 8, 2016 and shall remain in effect until satisfactory performance of all services, unless terminated for breach or as provided in this Contract.

III. SERVICES

A. General Scope: The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract. In case of a conflict among the contract documents listed below in any requirement(s), the requirement(s) of the document listed first shall prevail over the conflicting requirement(s) of a document listed later.

Contract and Exhibits

Invitation to Bid No. 4445 and Addendum #1, except that the following General Condition Sections shall not apply because each is superseded by a provision in the Contract:

- Section 1 (see Contract Section III.A)
- Section 4 (see Contract Section VII.B)
- Section 5 (see Contract Section VII.A)

- Section 28 (see Contract Section VI)
Bid Proposal of Contractor, dated May 16, 2016, and restated and attached as Exhibit A

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed above in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

- B. Quality of Services: The Contractor's standard of service under this Contract shall be of the level of quality performed by businesses regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. Compliance with Applicable Law: The Contractor shall perform its services under this Contract in compliance with all applicable laws, ordinances and regulations.
- D. Location: The Contractor shall provide all of these services at locations selected by the Urban Forest & Natural Resource Planning Coordinator and/or Field Operations Forestry Supervisor within the City of Ann Arbor, Michigan.

IV. RELATIONSHIP OF PARTIES

- A. The parties to this Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.
- B. The Contractor certifies that it has no personal or financial interest in the project other than the fee it is to receive under this Contract. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this Contract. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this Contract.
- C. Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.
- D. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this Contract.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid on the basis of the bid price. The total fee to be paid the Contractor for the services shall not exceed **\$46,050.00**. A summary of the approximate number of trees to be pruned, by size, and the fees for the work is set out in Exhibit B. The Contractor shall submit each month, or at longer intervals, if it so desires, an invoice covering work performed for which it believes payment, under the Contract terms, is due. The submission shall be to the City's Finance Department - Accounting Division. The Contract Administrator will, within 21 days following submission of the invoice, prepare a certificate for payment for the work in an amount to be determined by the Contractor Administrator as fairly representing the acceptable work performed during the period covered by the Contractor's invoice. Following the receipt of the Contract Administrator's Certificate, and subject to the City retaining a percentage of the estimate as provided in this paragraph, the City will make payment to the Contractor as soon as feasible, which is anticipated will be within 15 days. To insure the proper performance of this Contract, the City will retain a percentage of the estimate in the same manner as is done for construction contracts under Act 524, Public Acts of 1980. If the City fails to retain a percentage from one or more of the estimates it pays, the City reserves the right to retain the amount from a subsequent payment.
- B. If the Contract Administrator decides it is inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.
- C. The Contractor shall promptly remove from the premises all trees and materials determined by the Contract Administrator as failing to meet Contract requirements and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the City.
- D. The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract and defective work shall be made good. Unsuitable materials may be rejected by the Contract Administrator notwithstanding that the work and/or materials have been previously overlooked by the Contract Administrator and accepted or estimated for payment or paid for. If the work or any part shall be found defective at any time before the final acceptance, the Contractor shall forthwith make good the defect in a manner satisfactory to the Contract Administrator. The judgment and the decision of the Contract Administrator as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.
- E. Within 14 days after receipt of written notice from the Contractor that the work is ready for final inspection and acceptance, the City shall inspect all guaranteed work for final acceptance. When the Contract Administrator finds the work acceptable under the Contract and the Contract fully performed, including completion and re-inspection of all repairs and replacements necessary in the judgment of the Contract Administrator, the Contract Administrator will promptly

sign and issue a final certificate stating that the work required by this Contract has been completed and is accepted by the City under the terms and conditions of the Contract. Subject to the requirements below, the entire balance found to be due the Contractor, including the retained percentage shall be paid to the Contractor by the City within 30 days after the date of the final certificate.

Before issuance of final certificates, the Contractor shall file with the City:

- (1) The consent of the surety to payment of the final estimate;
- (2) The Contractor's Affidavit

In case the Affidavit or consent is not furnished, the City may retain out of any amount due the Contractor, sums sufficient to cover all lienable claims.

