

RESOLUTION #2022-10

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT ON BEHALF OF THE CITY OF WILDWOOD, MISSOURI, WITH SHAWNEE MISSION TREE SERVICE, INC., D/B/A ARBOR MASTERS TREE AND LANDSCAPE, FOR THE TREATMENT OF ASH TREES LOCATED WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE CITY TO PREVENT INFESTATION BY THE EMERALD ASH BORER PEST, INCLUDING OTHER INCIDENTAL ITEMS AS SHOWN ON THE PROJECT SPECIFICATIONS AND DOCUMENTS.

WHEREAS, the City of Wildwood, Missouri (the “City”), has prepared a plan to address the eminent demise of ash trees located on public rights-of-way in the City from the Emerald Ash Borer, which includes the treatment of trees to prevent infestation by the Emerald Ash Borer pest (the “Plan”); and

WHEREAS, based on the Plan, the City, developed specifications and bid documents for a project, to be completed during 2020 and 2021, to prevent infestation by the Emerald Ash Borer pest, which included the treatment of about 400 ash trees within the public rights-of-way in the City, including other incidental items as shown on the project specifications and bid documents (the “FY 2020 Project”); and

WHEREAS, the Department of Public Works of the City (the “Department of Public Works”) solicited bids for the FY 2020 Project, with bids opened publicly by the City on Friday, April 3, 2020; and

WHEREAS, a total of five (5) sealed bids were submitted by different companies, all of which were competitive and met the requirements set forth by the City for the FY 2020 Project; and

WHEREAS, the bid from Shawnee Mission Tree Service, Inc., d/b/a Arbor Masters Tree and Landscape (“Arbor Masters”), for ash tree treatments, was the lowest received, regardless of size class; and

WHEREAS, in 2020, the City entered into a City-Contractor Agreement with Arbor Masters for the treatment of about 199 ash trees located within the public rights-of-way for the FY 2020 Project, which was successfully completed; and

WHEREAS, in 2021, the City entered into another City-Contractor Agreement with Arbor Masters for the treatment of about 116 more ash trees located within the public rights-of-way to prevent infestation by the Emerald Ash Borer pest during Fiscal Year 2021 in conformance with the FY 2020 Project specifications and bid documents (the “FY 2021 Project”), which was also successfully completed; and

WHEREAS, the City has \$75,000.00 budgeted for ash tree planting and treatment on the public rights-of-way in the 2022 Capital Improvement Fund; and

WHEREAS, as the ash tree treatments have an expected duration of two (2) years, the Department of Public Works has recommended that 189 trees located within the public rights-of-way which were originally treated in 2020, and which remain viable, be re-treated during Fiscal Year 2022 to prevent infestation by the Emerald Ash Borer pest (hereinafter, the “FY 2022 Project”); and

WHEREAS, Arbor Masters has agreed to complete the FY 2022 Project in conformance with the FY 2020 Project specifications and bid documents; and

WHEREAS, the Administrative and Public Works Committee of the City Council reviewed the recommendation of the Department of Public Works, and recommended that the City enter into a City-Contractor Agreement with Arbor Masters to complete the FY 2022 Project for the amount of \$24,029.00; and

WHEREAS, the City Council of the City finds and determines that it is to the benefit of the health, safety and general welfare of the residents of the City to enter into a City-Contractor Agreement with Arbor Masters to complete the FY 2022 Project for the recommended contract amount.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Wildwood, Missouri, and Shawnee Mission Tree Service, LLC, dba Arbor Masters Tree and Landscape, for construction of the FY 2022 Project, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby approved and the Mayor shall be and is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Resolution.

Section Two. That the Mayor shall be and hereby is further authorized and directed, on behalf of and in the name of the City, to agree to do any and all other acts and things and to execute and deliver any and all other agreements, documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. The execution by the Mayor of any agreement, document, instrument, check or certificate referred to in this Resolution and the Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the Mayor may do or perform in conformance with the powers conferred upon them by this Resolution are hereby expressly authorized, approved, ratified and confirmed.

Section Three. The total expenses and liability of the City under the Agreement shall not exceed a contract sum of \$24,029.00.

Section Four. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Resolution of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Five. Severability. If any term, condition, or provision of this Resolution shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Resolution without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Six. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND RESOLVED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI,
THIS _____ DAY OF _____, 2022.

