

STATE OF TEXAS §
 § AGREEMENT FOR BED MAINTENANCE SERVICES
COUNTY OF DALLAS §

This agreement (“Agreement”) is made by and between the City of University Park, Texas (“City”) and BARE ROOTS LANDSCAPE SOLUTIONS (“Contractor”) acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to obtain BED MAINTENANCE services from Contractor in accordance with the description and scope of services attached hereto as Exhibit “A” (“Scope of Services”); and

WHEREAS, Contractor desires to provide such services (the “Services”) to the City in accordance with Scope of Services attached hereto as Exhibit “A”;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**Article I
Term**

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until February 28, 2026, unless earlier terminated as provided herein (the “Term”).

**Article II
Contract Documents**

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement; and
- B. The City’s RFP # 2024-14 (Exhibit A); and
- C. Contractor’s proposal to furnish the Services required by the City.

**Article III
Scope of Services**

Contractor shall provide the Services specifically set forth in the Scope of Services as contained in Exhibit “A,” which is attached hereto and made a part of this Agreement for all purposes.

Article IV Schedule of Work

Contractor agrees to commence the Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in Exhibit “A,” to the extent they do not conflict with this Agreement.

Article V Compensation and Method of Payment

5.1 Charges. City shall compensate Contractor for the Services, including all labor, materials, equipment and supplies as provided in Exhibit “A.” The total compensation to Contractor shall not exceed \$61,930.76 during the Term. Contractor shall provide the City with written invoices on a monthly basis describing the work and Services performed as provided in Exhibit “A.” Upon approval, City shall compensate Contractor as provided herein and in Exhibit “A” with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed. Contractor shall be responsible for payment of all subcontractors, and all labor, materials, equipment and supplies provided as required by this Agreement.

5.2 Additional Work. Services other than set forth in this Agreement and/or Exhibit “A”, when requested in writing by the City, shall be charged at a rate to be agreed upon by the parties.

Article VI Notice to Proceed

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Contractor prior to Contractor’s receipt of a written Notice to Proceed from City shall be entirely at Contractor’s own risk. Work performed and expenses incurred after Contractor has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VII Suspension of Work

City shall have the right to immediately suspend work by Contractor if City determines in its sole discretion that Contractor has, or will, fail to perform in accordance with this Agreement.

In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action.

Article VIII Devotion of Time; Personnel; and Equipment

8.1 The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Contractor to perform the Services required under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or companies that the Contractor may deem proper to aid or assist in the performance of the Services. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

8.3 The Contractor shall furnish the facilities, hardware, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the Services required under this Agreement unless otherwise provided herein. Contractor warrants for the maximum period allowed by law that the work performed conforms to the Scope of Services contained in Exhibit "A" and is free of any defect in equipment, material or design furnished, or workmanship performed by Contractor or any of its subcontractors or suppliers.

8.4 Contractor shall keep the site of the work free from waste material, rubbish, tools and equipment, and on completion of the work leave the site in a clean and orderly condition satisfactory to the City. Contractor shall remove and legally dispose of construction refuse. Contractor shall restore any work or City property damaged in the course of its performance of its duties hereunder.

8.5 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be terminated, and Contractor may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of Services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X Termination

This Agreement may be terminated by:

- (a) by mutual written agreement of the parties;
- (b) immediately by City, if Contractor defaults or breaches any of the terms or conditions of this Agreement;
- (c) by either party, upon thirty (30) days' prior written notice. Should Contractor terminate the Agreement under this provision, Contractor shall further state the reason(s) for termination in its written notice;
- (d) by City, if Contractor suffers an Event of Bankruptcy or Insolvency; "Event of Bankruptcy or Insolvency" shall mean the dissolution or termination (other than a dissolution or termination by reason of Contractor merging with an affiliate of Contractor) of Contractor's existence as a going business, insolvency, appointment of a receiver for any part of Contractor's property, and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and in the event such proceeding is not voluntarily commenced by the Contractor, such proceeding is not dismissed within ninety (90) business days after the filing thereof; or,
- (e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year.

Article XI Insurance

11.1 Contractor shall during the term hereof maintain in full force and effect insurance which contains, at a minimum: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Contractor's employees involved in the provision of the Services under this Agreement.

11.2 All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage, with the exception of Worker's Compensation Insurance; (2) provide for at least thirty

(30) days' prior written notice to the City of the cancellation, non-renewal, or material change of the insurance; and (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

11.3 All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service or approved by the City Risk Manager. A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

Article XII Miscellaneous

12.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

12.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Contractor to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.5 Amendments. This Agreement may be amended only by the mutual written agreement of the parties.

12.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

12.7 Independent Contractor. It is understood and agreed by and between the parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent Contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

12.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

City of University Park, Texas.
Attn: City Manager
3800 University Blvd.
University Park, Texas 75205
Facsimile: _____

with copy to:

Robert L. Dillard III
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201
Telephone: 214-965-9900
Facsimile: 214-965-0010

If intended for Contractor:

Facsimile: _____

12.9 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all the parties hereto.

12.10 Exhibits and Recitals. The exhibits attached hereto, and the Recitals are incorporated herein and made a part hereof for all purposes.

12.11 Indemnification. **Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney’s fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter “Claims”). Contractor is expressly required to defend City against all such Claims.**

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide its own defense; however, City is under no obligation to do so. Any such action by

City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this Contract. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City.

12.12 Audits and Records. Contractor agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the Services provided pursuant to this Agreement for a period of one year following the date of completion of the Services as determined by City, or the date of termination, if sooner.

12.13 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.14 Warranty. The Contractor warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

12.15 Immunity; Defenses. Nothing in this Agreement will be construed to waive, modify, or amend any legal defense available to the City, its officers, employees or agents, including governmental immunity from suit as provided by law.

(Signature page to follow)

EXECUTED this _____ day of _____ 20__.

CITY OF UNIVERSITY PARK

By: _____
CITY MANAGER
3800 University Blvd.
University Park, Texas 75205

ATTEST

CITY SECRETARY

EXECUTED this _____ day of _____ 20__.

Bare Roots Landscape Solutions, Inc

CONTRACTOR

By:  _____
Signature of Authorized Officer

Name: Chris Bacala
Print Name

Title: Founder | CEO

[ADDRESS]