



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID: 2020-1201

Substitute

10/13/2020

Public Hearing: YES  NO

Department: Board of Commissioner - District 6

### SUBJECT:

Commission District(s): All Districts

Front Yard Tree Program with Trees Atlanta

Information Contact: Commissioner Gannon

Phone Number: 404 371 4909

### PURPOSE:

Approve a two-year agreement between DeKalb County and Trees Atlanta that will for a nominal cost to homeowners in unincorporated DeKalb enable them to have Trees Atlanta install overstory trees in their front yards to improve the tree canopy, reduce stormwater and address climate change.

### NEED/IMPACT:

As growth continues in DeKalb County, the tree canopy is decreasing. Climate change is causing warmer temperatures and more intense rainfalls. Trees help to mitigate these changes. Planting trees in the front yards of residences is the best opportunity to successfully grow overstory trees that will absorb carbon dioxide, reduce ambient temperatures and absorb rainwater. Trees also reduce energy consumption and costs for homeowners. This program will provide for 400 trees to be planted in 2021 and 2022. Several cities in DeKalb County have similar programs.

### FISCAL IMPACT:

The Planning and Sustainability Department will administer the program and use existing funding in an account that collects tree recompense funds from developers. There are sufficient funds in the account to pay for the \$92,500 cost for the two-year agreement. Homeowners will pay a \$25 application fee to Trees Atlanta.

### RECOMMENDATION:

To approve the resolution and authorize the chief executive officer to execute all necessary documents.....

## **SERVICE AGREEMENT**

**THIS SERVICE AGREEMENT** (this “Agreement”) is made and entered into as of \_\_\_\_\_ 2020, by and between the **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia (the “County”) and **TREES ATLANTA, INC**, a non-profit organization ("Trees Atlanta").

### **WITNESSETH:**

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

**WHEREAS**, the Tree Fund is funded by developers, builders, contractors, homeowners and others as a recompense for permitted and illegal removal and destruction of trees within the County; and

**WHEREAS**, the County desires to spend over a two-year period an amount not to exceed \$92,500 of the funds currently in the Tree Fund to plant and care for trees to enhance the County’s existing tree canopy; and

**WHEREAS**, the DeKalb County Board of Commissioners finds that it is in the public interest and facilitates and enhances the health, safety and welfare of the Citizens of DeKalb County to foster and enhance the tree canopy of the County; and

**WHEREAS**, the County Commissioners further find that the County receives a tangible benefit from the work performed and the product provided by Trees Atlanta pursuant to this Agreement; and

**WHEREAS**, Trees Atlanta is a non-governmental, non-profit organization, which for 35 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 the County’s urban forest; and

**WHEREAS**, Trees Atlanta has proposed a tree planting campaign in the County. The DeKalb County Front Yard Tree Planting Program contemplates that Trees Atlanta will plant a maximum of 400 trees in neighborhoods within unincorporated DeKalb County between October 1, 2020 and March 31, 2022 (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 and side yards of private property and publicly owned spaces to help increase overall tree canopy coverage in unincorporated DeKalb County. After its receipt of the initial payment required by section 3.1, Trees Atlanta shall promptly undertake and shall complete with all due diligence, the selection, planting and maintenance, as more particularly described herein, of a maximum of two hundred (200) 15-gallon trees per season at a cost of \$250 per tree for the Program during the 2020/21 and 2021/22 planting seasons (October 1 through March 31). 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 unincorporated DeKalb County, although up to a total of fifty (50) trees per year may be planted in public spaces or on County-owned land, as determined by the appointed representative(s) of the County’s Department of Planning & Sustainability. 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 a 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 (3) agrees to hold the County and Trees Atlanta harmless for any liability attributable to the planting or presence of the New Trees on the private property. No New Tree(s) shall be planted on a particular parcel of private property until the appointed representative of the County’s Department of Planning & Sustainability receives a signed copy of the agreement fully executed by the property owner(s) of record for that parcel of private property on which the New Tree(s) are to be planted. Such agreement may be in electronic form.
- 1.1.3 Each homeowner may request up to a total of two (2) trees for her/his front yard and/or side yard of a corner lot as approved by the DeKalb County designated representative from the Planning & Sustainability Department.
- 1.1.4 All New Tree(s) shall be planted no later than March 31, 2022. However, should the Agreement not be approved and signed by the Program start date (October 1, 2020), 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, 2020 and the Agreement signing date. Planting season begins October 1 and ends March 31.