CITY OF WILDWOOD

BY: _____
James R. Bowlin, Mayor

ATTEST:

Megan Eldridge, City Clerk

EXHIBIT A
[attach Agreement]

City of Wildwood

CITY-CONTRACTOR AGREEMENT

This City–Contractor Agreement “Agreement” is made and entered into this ___ day of _____, 2021, by and between the City of Wildwood, Missouri (hereinafter called the "City") and Shawnee Mission Tree Service, LLC, dba Arbor Masters Tree and Landscape, with offices located at 8250 Cole Pkwy, Shawnee, KS 66227 (hereinafter called the "Contractor").

WITNESSETH:

The Contractor and the City, for the consideration set forth herein, agree as follows:

ARTICLE I.

The Contract Documents

The Contract Documents, hereby placed on file with the City Clerk, consist of the General Conditions of City-Contractor Agreement, State Wage Determination, Non-Collusion Affidavit, Performance Payment Bond, Specifications, Drawings, the Schedule, all Addenda, and all Modifications issued after execution of this Agreement, which together with this Agreement form the entire agreement, obligations and duties of the parties, and are all as fully a part of the Agreement as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this Agreement.

ARTICLE II.

Scope of Work

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents (the “Work”) and shall timely complete the project in strict compliance with all requirements and specifications set forth in the Contract Documents. Contractor represents and warrants that it has special skills which qualify it to perform the Work in accordance with the Contract Documents, and that it is free to perform all such Work and

is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work. All Work shall be performed in compliance with all applicable federal, state, and City laws and regulations, including but not limited to all grading, construction and zoning ordinances of the City.

ARTICLE III.

Time of Completion

All time limits stated in the Contract Documents are of the essence. The Work to be performed here under shall commence within ten (10) days of the date of the written notice to proceed from the City to the Contractor. All Work shall be completed within sixty (60) calendar days. Should the Contractor, or in case of default, the surety, fail to complete the Work within the calendar days or the completion date specified, whichever occurs first, a deduction of the amount stipulated in Article V will be made for each day that the Work remains uncompleted.

ARTICLE IV.

The Contract Sum and Payments

The City shall pay the Contractor for the performance of the Work the total sum of Twenty Four Thousand and Twenty Nine Dollars (\$24,029.00) ("Contract Sum") based upon Applications for Payment submitted by the Contractor on or before the fifteenth (15th) day of the month for Work completed in accordance with the General Conditions in the following manner:

(1) On or about the tenth (10th) day of each following month, ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site to be incorporated into the Work, through the period ending up to the twentieth (20th) of the preceding month, less the aggregate of all previous progress payments;

(2) Upon completion of the Work, a sum sufficient to increase the total payments to ninety five percent (95%) of the Contract Sum; and

(3) Final payment within 60 days after the Work is fully completed and accepted by the City and the Work fully performed.

(4) The retainage amount withheld by subsections (1) and (2) above shall not exceed any maximum amount permitted by law.

ARTICLE V.

Performance of the Work

(a) Within seven (7) calendar days after being selected, the Contractor shall prepare and submit for the City's approval a Schedule for the Work in a bar chart format which Schedule shall indicate the dates for starting and completing the various stages of construction. The Notice To Proceed shall be issued within 10 working days of the selection, however, no Work will commence until the Contractor's Schedule is submitted and approved by the City.

(b) Completion of the Work in accordance with the time limits set forth in the Schedule is an essential condition of the Agreement. If the Contractor fails to complete the Work in accordance with the Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City, as liquidated damages and not as a penalty, the sum of Two Hundred and Fifty Dollars (\$250.00) for each calendar day the Contractor fails to comply with the Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.

(c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City at such intervals as the City may reasonably direct, the actual progress of the Work compared to the Schedule. If the Contractor falls behind the Schedule for any reason, it shall promptly take, and cause its Subcontractors to take,

such action as is necessary to remedy the delay, and shall submit promptly to the City for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied; provided, however, that if the delay is excusable under Article VI hereof, the Contractor will not be required to take, or cause its Subcontractors to take, any action which would increase the overall cost of the Work (whether through overtime, premium pay or otherwise), unless the City shall have agreed in writing to reimburse the Contractor for such increase in cost. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof, or is not approved in advance by the City, shall be borne by the Contractor.

ARTICLE VI.

Delays beyond Contractor's Control

(a) If the Contractor fails to complete the Work in accordance with the Schedule solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Contractor's control, the Contractor shall not be required to pay liquidated damages to the City pursuant to paragraph (b) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (c) of Article V hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with the Schedule is so substantial that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion and the Schedule shall be extended pursuant to a Change Order for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefore is made in writing by the Contractor to the City, and no extension of time shall be granted

if the Contractor could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

- (c) Weather shall not constitute a cause for granting an extension of time.
- (d) In the event a delay is caused by the City, the Contractor's sole remedy shall consist of its rights under this Article VI.

ARTICLE VII.

Changes in the Work or Cost of Work

(a) The City may make changes within the general scope of the project by altering, adding to or deducting from the Work, and the Contract Sum adjusted accordingly. All such changes in the Work shall be executed under the conditions of the Agreement.

No extra Work or change in the Work shall be made except pursuant to a Change Order approved by the City and Contractor in accordance with the General Conditions.

Any claim for an increase in the Contract Sum resulting from any such change in the Work shall promptly be made by the Contractor in accordance with the General Conditions.

(b) If the requested change would result in a delay in the Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Schedule shall be adjusted by agreement between the parties to reflect such decrease.

(c) If the Contractor intends to make a claim for an increase in the Contract Sum, it shall give the City written notice explaining the circumstances, justifications and amount of Contract Sum increase desired thereof promptly after the occurrence of the event or circumstances giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute further Work. No such claim shall be valid

unless so made in accordance with the General Conditions. Any change in the Contract Sum resulting from such a claim shall first be authorized by Change Order executed by the City and Contractor. The City reserves the right to suspend Work of the Contractor pending the resolution of any claim for an increase in the Contract Sum.

(d) Any adjustment in the Contract Sum for duly authorized extra Work or change in the Work shall be determined based on the unit prices previously specified, to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the Contract Sum shall, at the option of the City, be determined by an acceptable lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee.

ARTICLE VIII.

Termination by City or Contractor

(a) If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly fails, except in cases for which an extension of time is provided, to make progress in accordance with the Schedule, or if the Contractor fails to make prompt payment to Subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Agreement, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor and its surety, terminate the Agreement, take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Sum shall exceed the expenses of

finishing the Work, including additional architectural, managerial and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the City promptly upon demand.

In the event of termination pursuant to this Article, the Contractor, upon the request of the City, shall promptly:

- (i) assign to the City, in the manner and to the extent directed by the City, all right, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefore, and
- (ii) make available to the City to the extent directed by the City all construction equipment owned by the Contractor and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the City by giving three (3) days prior written notice to the Contractor if the City, for any reason and in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to paragraph (a) of this Article VIII, the Contract Sum shall be reduced in an equitable manner by agreement between the parties or by arbitration.

ARTICLE IX.

Contractor's Liability Insurance

The Contractor shall purchase and maintain in full force and affect the following insurance coverages with an insurance carrier acceptable to the City:

The policy shall be endorsed to cover the liability of the Contractor under the General Conditions of this Agreement.

The Contractor and his Subcontractors shall procure and maintain during the life of this Agreement insurance of the types and minimum amounts as follows:

- (a) Workers' Compensation in full compliance with statutory requirements of Federal and State of Missouri law and Employers' Liability coverage in the amount of \$1,000,000.
- (b) Comprehensive General Liability and Bodily Injury
 - Including Death: \$500,000 each person*
 - \$3,000,000 each occurrence*
 - Property Damage: \$3,000,000 each occurrence*
 - \$3,000,000 aggregate*
- (c) Comprehensive Automobile Liability, Bodily Injury
 - Including Death: \$500,000 each person*
 - \$3,000,000 each occurrence*
 - Property Damage: \$3,000,000 each accident*

The Contractor's policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished the City prior to Contractor commencing the Work on this project. The certificates must state "The City of Wildwood is an additional insured."

*But not less than the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, R.S.Mo. The Contractor and his Subcontractors shall cause the insurer(s) to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, R.S.Mo. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for the City's rights or defenses with regard to its applicable sovereign, governmental, or official immunities and protections provided by state constitution or law.

ARTICLE X.

The Work

The Contractor shall furnish all labor, materials and equipment necessary to perform the scope of Work within the project limits. The Scope of Work includes the treatment of about 189 ash trees, within the public right of way, to prevent infestation from the Emerald Ash Borer pest, and as indicated within the bid documents and contractor proposal attached as **Exhibit 1**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF WILDWOOD

(the "City")

By: _____
James R. Bowlin, Mayor

Attest:

Megan Eldridge, City Clerk

ARBOR MASTERS TREE AND LANDSCAPE

(the "Contractor")

By:  _____
7584FBCD9FF940E...

Printed Name: Mark Cantrell

Vice President
Title



Exhibit 1

PROPOSAL

8250 Cole Pkwy
Lenexa, KS 66227

913-441-8888
www.ArborMasters.com

Proposal #: 76044
Salesperson: Mark Cantrell
mcantrell@arbormasters.com

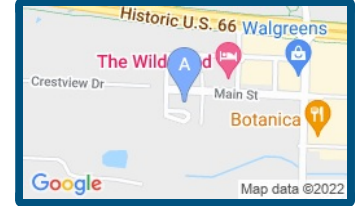
Proposal For

City of Wildwood

City of Wildwood
16860 Main St
Wildwood, MO 63040

Location

16860 Main St
Wildwood, MO 63040



2022 EAB

Terms
Net 30

ITEM DESCRIPTION	AMOUNT
2) Contract PHC Service 189 Ash Trees to be treated to control Emerald Ash Borers.	\$ 24,029.00
13" - 15" \$97.50	
16" - 18" \$115.00	
19" - 21" \$130.00	
22" - 24" \$150.00	

**Record the tag numbers and actual dbh on the list and return that to me upon completion.

All work will be completed in accordance with these plans unless subsequent changes are agreed upon in writing. Balances not paid by the due date are subject to late fees.

Pricing is good for 30 days from the date of this Proposal.

PROPOSAL SUBTOTAL	\$ 24,029.00
SALES TAX	\$ 0.00
PROPOSAL TOTAL	\$ 24,029.00

Signature

x

Please sign here to accept the terms and conditions

Date

TERMS AND CONDITIONS Thank you for choosing Arbor Masters! The following terms and conditions, together with the terms, prices, and specifications outlined on your estimate, proposal, and/or services agreement and Plant Health Care, if applicable for your state, constitute your entire agreement with Shawnee Mission Tree Service, Inc. DBA Arbor Masters and herein later referred to as "Arbor Masters".

PERFORMANCE BY ARBOR MASTERS Our Plant Health Care programs are designed to manage and not eradicate, insects, mites, and disease. Horticulturally tolerable levels of insects, mites, and disease may still be present after treatments. Epidemic infestations may require additional visits at additional cost to you, pending your approval. Each time we are on your property, an evaluation will be emailed indicating the service(s) performed and, if necessary, any additional recommendations and precautions to be observed. Remeasurement of your lawn, trees or shrubs may also be done if there is a discrepancy between the original estimate and the actual square footage or product(s) required. You will be notified of any price adjustments for future services. Work crews will arrive at the job site unannounced unless otherwise noted herein. Arbor Masters shall not be liable for damage or losses due to delays for weather or causes beyond our control, or for failure to observe precaution notices. By accepting this Agreement and engaging our services, you accept that every day during the Agreement's term is a day on which applications may be applied, and you are continuously on notice that Arbor Masters will perform applications on any day during the term of this Agreement if any other day becomes unnecessary or infeasible for performance (due to weather, scheduling conflicts, insect, mite and disease cycles) in which case you waive Arbor Masters' performance on such a day. Absent extraordinary circumstances, you request that Arbor Masters not further contact you concerning dates of application as such further contact would be a burden to you. You understand that, in connection with rendering our services to you, Arbor Masters may be required to bring trucks and other heavy equipment onto your driveway and other parts of your property. Arbor Masters operates under the assumption that any and all parts of your property onto which we must bring such equipment can sustain the presence, weight, and movement of that equipment, and you hereby hold Arbor Masters harmless for, and agree not to bring any claims against Arbor Masters as a result of, any damage or degradation to any part of your property that results from the presence on it of such equipment. You understand that certain work that Arbor Masters will render for you, such as dismantling large trees, will likely have a visible impact on your lawn and other parts of your property (e.g., divots, holes, sawdust, etc.). While we will do our best to minimize, mitigate, and repair any such impact, you hereby hold Arbor Masters harmless for, and agree not to bring any claims against Arbor Masters as a result of, any such impact on your property. You understand that after removal of stumps/roots that some shrubs/trees will continue to produce sprouts that may require multiple treatments, at additional cost to you, for control and that these treatments may result in damage to nearby plants/shrubs/trees and that you hereby hold Arbor Masters harmless for, and agree not to bring any claims against Arbor Masters as a result of, any damage to nearby plants/shrubs/trees. This Agreement may be terminated without penalty at any time by either party.

WORKMANSHIP All work is performed in a professional manner by experienced personnel outfitted with the appropriate tools and equipment to complete the job properly. Our work meets and exceeds the guidelines and standards set forth by ANSI (the American National Standards Institute) A300. Most work to be performed will be evaluated during an on-site inspection by an arborist who will submit an estimate, proposal, and/or services agreement for client approval. You are responsible for advising Arbor Masters regarding the location of underground utilities in the area where work is to be done. Arbor Masters shall not be responsible for damage to such utilities unless the location has been indicated prior to the commencement of work. Recommendations are intended to minimize or reduce hazardous conditions associated with trees. The owner or owner's representative is responsible for the annual scheduling of the required inspection of supplemental support systems. You have a duty to inspect your property within fifteen (15) calendar days of service and provide written notice within that time of alleged damage of any nature. If written notice is not provided within that time, you agree that any claims alleging damage of any nature and/or rights to withhold future payments under this Agreement are waived. Stump grinding will not take place on the day of tree removal. Typically, stumps will be ground within 4-7 days after removal, weather permitting.

NO WARRANTIES Except as expressly set forth in this agreement, no representations, warranties, or guarantees, express or implied, are intended with regard to products used or services performed.

INSURANCE Arbor Masters is insured for liability resulting from injury to persons or negligent damage to property, and all its employees are covered by Workers' Compensation Insurance. A certificate of insurance is available upon request.

OWNERSHIP By accepting this Agreement and engaging our services, you warrant that all trees, plant material and property on which work is to be performed are either owned by you or that permission for the work has been obtained from the owner by you. It is further agreed that the property owner or representative shall be responsible for obtaining any and all permits which may be required by local authorities. You hereby hold Arbor Masters harmless from all claims for damages resulting from your failure to obtain such permits.

TERMS OF PAYMENTS The total cost estimates within this Agreement are valid for 30 days unless otherwise noted. All invoices are payable upon receipt. A deposit of 50% may be required prior to the commencement of General Tree Care work. A finance charge at the maximum rate allowed under applicable state law will be added to invoices after 30 days. Your next treatment may not be performed if your account is past due. Past due balances void any guarantees. If outside assistance is used to collect the account, you are responsible for all costs associated with the collection including, but not limited to, reasonable attorneys' fees and court costs. Sales tax, if applicable, will be added to the amounts of this Agreement per your local and state tax jurisdiction. Should any terms of this Agreement be amended, subsequent payment for our services shall constitute your written acceptance thereof. By accepting this Agreement and engaging our services, you accept that the annual program total cost shall increase on January 1st of each year of this Agreement by the annual increase in the CPI (CPI-U) published on www.bls.gov for twelve months ending September 30 unless otherwise agreed, with a minimum annual increase of 1%. Further, you hereby acknowledge that you have received notice of and understand the total cost of Arbor Masters' services.

CONCEALED CONTINGENCIES You agree to pay Arbor Masters on a time and materials basis for any additional work required to complete the job occasioned by concrete or other foreign matter; stinging insect nests in the tree, trees, or branches; rock, pipe, or underground utilities encountered in excavations; and work not described within this Agreement, or any other condition not apparent in estimating the work specified.

STATE NOTIFICATION REQUIREMENTS Certain states require that specific product information be submitted to you. Such information will be provided to you in your proposal. Accepting your proposal waives any pre-notification requirement unless noted otherwise.

LIMIT OF LIABILITY Arbor Masters' total liability for any losses, damages, and expenses of any type whatsoever incurred by you or any of your guests, tenants, or invitees in connection with or resulting from Arbor Masters' services under this Agreement ("Losses"), which are caused by wrongful acts or omissions of Arbor Masters, shall be limited solely to proven direct and actual damages in an aggregate amount not to exceed the amounts actually paid to Arbor Masters hereunder. In no event will Arbor Masters be liable for special, indirect, incidental or consequential damages, irrespective of the form or cause of action, in contract, tort or otherwise, whether or not the possibility of such damages has been disclosed to Arbor Masters in advance or could have reasonably been foreseen by Arbor Masters.

ARBITRATION Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof, the work performed by Arbor Masters for you, and/or any commission or omission by Arbor Masters, shall be submitted to and determined by arbitration before a single arbitrator pursuant to the Commercial Rules of the American Arbitration Association. The arbitration shall be held at the American Arbitration Association office closest to the site at which Arbor Masters performed the underlying services for you. The arbitration award shall be final and binding. Judgment on the award may be entered in any Court having competent jurisdiction thereof.

CUSTOMER REFERRAL PROGRAM Word of mouth is our best advertising. When you are satisfied with our services, please tell a friend. Each time you refer a new customer to us who meets with an arborist, we will send you a thank you gift.

YOUR SATISFACTION IS IMPORTANT Should our service fall short of your expectations, please contact us immediately and we will do everything we can to make it right.