

**CONTRACTOR AGREEMENT  
CITY OF BOERNE, TEXAS**

This Contractor Agreement (the "Agreement") is hereby entered into on the 1<sup>st</sup> day of July, 2025 ("Effective Date") by and between McCoy Tree Surgery, Co. ("Contractor"), and the City of Boerne, a Texas home-rule municipality (the "City"), for the provision of certain tree trimming services within the City.

**RECITALS**

**WHEREAS**, the Contractor and the Lower Colorado River Authority ("LCRA"), a conservation and reclamation district of the State of Texas created pursuant to Article XVI, Section 59, of the Texas Constitution, previously entered into Services Contract #5476, and a subsequent amendment related thereto, concerning the trimming and pruning of trees, brush, and other vegetation interfering with power lines as set out in more detail therein, and providing for such services at a specified price ("Services Contract"), attached hereto as **Exhibit A and Exhibit B** and incorporated herein; and

**WHEREAS**, the City desires to receive, and Contractor is willing to provide, certain tree trimming services under the Services Contract referenced above at the pricing described in that agreement; and

**WHEREAS**, the City is authorized, pursuant to Texas Local Gov't Code Ch. 271, and Texas Gov't Code Ch. 791, to enter into cooperative purchasing agreements and is deemed thereby to satisfy state laws requiring competitive bidding; and

**WHEREAS**, the City and Contractor desire to enter into this Agreement to clarify and make explicit the rights, duties, and responsibilities between the parties, and in case of any conflicts between this Agreement and the provisions of the Services Contract, the terms of this Agreement shall prevail; and

**WHEREAS**, the City and Contractor recognize and agree that this Agreement does not amend or alter the rights, duties, and obligations between Contractor and LCRA;

**NOW, THEREFORE**, the City and Contractor agree that the recitals above are true and correct, and further agree mutually as follows:

1. Contractor agrees to furnish and deliver to the City the services requested by the City as further detailed on the "Customer Services Contract" attached to this Agreement as **Exhibit C** and incorporated herein. The City agrees to pay Contractor for such services at the prices shown on **Exhibit C**.
2. The City shall make payment for goods or services in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. The date of any payment, whether net or gross, shall be determined by calculating the number of days after receipt of invoices from Contractor.
3. This Agreement is made and shall be construed according to the laws of the State of Texas, without regard for conflicts of law principles. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Kendall County, Texas. This Agreement is made and is to be performed in Kendall County, Texas.
4. All written notices shall be deemed to have been duly served if delivered in person to an individual, officer, legal representative, or member of the party for whom it is intended, or if delivered at or sent by registered mail to the last business address known to the person giving the notice.
5. Contractor shall indemnify and hold the City, its officers, employees, elected officials, and appointed officials harmless from all claims, damages, losses, fines, penalties, costs and expenses, including reasonable

attorneys' fees arising out of or resulting from this Agreement, and either (1) caused, in whole or in part, by the act or omission of Contractor, anyone directly or indirectly employed by it (including without limitation, Contractor's subcontractors or suppliers of any tier), or anyone for whose acts it may be liable, or (2) related to any payments due or owing between the Contractor and its subcontractors or suppliers.

If the Parties are concurrently negligent, each Party's liability shall be limited to that portion of negligence attributable to it as determined under the applicable proportionate responsibility rules of the State of Texas.

6. Governmental Functions/Immunities. The parties hereby acknowledge and agree that the City is entering this Agreement pursuant to its governmental functions and that nothing contained in this Agreement shall be construed as constituting a waiver of the City's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law. Notwithstanding anything to the contrary herein, the parties hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, the City's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, Texas Local Government Code. Further, the parties agree that this Agreement is made subject to all applicable provisions of the Texas Civil Practice and Remedies Code, including, but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

### MISCELLANEOUS

7. The terms and conditions of any exculpatory or indemnity provisions in this Agreement shall be construed in favor of the party being protected and shall survive the termination and completion of this Agreement. The judicial doctrine that provides that documents or exculpatory provisions are to be construed against the drafter or provider of such documents or provisions does not apply to this Agreement.

8. Contractor shall perform its obligations under this Agreement as an independent contractor and shall not be considered an employee of the City for any purpose whatsoever, including, but not limited to, entitlement to City employee benefits. Contractor hereby expressly waives any claim or entitlement to such benefits. Furthermore, this Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture, or trust.

9. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute, court decision, or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

10. No right or remedy granted herein or reserved to either party is exclusive of any other right or remedy provided or permitted by law or equity, but each shall be cumulative of every other right or remedy given hereunder. The waiver or failure of either party to exercise, in any respect, any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

11. This Agreement is subject to the appropriation of public funds by the City in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Agreement for that fiscal year. The obligation of the City pursuant to this Agreement in any fiscal year for which this Agreement is in effect shall constitute a current expense of the City for that fiscal year only, and shall not constitute an indebtedness of the City of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Agreement, this Agreement may be terminated without any liability to either party.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and constitute one and the same instrument.

13. This Agreement, together with all exhibits referenced herein, embody the complete agreement of the

parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement.

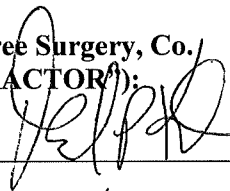
**IN WITNESS WHEREOF**, the Parties hereto have accepted the terms of this Agreement and caused this Agreement, including the exhibit attached hereto and incorporated herein by reference for all purposes, to be executed as of the date set forth above.

**CITY OF BOERNE, TEXAS**

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Secretary

**McCoy Tree Surgery, Co.**  
**("CONTRACTOR"):**  
By:  \_\_\_\_\_  
Name: MARK P KLINE  
Title: SECRETARY