- 1.1.5 For New Trees planted on private property, Trees Atlanta shall provide, on an as needed basis, one pest control treatment, one fertilization treatment and one pruning 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 prune and provide pest control for the New Tree(s). Homeowners receiving New Tree(s) on their property shall sign an agreement obligating them to water the New Tree(s) during the first two years and they shall notify Trees Atlanta if they notice any adverse conditions of the New Tree(s) during the two-year replacement period as referenced in section 1.1.8.
- 1.1.6 For New Trees planted in public spaces or on County-owned property, Trees Atlanta shall provide two-years' maintenance services to include: up to 20 watering visits during Year 1 and watering as necessary during Year 2, a single pruning during Year 2 and pest and fertilization treatments only as needed for tree health throughout the two-year maintenance period.
- 1.1.7 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 of the New Trees.
- 1.1.8 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 County.
- 1.1.9 Where possible, replacement trees shall be the same species as the tree replaced, as long as the species is compatible with the planting location.
- 1.1.10 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 1.1.8 above. Replacement of trees under this section shall only be executed with prior County approval.
- 1.1.11 Pursuant to specifications of the Department of Planning & Sustainability, 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 County. The County shall have access to Trees Atlanta's tree planting records and tree inventory system upon request. Trees Atlanta shall utilize i-Tree to calculate details related to the environmental benefits of the New Trees at maturation 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" and the DeKalb County "Tree Protection Ordinance – Sec. 14-39. – Tree Protection" 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 DeKalb County Tree Protection Ordinance, or other closely similar species as agreed to between Trees Atlanta and the designated DeKalb County Representative from the Planning & Sustainability 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 The amount of pruning, if any, to be performed on each New Tree will be determined by the New Tree's response to planting. Other than removal of weak, broken, or diseased branches, no pruning will be performed on New Trees until after the first growing season.
- 2.4.2 Trees Atlanta will provide mulching for all New Trees and weed control and mitigation as may be required.
- 2.4.3 Trees Atlanta will perform a fertilizer application of the New Trees planted for the Program in the form of a two (2) year slow release fertilizer, only as required for tree health.
- 2.4.4 Trees Atlanta will stake New Trees only in the following circumstances.
  - 2.4.4.1 Protective staking may be used for New Trees that are able to stand without support to provide a barrier from potential harms such as foot traffic, mowers, and vehicles.

- 2.4.4.2 Anchor staking may be used to hold a root ball in place during the period of reestablishment for New Trees with otherwise adequate support.
- 2.4.5 When staking is permitted by the Department of Planning & Sustainability Director or her/his designee, Trees Atlanta will determine the extent of staking by considering the New Tree's strength, form and condition at planting, expected wind conditions, the amount of vehicle or foot traffic, and the level of follow up maintenance.
  - 2.4.5.1 Trees Atlanta will perform periodic follow up inspections on New Trees that are staked.
  - 2.4.5.2 Trees Atlanta will remove the staking from a New Tree as soon as the New Tree is capable of providing its own anchorage and support.

## 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 unincorporated County residents with property appropriate for planting. However, current officers, agents, employees and elected officials of DeKalb County, and their immediate family members, are not eligible to participate in this Program. Trees Atlanta shall ask for this information on its application form, and which shall include a statement that such homeowners are not eligible to participate. Further, Trees Atlanta may, in consultation with the County, 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 County will promote the Program to its eligible residents.
- 2.5.3 The designated DeKalb County representative from the Planning & Sustainability Department and Trees Atlanta will identify a limited tree species list from which participating residents will be allowed to choose.
- 2.5.4 Trees Atlanta will create an online portal specific to unincorporated County 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. The portal will also facilitate the collection of the required \$25 per tree application fee.

## **Payments; Documentation**

### 3.1 Payments

The cost of the Program shall not exceed \$46,250 per year or \$92,500 over the two-year term of this agreement.

Trees Atlanta's preferred payment method is via ACH or automated clearinghouse; a County-issued check is also an accepted form of payment.

#### 3.1.1 2020/21 Planting Season:

Trees Atlanta may submit a request for payment of \$25,000 upon signing this Agreement to allow for the purchase of New Trees, needed supplies and program marketing for the 2020/21 planting season (primarily setting up the website outlined in Section 2.5.4). Trees Atlanta may submit a second request for payment of *up to* \$21,250 after submitting certification to the appointed representatives in the Department of Planning & Sustainability for the completion of the 2020/21 planting season, and after receiving the representative's written authorization. The amount of the second payment may be less than \$21,250 if fewer than 200 total trees have been planted and certified for the 2020/21 planting season. The amount of the second payment may be less than \$21,250 if fewer than 200 total trees have been planted and certified for the 2020/21 planting season. The exact amount will be determined by the Director of Planning and Sustainability based on the actual number of trees planted.

\* It is the intention of the County and Trees Atlanta that Trees Atlanta will collect a \$25 application fee per *household* from each resident requesting tree(s). Homeowners requesting two (2) trees will only be charged a single \$25 fee. The collection of the \$25 fee by Trees Atlanta will have the effect of reducing the County's cost per tree from \$250 to \$225, regardless of whether the homeowner receives one or two trees. Trees Atlanta will deduct any such amounts that it collects from homeowners from the second request for payment.

#### 3.1.2 2021/22 Planting Season:

Trees Atlanta may submit a request for payment of \$25,000 on or after July 1, 2021 for the purchase of New Trees and needed supplies and program marketing for the 2021/22 planting season. Trees Atlanta may submit a second request for payment of *up to* \$21,250 after submitting certification to the appointed representatives in the Department of Planning and Sustainability for the 2021/22 planting season, and after receiving the representative's written authorization. The amount of the second payment may be less than \$21,250 if fewer than 200 total trees have been planted and certified for the 2020/21 planting season. The exact amount will be determined by the Director of Planning and Sustainability based on the actual number of trees planted.

\* It is the intention of the County and Trees Atlanta that Trees Atlanta will collect a \$25 application fee per *household* from each resident requesting a front yard tree. Homeowners requesting two (2) trees will only be charged a single \$25 fee. The collection of the \$25 fee by Trees Atlanta will have the effect of reducing the County's cost per tree from \$250 to \$225, regardless of whether the homeowner receives one or two trees. Trees Atlanta will deduct any such amounts that it collects from homeowners from the second request for payment.

### 3.2 Documentation



Trees Atlanta shall send documentation of the status of the Program to the Department of Planning and Sustainability at least quarterly. Documentation shall include all of the information set forth in the Planting Plan, except that the proposed date of planting shall be changed to the actual date of planting. The documentation shall also include all maintenance work performed on the planted New Trees.

3.2.1 Trees Atlanta shall provide an annual report, in a PowerPoint format, to the DeKalb County Department of Planning & Sustainability that will (at a minimum) include the following information: The (1) total number of trees (and their species) planted under the Program that year, and (2) their precise locations shown on a County map. The annual report shall also include (1) sample pictures of plantings, (2) commentary or feedback from some of the homeowner participants, and (3) an indication of the tree canopy benefits as identified through the use of i-Tree.

### 3.3 Records

Trees Atlanta will maintain records and accounts in connection with the performance of this Agreement that will accurately document incurred costs, both direct and indirect, of whatever nature for a period of three (3) years from the date of the last payment by the County to Trees Atlanta pursuant to section 3.1 above. The County or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification.

## **Liability; Indemnity and Insurance**

### 4.1 County's Liabilities

The County 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 County's gross negligence, intentional misconduct, or breach of this Agreement.

### 4.2 Indemnification and Hold Harmless

#### 4.2.1 Indemnification and Hold Harmless Agreement by Trees Atlanta

Trees Atlanta agrees to indemnify, defend, and hold harmless the County and the County's officers, agents, employees, and elected officials in their capacities as such (collectively, "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") arising from the performance of the services under this Agreement,

but only if and to the extent that such Claims are the proximate result of the negligence of Trees Atlanta in its performance of the services under this Agreement; 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 a contract with Trees Atlanta that includes an indemnification and hold harmless provision in favor of the County and the County's officers, agents, employees, and elected officials substantially in scope and substance as described above, and any Claims are suffered by the County or the County's officers, agents, employees, and elected officials as a result (in whole or in part) of the negligence or willful misconduct of such contractor or subcontractor (including the negligence or willful misconduct of any such contractor's or subcontractor's officers, employees, agents, or other persons acting at the direction or under the supervision of such contractor or subcontractor), then the indemnification undertakings of the contractor or subcontractor, as applicable, in favor of the County shall apply and the foregoing indemnity from Trees Atlanta in favor of the County and the County's officers, agents, employees, and elected officials shall be inapplicable and unenforceable except to the extent that such Claim is the direct and proximate result of the sole negligence of Trees Atlanta. Notwithstanding anything to the contrary contained in this Agreement, Trees Atlanta shall have no duty to remediate, or indemnify any Indemnified Person with respect to, 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 is directed in writing by the County, 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. Trees Atlanta's agreement to indemnify and hold harmless as set forth hereinabove shall be limited by the policy limits or terms of any insurance obtained by Trees Atlanta, with such required limits and terms set forth within Section 4.3 of this agreement.

Exclusions from Indemnity: Trees Atlanta's aforesaid indemnity and hold harmless obligations 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 substantial part, by such Indemnified Person's negligence or willful misconduct; or (ii) any Claims resulting from the act or omission of any person who is not an officer, employee, or agent 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.

#### 4.2.2 Indemnification and Hold Harmless Agreement by Trees Atlanta's Contractors

Trees Atlanta shall require each of its contractors and subcontractors performing any work related to this Agreement to execute an agreement with Trees Atlanta that includes an indemnification provision in form and scope substantially as set forth above and in favor of the County and the County's officers, agents, employees, and elected officials, with the exception that the name of contractor or subcontractor, as

applicable, shall replace “Trees Atlanta” as the party providing the indemnity to the County; and Trees Atlanta’s agreement with such contractor or subcontractor shall make clear that the County is a third party beneficiary of such indemnification.

- 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 County 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 County 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 County’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 County. If Trees Atlanta receives notice of non-renewal or material adverse change of any of the required coverages, Trees Atlanta shall promptly advise the County in writing. Failure of Trees Atlanta to promptly notify the County 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 County.

- 4.3.5.2 Workers' Compensation and Employer's Liability and Property insurance policies shall contain a waiver of subrogation in favor of the County and the County'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 County and the County'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 County. Certificates of Insurance showing that such coverage is in force shall be filed under this Agreement by the Contractor to the County.

Certificate Holder should read:

DeKalb County, Georgia  
1300 Commerce Drive  
Decatur, GA 30030

Trees Atlanta shall require the same "Insurance Requirements" of/from all sub-contractors who will be working in the DeKalb County "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 County 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 County, the County will enter into such litigation as is necessary to protect the interest of the County and to effectuate the Equal Employment Opportunity Program of the County.
- 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, 2024 ("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 County, in an amount not to exceed \$92,500 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 County 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 County, the termination will not affect any rights or remedies of the County 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 County all County-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 County 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 County, 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 County. Any attempted assignment or delegation by Trees Atlanta without the prior express written approval of DeKalb County may, at the County'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 DeKalb County:**

Andrew Baker, AICP

**With copies to:**

*Designated P&S Representative*

Director, Planning & Sustainability  
DeKalb County  
330 West Ponce de Leon Avenue  
Decatur, GA 30030

**If to Trees Atlanta:**

Greg Levine, Co-Executive Director  
225 Chester Ave. SE  
Atlanta, GA 30316

Planning & Sustainability  
DeKalb County  
330 West Ponce de Leon Avenue  
Decatur, GA 30030

**With copies to:**

Connie Veates, Co-Executive Director  
225 Chester Ave. SE  
Atlanta, GA 30316



### **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 DeKalb County, Georgia. For the purpose of venue, all suits or cause of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia, notwithstanding any other provision of Georgia law, including any right to be sued in the county 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.

**DeKalb County, Georgia**

**ADOPTED** by the DeKalb County Board of Commissioners, this day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
STEPHEN R. BRADSHAW  
Presiding Officer  
Board of Commissioners DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer this day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
MICHAEL L. THURMOND  
Chief Executive Officer DeKalb County, Georgia

**ATTEST:**

\_\_\_\_\_  
BARBARA H. SANDERS-NORWOOD, CCC  
Clerk  
Board of Commissioners and  
Chief Executive Officer DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ANDREW BAKER  
Director  
DeKalb County Department of Planning & Sustainability

\_\_\_\_\_  
VIVIANE H. ERNSTES  
County Attorney

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

**TREES ATLANTA, INC.**

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

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

ATTEST:

By: \_\_\_\_\_  
Secretary

(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 225 Chester Ave. SE, Atlanta, Georgia 30316, 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 COUNTY PUBLIC BENEFIT APPLICATION**

By executing this affidavit under oath, as an applicant for a DeKalb County, 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 DeKalb County 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 DeKalb County 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

DeKalb County 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: \_\_\_\_\_