The making and acceptance of the final payment shall constitute a waiver of all claims by the City except those arising from:

- (1) unsettled liens;
- (2) faulty work appearing within 12 months after final payment;

The making and acceptance of the final payment shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

VI. INSURANCE; INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C. When requested, Contractor shall provide the same documentation for its subcontractor(s).
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Contract, except to the extent that any

suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Contract.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Contract a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Contract are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY CONTRACTOR

- A. The Contractor warrants that the quality of its services under this Contract shall conform to the level of quality performed by professionals regularly rendering this type of service. The Contractor warrants that the repairs shall be free of defects for a period of one year.

- B. The Contractor warrants that it has all the skills and experience necessary to perform the services it is to provide pursuant to this Contract. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent contractor or when it has actual notice of any defects in the reports and surveys.

IX. SURETY BONDS

Before the commencement of any work under this Contract, Contractor shall provide to the City the following surety bond(s), issued by a surety company licensed to write surety bonds in the State of Michigan, executed on a form supplied by the City, and satisfactory to the City Attorney:

A. Performance Bond to the City of Ann Arbor for the amount of the Contract.

X. TERMINATION OF CONTRACT; RIGHTS ON TERMINATION

- A. This Contract may be terminated by either party in the case of a breach of this Contract by the other party, if the breaching party has not corrected the breach within 15 days after notice of termination is given in conformance with the terms of this Contract.
- B. If contracting services are terminated for reasons other than the breach of the Contract by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

XI. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to staff and City owned properties as required to perform the necessary services under the Contract.
- B. The City shall notify the Contractor of any defects in the services of which the City has actual notice.

XII. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of the services without prior written consent to such action by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under the Contract to third parties.

XIII. NOTICE

All notices and submissions required under the Contract shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this Contract or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this Contract when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

XIV. EXTENT OF AGREEMENT

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this agreement.

This Contract may be altered, amended or modified only by written amendment signed by the Contractor and the City.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Contract will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Contract or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Contract or the application of the provision to other parties or other circumstances.

XVI. CHOICE OF LAW

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Contract, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract

For Contractor

By _____

Its: _____

For City of Ann Arbor

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus, City Administrator

Craig Hupy
Public Services Area Administrator

Approved as to form

Stephen K. Postema, City Attorney

EXHIBIT A

Bid Proposal of Contractor, dated May 16, 2016.

EXHIBIT B
Street Tree Pruning Bid Sheet

Diameter Class (DBH)	Approximate Number of Trees in Diameter Class	Per Tree Cost	Total Cost to Prune Trees
10-15"	50	\$ 162.00	\$ 8,100.00
16-20"	100	\$ 201.00	\$ 20,100.00
21-25"	50	\$ 224.00	\$ 11,200.00
26-30"	25	\$ 266.00	\$ 6,650.00
TOTAL			\$ 46,050.00

**EXHIBIT C
INSURANCE REQUIREMENTS**

Effective on or before the effective date of this Contract, and continuing without interruption during the term of this Contract, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products and Completed Operations Aggregate

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under A.2 and A.3 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive

any right of recovery by its insurer against the City.

- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

PERFORMANCE BOND

- (1) _____ (referred to as "Principal"), and _____, a corporation duly authorized to do business in the State of Michigan (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for \$ _____, the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.
- (2) The Principal has entered a written Contract with the City dated _____, 20____, for: _____.
- (3) Whenever the Principal is declared by the City to be in default under the Contract, the Surety may promptly remedy the default or shall promptly:
- (a) complete the Contract in accordance with its terms and conditions; or
 - (b) obtain a bid or bids for submission to the City for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in paragraph 1.
- (4) Surety shall have no obligation to the City if the Principal fully and promptly performs under the contract.
- (5) Surety agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying it shall in any way affect its obligations on this bond, and waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work, or to the specifications.

SIGNED AND SEALED this _____ day of _____, 20____.

(Name of Surety Company)

By _____
(Signature)

Its _____
(Title of Office)

Approved as to form:

Stephen K. Postema, City Attorney

(Name of Principal)

By _____
(Signature)

Its _____
(Title of Office)

Name and address of agent:

