



## City Council Meeting - Final

September 18, 2023  
7:00 PM

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**F. 2023-193** Approval of the Front Yard Tree Program Campaign by Trees Atlanta in Partnership with the City of Smyrna.

## SERVICE AGREEMENT

**THIS SERVICE AGREEMENT** (this “Agreement”) is made and entered into as of \_\_\_\_\_ 2023, by and between the **CITY OF SMYRNA, GEORGIA**, a municipality within Cobb County of the State of Georgia (“Smyrna” or “City”) and **TREES ATLANTA, INC.**, a non-profit organization (“Trees Atlanta”).

### WITNESSETH:

**WHEREAS**, the City of Smyrna maintains a Tree Bank to be utilized for the protection, planting, maintenance, and regeneration of City trees and other forest resources, and for related educational programs and materials; and

**WHEREAS**, the City desires to spend an amount not to exceed \$23,000 of the funds currently in the Tree Bank to plant and care for trees to enhance the City’s existing tree canopy; and

**WHEREAS**, the City of Smyrna City Council finds that it is in the public interest and facilitates and enhances the health, safety and welfare of the citizens of the City of Smyrna to foster and enhance the tree canopy of Smyrna; and

**WHEREAS**, the City Council further finds that Smyrna receives a tangible benefit from the work performed and the product provided by Trees Atlanta pursuant to the Agreement; and

**WHEREAS**, Trees Atlanta is a non-governmental, non-profit organization, which for 38 years has been committed to the care and replenishment of metro Atlanta’s urban forest, which utilizes community volunteers to plant trees, thereby reducing the cost of its services while improving neighborhood involvement and sense of ownership in Smyrna’s urban forest; and

**WHEREAS**, Trees Atlanta has proposed a tree planting campaign in the Smyrna. The City of Smyrna Front Yard Tree Planting Program contemplates that Trees Atlanta will plant a maximum of 80 trees in neighborhoods within the City of Smyrna between October 1, 2023 and March 31, 2025 (the “Program”);

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS** herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby severally acknowledged, the parties hereto do hereby agree as follows:

## **Scope of Work**

### **1.1 Program**

The goal for the Program is to increase the planting of shade trees in front yards to help increase overall tree canopy coverage in Smyrna. Upon the signing of this agreement, Trees Atlanta and Smyrna shall jointly and promptly undertake the marketing of the Front Yard Tree Program to City residents. Trees Atlanta will manage the processing of tree requests and coordinate with homeowners for the selection, placement and installation of a front yard tree through this program. Each tree planted as part of the Program shall be referred to singularly as a “New Tree” and collectively as “New Trees” hereinafter. Trees Atlanta staff shall be ultimately responsible for tree planting but may utilize supervised volunteer participation at its discretion. Trees Atlanta shall provide the services described in this section, section 2 and as may be described elsewhere in this Agreement (“Services”).

- 1.1.1 New Trees planted through this Program will be planted on private property located in Smyrna. Trees Atlanta shall make certain that the New Trees planted on private property, upon maturation, will provide shade to the public right-of-way, and are immediately visible from the public right-of-way, and in no event shall they be planted more than 35 feet from the public right-of-way.
- 1.1.2 Trees Atlanta shall be responsible for securing a written or electronically recorded agreement with the private property owner(s) of record, whereby the property owner(s): (1) grants Trees Atlanta a right of entry to plant the New Tree(s); (2) acknowledges that s/he shall be the owner of the New Tree(s) and shall be responsible for maintaining it/them and will not remove it/them; and (3) agrees to hold Smyrna and Trees Atlanta harmless for any liability attributable to the planting or presence of the New Trees on the private property.
- 1.1.3 All New Trees shall be planted no later than April 15, 2025. However, should the Agreement not be approved and signed by the Program start date (October 1, 2023), Trees Atlanta will be granted additional planting days during the following planting season, during which it can fulfill the Agreement. The additional days shall equal the number of days lost between October 1, 2023 and the Agreement signing date. Planting season begins October 1 and ends March 31.
- 1.1.4 Trees Atlanta shall provide, on an as needed basis only, one pest control treatment, and one fertilization treatment for each New Tree planted. All references in this Agreement to maintaining New Trees shall mean that Trees Atlanta shall be obligated to take such action as is reasonably necessary to provide pest control for the New Tree(s). Homeowners receiving a New Tree on their property shall sign an agreement obligating them to water the New Tree during the first two years and they shall notify Trees Atlanta if they notice any adverse conditions of the New Tree during the two-year replacement period as referenced in section 1.1.6.
- 1.1.5 The procurement, planting, and maintenance services provided by Trees Atlanta for

the New Trees shall include selection of the trees, project design, shipping, handling, labor, tools, equipment, and other associated expenses and/or activities associated with selection, planting and maintenance (only as described in 1.1.4 above) of the New Trees.

- 1.1.6 Trees Atlanta shall replace any New Tree planted as a part of the Program that dies during the two-year establishment period, except for trees that die due to vandalism, vehicular accidents, or acts of God. The replacement shall be accomplished at no expense to the City or the homeowner.
- 1.1.7 Where possible, replacement trees shall be the same species as the tree replaced, as long as the species remains compatible with the planting location.
- 1.1.8 Trees Atlanta may replace any New Tree planted as part of this Agreement that dies due to vandalism, vehicular accidents, or acts of God, provided that any such replacement trees shall be counted toward the total number of New Trees to be planted pursuant to section 1.1 above, and not as a replacement pursuant to section 1.1.6 above. Replacement of trees under this section shall only be executed with prior City approval.
- 1.1.9 Pursuant to specifications of the Department of Community Development, Trees Atlanta shall keep a record of its plantings and care of all New Trees pursuant to section 1.1 above and shall provide this information to the City. The City shall have access to Trees Atlanta's tree planting records and tree inventory system upon request.

### **Terms of Providing Services**

#### **2.1 Standards for Selecting the Types of Trees to be Procured**

When determining which New Tree(s) shall be planted in which locations, Trees Atlanta shall abide by the standards established by the International Society of Arboriculture in the "Trees and Shrub Transplanting Manual" including, but not limited to, the following: (1) only healthy trees with a well-developed root system and a well-formed top characteristic of the species shall be planted; (2) trees selected for planting shall be compatible with the specific site conditions and shall be overstory trees as shown in the Smyrna Tree Protection Ordinance, or other closely similar species as agreed to between Trees Atlanta and the Director of the Community Development Department; (3) Trees Atlanta shall consider the ability of a species to regenerate a new root system and to become re-established; and (4) deciduous and evergreen trees shall be planted in October, November, December, January, February or March.

#### **2.2 Quality Standards for New Trees to be Procured**

- 2.2.1 New Tree(s) will be free from injury, pests, disease, or nutritional disorders at the time that they are procured and planted by Trees Atlanta.
- 2.2.2 New Tree(s) will be of good vigor at the time that they are procured and planted by Trees Atlanta. Though the determination of vigor is subjective and depends upon the species of the tree, in general, Trees Atlanta shall procure New Trees that meet the following criteria:
  - 2.2.2.1 The New Tree(s') foliage should have a green or dark green color, large leaves and dense foliage in accordance with its species.
  - 2.2.2.2 The New Tree(s) should have new branches, and the shoot growth should be at least 1 foot per year. At least one half of the branches should arise from points on the lower two thirds of a trunk.
  - 2.2.2.3 Bark texture and appearance on the trunk and branches of the New Trees should be smooth or shiny, as appropriate to the species.
  - 2.2.2.4 New Tree(s) should be tapered, with an increase in diameter and a decrease in height. Trees Atlanta should not procure New Trees with reverse tapers or no taper.
  - 2.2.2.5 The roots of the young New Tree(s) should be light in color.
- 2.2.3 New Tree(s) will be free of root defects at the time that they are procured and planted by Trees Atlanta, including but not limited to: (a) kinked roots, in which taproots, major branch roots, or both are bent more than 90 degrees with less than 20 percent of the root system originating above the kink; or (b) circling or girdling roots that circle 80 percent or more of the root system by 360 degrees or more.

### 2.3 Procedures for Planting New Trees

- 2.3.1 Trees Atlanta will ensure that, when New Tree(s) are planted, the standards established by the International Society of Arboriculture in the "Trees and Shrub Transplanting Manual", are followed, including, but not limited to, the following:
  - 2.3.1.1 Planting holes will be no less than one foot wider than the root ball or the container of the New Tree(s) being planted. Trees Atlanta will, if possible, create a planting hole three times the width of the root ball of the New Tree(s).
  - 2.3.1.2 New Trees will not be planted deeper than their placement in their former location or container.
  - 2.3.1.3 Spade compacted bottom and sides of the planting hole for the New Trees will be roughed or scarified to allow the penetration of the New Trees' developing roots.
  - 2.3.1.4 Planting holes of the New Trees will have good water drainage from the bottom.
  - 2.3.1.5 Once a New Tree is set in a planting hole, the planting hole will be backfilled with soil of good texture and structure. A backfill with native soil alone is adequate.

2.3.1.6 Trees Atlanta will not add fertilizer to the backfill soil unless deemed necessary for the survival of the New Trees. If fertilizer must be added, a low rate will be used. Approximately 1.5 pounds of nitrogen per cubic yard of backfill will be utilized for bare root plants.

2.3.1.7 After placing the backfill soil in the planting hole, the soil will be slightly mounded to allow for settling; a ridge or dike around the perimeter of the hole will be formed to facilitate watering.

2.3.1.8 The backfill soil will be gently tamped, but not compacted, and soaked for settling.

## 2.4 Post-Planting Procedures for New Trees

2.4.1 Homeowner accepts responsibility for maintaining the New Tree after planting is complete. Trees Atlanta will provide each homeowner with tree care instructions that include watering volume and frequency, mulching, weeding and pruning.

2.4.2 Homeowner may contact Trees Atlanta with any questions related to tree care or tree health, and Trees Atlanta may, at its discretion, perform a site visit at the request of the homeowner.

2.4.3 If and when Trees Atlanta conducts a site visit, it will evaluate trees for health issues and provide instructions to the homeowner regarding methods to improve tree health. Should Trees Atlanta identify a nutrient or pest issue, it will apply the appropriate treatment in an effort to return the New Tree to health pursuant to section 1.1.4 above.

2.4.4 If Trees Atlanta is unable to return the New Tree to health, it will replace the New Tree during the following planting season, pursuant to the limitations outlined in section 1.1.6 above.

## 2.5 Services Summary

In addition to the Services described in section 1.1 and elsewhere in this Agreement, the parties agree as follows:

2.5.1 The Front Yard Tree Program described in this Agreement will be available to all City residents with property appropriate for planting. Further, Trees Atlanta may, in consultation with the City, group the planting date(s) for specific tree requests based on planting location in order to improve the efficiency of planting operations.

2.5.2 The City will promote the Program to its eligible residents.

2.5.3 City of Smyrna's City Arborist and Trees Atlanta will identify a limited tree species list from which participating residents will be allowed to choose in consultation with Trees Atlanta.

2.5.4 Trees Atlanta will create an online portal specific to City residents. The portal will enable residents to request trees through the Program. The

portal will collect an electronic signature from the homeowner(s) signifying his/her agreement with the disclosures outlined in Section 1.1.2.

### **Payments; Documentation**

#### **3.1 Payments**

The cost of the Program shall not exceed \$23,000 during the two-year program life. Trees Atlanta's preferred payment method is via ACH or automated clearinghouse; a City-issued check is also an accepted form of payment. The total cost of each front yard tree is \$275 during the 2023-24 planting season and \$300 during the 2024-25 planting season.

Trees Atlanta shall bill Smyrna once at the conclusion of each planting season and after the City has had the opportunity to audit planted trees with location data provided by Trees Atlanta. Trees Atlanta will bill for all trees planted during the previous planting season and which are verified or approved by the City for billing. Trees Atlanta will aim to provide the City with tree location data by April 30, 2024 for trees planted during the 2023-24 planting season and April 30, 2025 for trees planted during the 2024-25 planting season. The City will aim to complete the audit or tree review within 10 business days to allow for timely billing.

#### **3.2 Documentation**

Trees Atlanta shall send a Program progress report to the City bi-monthly to report on trees requested and trees planted through the program (no trees will be planted before October 1, 2023). By April 30, 2024 and April 30, 2025, Trees Atlanta shall provide a complete report on trees planted during each respective planting season, including homeowner name and address, the status of each request and the tree planted date and species, where applicable.

## **Liability; Indemnity and Insurance**

### **4.1 City's Liabilities**

The City shall not in any way be liable or responsible for any loss, damage or expense that Trees Atlanta may sustain or incur in its performance of the work provided for in this Agreement, unless and only to the extent that said loss, damage or expense is caused by the City's gross negligence, intentional misconduct, or breach of a material term of this Agreement.

### **4.2 Indemnification and Hold Harmless by Trees Atlanta**

#### **4.2.1 Indemnification by Trees Atlanta**

Trees Atlanta agrees to indemnify, defend, and hold harmless the City and the City's officers, agents, employees, and elected officials in their capacities as such (collectively with the City, the "Indemnified Persons") from and against any and all claims, demands, suits, actions, causes of action, damages, liabilities, losses, judgments, and reasonable legal expenses and fees of every kind and character (collectively, the "Claims") that arise directly from Trees Atlanta's performance of its services under this Agreement, but only if and to the extent that such Claims are the direct and proximate result of the negligence of Trees Atlanta in its performance of services hereunder; provided, however, that, if a contractor or subcontractor is retained by Trees Atlanta to perform services under or in connection with this Agreement and has executed an agreement with Trees Atlanta or the City in accordance with Section 4.2.2 hereof and any Claims are suffered by an Indemnified Person as a result (in whole or in part) of the negligence of such contractor or subcontractor (including, without limitation, the negligence of any such contractor's or subcontractor's officers, employees, agents, or other persons acting at the direction or under the supervision or control of such contractor or subcontractor), then the indemnification undertakings of the contractor or subcontractor, as applicable, in favor of the Indemnified Persons shall exclusively apply and the foregoing indemnity from Trees Atlanta shall be inapplicable and unenforceable (the "Contractor/Subcontractor Exclusion"). Notwithstanding anything to the contrary contained in this Agreement, Trees Atlanta shall have no duty to remediate, or to indemnify any Indemnified Person with respect to, any Claim arising from, any potentially dangerous, hazardous, or otherwise unsafe condition unless (a) such condition was caused by the sole negligence of Trees Atlanta in connection with its performance of the services hereunder ***[or under a specific agreement]*** and (b) Trees Atlanta was directed in writing by the City, during the term of this Agreement, to remediate such condition, which writing shall describe the nature and specific location of the condition to be remediated and the asserted negligence of Trees Atlanta that caused such condition to exist; provided, however, that in no event shall Trees Atlanta be deemed to be negligent in its performance of any services pursuant to a request, direction, or instruction of any officer, agent, or employee of the City. Trees Atlanta's agreement to indemnify and



hold harmless the Indemnified Persons as set forth hereinabove shall be limited by the policy terms, including coverage amounts and limitations, of any insurance obtained by Trees Atlanta, provided that such terms and coverage limitations are consistent with the terms set forth in Section 4.3 of this Agreement.

Exclusions from Indemnity: Trees Atlanta's aforesaid indemnity and hold harmless agreement (and the indemnity that Trees Atlanta is obligated by Section 4.2.2 to obtain from its contractors and subcontractors) shall not apply and shall not be enforceable with respect to: (i) any Claims suffered or incurred by any Indemnified Person that is caused, in whole or in part, by such Indemnified Person's gross negligence; or (ii) any Claim resulting from the act or omission of any person who, at the time of such act or omission, was not an officer, authorized agent, or employee of Trees Atlanta unless such person is acting directly under the supervision, oversight, and control of Trees Atlanta in connection with its provision of services under this Agreement, subject in all events to the provisions in Section 4.2.1 with respect to the Contractor/Subcontractor Exclusion.

#### 4.2.2 Indemnification by Trees Atlanta's Contractors/Subcontractors

Trees Atlanta shall require each of its contractors and subcontractors performing any work pursuant to or otherwise related to this Agreement to execute an agreement with Trees Atlanta (or directly with the County) that includes an indemnification provision in form and scope substantially as set forth above and in favor of the Indemnified Persons, with the exception that the name of the applicable contractor or subcontractor shall replace "Trees Atlanta" as the party providing the indemnity in favor of the Indemnified Persons; and any agreement between Trees Atlanta and any such contractor or subcontractor shall make clear that each Indemnified Person is a third-party beneficiary of such indemnification and hold harmless agreement. Trees Atlanta does not anticipate using subcontractors for its work on the City of Smyrna Front Yard Program.

#### 4.3 Insurance Requirements. Prior to beginning any work on the Program and at all times that this Agreement is in force, Trees Atlanta shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-6 or higher and acceptable to the City covering:

- 4.3.1 Workers' Compensation & Employer's Liability Insurance. Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$500,000 per accident for bodily injury or disease.
- 4.3.2 Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, and any other type of liability for which this Agreement applies with limits of liability of not less

than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance will be written on an “occurrence” form.

- 4.3.3 Automobile Liability Insurance with limits of liability of not less than \$500,000 per accident for bodily injury and property damage if automobiles are to be used in the delivery of or in the completion of services and work or driven onto the City’s property. Insurance shall include all owned, non-owned and hired vehicle liability.
- 4.3.4 Umbrella Insurance with limits of liability excess of Employer’s Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$3,000,000.
- 4.3.5 Fidelity Bond (Employee Dishonesty) in the sum of not less than \$50,000. All such insurance will remain in effect until final payment is made and the Program is accepted by the City. If Trees Atlanta receives notice of non-renewal or material adverse change of any of the required coverages, Trees Atlanta shall promptly advise the City in writing. Failure of Trees Atlanta to promptly notify the City on non-renewal or material adverse change of any of the required coverages shall be deemed a breach of this Agreement. The insurance policies will contain or be endorsed to contain, the following provisions:
  - 4.3.5.1 A provision that coverage afforded under such policies shall not expire, be canceled or altered without at least thirty (30) days prior written notice to the City.
  - 4.3.5.2 Workers’ Compensation and Employer’s Liability and Property insurance policies shall contain a waiver of subrogation in favor of the City and the City’s boards, officials, directors, officers, employees, representatives, agents, and volunteers.
  - 4.3.5.3 Commercial General Liability, Automobile Liability Contractors’ Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) insurance policies will include an endorsement making the City and the City’s boards, officials, directors, officers, employees, representatives, agents, and volunteers Additional Insureds under such policies.

A copy of these endorsements shall be provided to the City. Certificates of Insurance showing that such coverage is in force shall be filed under this Agreement by the Contractor to the City.

Certificate Holder should read:

City of Smyrna, Georgia  
2800 King Street

Smyrna Ga 30080

Trees Atlanta shall require the same “Insurance Requirements” of/from all sub-contractors who will be working in the Smyrna “tree planting campaign”.

The obligations for the Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of the Contractor whether or not same is covered by insurance.

### **Non-Discrimination**

- 5.1 By execution of this Agreement, Trees Atlanta certifies that, during the term of this Agreement, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment or services covered by this Agreement shall not discriminate against any volunteer, employee, or applicant for volunteerism or employment, because of the race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, disability, genetic information, political affiliation, military or veteran status, or any other status or classification protected by applicable federal, state and local laws."

As used herein, the words “shall not discriminate” shall mean and include, without limitation, the following:

selection, hiring, placement, assignment, promotion, performance review, discipline, termination, reduction-in-force, layoff, recall, transfer, leave of absence, compensation, and training.

Trees Atlanta shall post in conspicuous places, available to employees and applicants for employment the provisions of the non-discrimination statement above, and the other provisions set forth in this section 5 of this Agreement.

- 5.2 Trees Atlanta shall, in all solicitation or advertisement of employees or volunteers placed by or on behalf of Trees Atlanta, state that all qualified applicants will receive consideration for the employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age, disability, genetic information, political affiliation, military or veteran status, or any other status or classification protected by applicable federal, state and local laws.
- 5.3 Trees Atlanta will take such lawful action with respect to any contractor or subcontractor as the City may direct as a means of enforcing the provisions herein, including penalties and sanctions for non-compliance; provided, however, that in the event Trees Atlanta becomes involved in or is threatened with litigation as a result of such direction by the City, the City may enter into such litigation as is necessary to protect the interest of the City and to effectuate the Equal Employment Opportunity Program of the City.

- 5.4 Trees Atlanta shall include the provisions of section 5 of this Agreement in every contract and subcontract so that such provisions will be binding upon each contractor and subcontractor.
- 5.5 The refusal by Trees Atlanta or any of its contractors or subcontractors to comply with the non-discrimination section of this Agreement, after notice of default and a reasonable opportunity to cure, may subject the offending party to cancellation of the Agreement or contract or subcontract, as applicable.

### **Term of this Agreement**

This Agreement shall be effective upon the date first above written. The term of this Agreement shall be deemed to have commenced on the date hereof, and shall continue until March 31, 2027 ("Term"), or the date on which Trees Atlanta has rendered all services required under this agreement (including any necessary tree replacements) and all fees and reimbursable expenses are paid to Trees Atlanta in full by the City, in an amount not to exceed \$23,000 in accordance with the terms and conditions of this Agreement.

### **Termination of this Agreement**

- 6.1 Termination for Default. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within ten (10) days of receipt of a written notice from the other party specifying such default. "Default" shall mean:
- 6.1.1 If Trees Atlanta fails to perform or observe any of its duties or obligations under the terms of this Agreement.
- 6.1.2 If the City or Trees Atlanta shall have made any warranty or representation in connection with this Agreement which is found to have been false at the time such warranty or representation was made and is materially harmful to the other party.
- 6.2 Termination for Convenience. Notwithstanding the above, either party to this agreement may, for its own convenience and at its sole option, without cause and without prejudice to any other right or remedy of the other party, elect to terminate the Agreement by delivering to the either party, at the address listed below, a written notice of termination specifying the effective date of termination. Such notice shall be delivered to the terminating party at least thirty (30) days prior to the effective date of termination. If this agreement is terminated by the City, the termination will not affect any rights or remedies of the City then existing or which may thereafter accrue against Trees Atlanta. Neither party shall be entitled to recover lost profits, special, consequential, or punitive damages, attorney's fees or costs from the other party to this Agreement for any reason whatsoever. This Agreement shall not be deemed to provide any third-party with any remedy, claim, right of action, or other right. The parties' obligations pursuant to this section shall survive termination or

expiration of this Agreement.

- 6.3 Compensation upon Termination. If this Agreement is terminated prior to the last day of the Term, Trees Atlanta shall be exclusively limited to receiving only compensation and expense reimbursement for the work performed under the Program and appropriately documented to and including the effective date of termination specified in the written termination notice.
- 6.4 Termination of Services and Return of Property. Upon the expiration or earlier termination of this Agreement, Trees Atlanta shall immediately terminate its services and shall deliver promptly to the City all City-owned property relating to this agreement.
- 6.5 Standard of Performance and Compliance with Applicable Laws. Trees Atlanta warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the Program and the obligations imposed by this Agreement. Trees Atlanta agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the work required by this Agreement, including the requirements set forth in the Certification of Sponsor Drug Free Workplace attached hereto as Exhibit A, in the Affidavit Verifying Status for City Public Benefit Application attached hereto as Exhibit B, and in the Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1) attached hereto as Exhibit C, and agrees to execute and provide such certifications to the City, which are incorporated into and made a part of this Agreement.

Trees Atlanta will, at all times, observe and comply in all material respects with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by Trees Atlanta hereunder or which in any manner affect this Agreement.

### **Conflicts of Interest**

- 7.1 Trees Atlanta warrants and represents that:
- 7.1.1 the Services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing;
- 7.1.2 Trees Atlanta is not presently subject to any agreement with any other party that will prevent Trees Atlanta from performing in accordance with this Agreement;
- 7.1.3 Trees Atlanta is not subject to any statute, regulation, ordinance or rule that will materially and adversely affect its ability to perform on a timely basis its obligations under this Agreement;
- 7.1.4 Trees Atlanta shall be free to accept other work during the term hereof provided that such other work does not interfere with the timely provision of Services hereunder.

### **Assignment / Delegation**

Trees Atlanta shall not assign this Agreement, or the rights created herein or delegate any of its duties hereunder (except to contractors and subcontractors whose contract indemnities are approved pursuant to Section 4.2 hereof) without the prior express written consent of the City. Any attempted assignment or delegation by Trees Atlanta without the prior express written approval of Smyrna may, at the City's sole option, result in the termination of this Agreement without any notice to Trees Atlanta of such termination.

### **Notices**

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

#### **If to Smyrna:**

Joseph Bennett  
City Administrator  
City of Smyrna  
2800 King St.  
Smyrna, GA 30080

#### **With copies to:**

Julie Barwig  
Environmental Services Director  
City of Smyrna  
2800 King St.  
Smyrna, GA 30080

#### **If to Trees Atlanta:**

Greg Levine  
Executive Director  
825 Warner St. SW, Suite A  
Atlanta, GA 30310

#### **With copies to:**

Mike Vinciguerra  
Business Development Director  
825 Warner St. SW, Suite A  
Atlanta, GA 30310

### **Governing Law and Consent to Jurisdiction**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

This Agreement shall be deemed to have been made and performed in Smyrna, Georgia. For the purpose of venue, all suits or cause of action arising out of this Agreement shall be brought in the courts of Cobb County, Georgia, notwithstanding any other provision of Georgia law, including any right to be sued in the City of the headquarters of any party.

### **Waiver of Breach**

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

### **Disputes**

No civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced without first giving at least fourteen (14) calendar days' written notice to the party against whom such action is to be commenced, of the claim and the intent to initiate a civil action.

### **Severability**

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of the Agreement shall continue to be valid and enforceable.

### **Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and thereof and supersedes and replaces any and all prior and contemporaneous discussions, representations, understandings and agreements, whether oral or written regarding the same subject matter.

### Counterparts

This Agreement may be executed in multiple counterparts and such counterparts taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties hereto, acting through their duly authorized agents, have signed and sealed this Agreement.

**Smyrna, Georgia**

By: \_\_\_\_\_  
Derek Norton, Mayor

\_\_\_\_\_  
Date of Execution

ATTEST:

By: \_\_\_\_\_  
Heather K. Peacon-Corn, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Scott Cochran, City Attorney

(SEAL)

(SIGNATURES CONTINUED ON FOLLOWING PAGE)



**TREES ATLANTA, INC.**

By: \_\_\_\_\_  
Greg Levine, Executive Director

\_\_\_\_\_  
Date of Execution

ATTEST:

By: \_\_\_\_\_  
Mike Vinciguerra, Bus Dev Director

(SEAL)

\_\_\_\_\_  
Witness

## EXHIBIT A

### CERTIFICATION OF SPONSOR DRUG-FREE WORKPLACE

I hereby certify that I am a principal and duly authorized representative of Trees Atlanta, Inc. (“Contractor”), whose address is 825 Warner St. SW, Suite A, Atlanta, Georgia 30310, and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied with in full; and
- (2) A drug-free workplace will be provided for Contractor’s employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with Contractor, Greg Levine certifies to Contractor that a drug-free workplace will be provided for the Subcontractor’s employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3”; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

Contractor:

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Greg Levine, Co-Executive Director

## EXHIBIT B

### AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION

By executing this affidavit under oath, as an applicant for a Smyrna, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit, execution of contract or other public benefit as referenced in O.C.G.A. § 50-36-1, I, Greg Levine, hereby state the following with respect to my application for a Smyrna license/permit and/or contract for Trees Atlanta, Inc.:

1.   X   I am a United States citizen

**OR**

2. \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States. \*

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. §16-10-20.

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: Greg Levine \_\_\_\_\_

\*Alien Registration number for non-citizens: \_\_\_\_\_

**\*\*PLEASE INCLUDE A COPY OF YOUR PERMANENT RESIDENT CARD, EMPLOYMENT AUTHORIZATION, GREEN CARD, OR PASSPORT WITH A COPY OF YOUR DRIVER'S LICENSE IF YOU ARE A LEGAL PERMANENT RESIDENT (#2).**

Subscribed and Sworn Before Me, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the Federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the Federal definition of "alien", legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

\_\_\_\_\_

## EXHIBIT C

### CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(b) (1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the Smyrna has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

495 904  
Federal Work Authorization User Identification Number

06/01/2013  
Date of Authorization

Trees Atlanta, Inc.  
Name of Contractor

Smyrna Tree Planting Program  
Name of Program

N/A  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Greg Levine / Co-Executive Director

SUBSCRIBED AND SWORN BEFORE ME  
THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_