

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this, the 24th day of April, 2024 by and between the City of Dripping Springs, Texas (hereinafter referred to as the "City") and The F.A. Bartlett Tree Expert Company, (hereinafter referred to as "Contractor"), is understood and agreed to be as set forth herein:

1. **Scope of Work:** Contractor will provide tree care services in the form of task orders for different areas of the City, upon written request of the City Administrator or the Administrator's designee.
2. **Description of Work:**

As described in the Scope of Work in Attachment "A" for trees as designated by the City Administrator or Administrator's Designee through written task order as shown in Attachment "B".
3. **Payment for Services:** The City shall pay Contractor for the performance of the Agreement, in current funds, as outlined in each Task Order. An invoice will be submitted upon completion of the work specified in this Agreement and related task orders. Payment is due within 30 days of the City's receipt and approval of the invoice.
4. **Duration:** This Agreement is active for twelve (12) months. This Agreement may be renewed for up to two (2) subsequent one year terms.
5. **Termination:** The City may cancel this Agreement, without penalty or obligation, at any time with thirty (30) days written notice.
6. **Relationship of Parties:** It is understood by the parties that Contractor is an independent contractor with respect to the City and not an employee of the City. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Contractor. The City may contract with other individuals or firms for tree services.
7. **Employees:** Contractor employees, if any, who perform services for City under this Agreement shall also be bound by the provisions of this Agreement. At the request of City, Contractor shall provide adequate evidence that such persons are Contractor's employees.
8. **Mandatory Disclosures:** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) The Contractor also confirms it is in compliance with all Texas requirements related to government contracts including: (1) no boycott of Israel; (2) not listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) Contractor does not have a policy or practice of discriminating against firearm entities or firearm trade associations; (4) Contractor does not boycott energy

companies; and Contractor is compliant with all other Texas laws including any additional disclosure requirements.

9. Injuries/Insurance: Contractor acknowledges its obligation to obtain appropriate insurance coverage for the benefit of Contractor’s employees, if any. Contractor waives the rights to recovery from City for any injuries that Contractor and/or Contractor’s employees may sustain while performing services under this Agreement. The Contractor is to provide a copy of a certificate of insurance coverage to City at least ten (10) days prior to end of any existing coverage period if Contractor uses the services of any of Contractor’s employees for the provision of services to the City.

10. INDEMNIFICATION: CONTRACTOR AGREES TO INDEMNIFY AND HOLD CITY HARMLESS FROM ALL CLAIMS, LOSSES, EXPENSES, FEES, INCLUDING REASONABLE ATTORNEY’S FEES, COSTS, AND JUDGMENTS THAT MAY BE INCURRED BY CITY TO THE EXTENT THAT RESULT FROM NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, CONTRACTOR’S EMPLOYEES, IF ANY, AND CONTRACTOR’S AGENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIS INDEMNITY WILL ONLY APPLY IN RESPECT OF ACTS OR OMISSIONS OCCURRING DURING THE PERIOD BEGINNING WHEN THE PERFORMANCE ON SITE BEGINS AND ENDING WHEN THE PERFORMANCE ON THE SITE CONCLUDES.

11. Assignment: Contractor’s obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the City.

12. Notice: All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

Attention: Michelle Fischer
 City of Dripping Springs
 P.O. Box 384
 Dripping Springs, TX 78620
 (512) 858-4725

For the Contractor:

Attention: Michael Embesi
 F.A. Bartlett Tree Expert Company
 2403 Howard Lane
 Austin, TX 78728
 (512) 826-0452

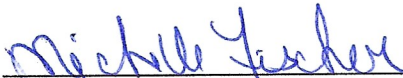
Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received five (5) days after deposit in U.S. mail.

13. Entire Agreement: This Agreement and its attachments contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties. If a conflict exists between this Agreement and any Attachment, this Agreement shall prevail. For greater clarity, Bartlett’s General Terms Consulting are also included as part of this Professional Services Agreement. In instances where Bartlett’s terms conflict with the rest of the Professional Services Agreement, the Professional Services Agreement will prevail.

- 14. **Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
- 15. **Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 16. **Waiver of Contractual Right:** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
- 17. **Applicable Law:** The laws of the State of Texas shall govern this Agreement.
- 18. **Venue:** The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.
- 19. **Consequential Damages.** Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.

CITY OF DRIPPING SPRINGS:


**F.A. BARTLETT TREE EXPERT
COMPANY:**



Michelle Fischer, City Administrator



Matthew Farin, Executive Vice President



Date



Date



General Terms Commercial

The F.A. Bartlett Tree Expert Company (“**Bartlett Tree Experts**”) provides tree-care and related services to commercial and government clients. The agreed upon “Work” has been expressed in a separate Client Agreement between Bartlett Tree Experts and the Client, and is identified within the portion of the Client Agreement communicating the Scope of Work, the Goals, the Specifications, the Schedule for the Work, and the Payment Terms. These general terms combine with the approved Client Agreement and form the complete agreement between the parties.

Article 1 TREE RISK

1.1 Tree Risk

- (a) The Client acknowledges that having trees on one’s property involves risk, including the risk that a tree or tree limb might fall. As part of the Work, Bartlett Tree Experts may recognize the risk posed by failure of trees within the scope of the Work and recommend to the Client ways to reduce that risk, but the Client acknowledges that Bartlett Tree Experts cannot detect all defects and other conditions that present the risk of tree failure and cannot predict how all trees will respond to future events and circumstances. Trees can fail unpredictably, even if no defects or other conditions are apparent. Bartlett Tree Experts will not be responsible for damages caused by subsequent failure of a tree, or tree part, within or around the scope of the Work due to defects or other preexisting structural or health conditions.
- (b) Unless the Work includes having Bartlett Tree Experts perform a tree risk assessment for designated trees, the Client acknowledges that in performing the Work Bartlett Tree Experts is not required to inspect and report to the Client on risks to, and risks posed by, trees on or near the Client’s property.
- (c) The Client also acknowledges that because trees are living organisms that change over time, the best protection against the risk associated with having trees on the Client’s property is for the Client to arrange to have them inspected by a qualified arborist annually and after each major weather event to identify any defects or other conditions that present the risk of tree failure. Then, once inspected, the Client should review any possible defects or conditions that present the risk of failure and request recommendations for, and implement, remedial actions to mitigate the risks.

Article 2 THE WORK

2.1 Ownership

The Client states that all trees and other vegetation within the scope of the Work are owned by the Client or that the owner has authorized the Client to include them within the scope of the Work.

2.2 Insurance

- (a) Bartlett Tree Experts states that it is insured for liability resulting from injury to persons or damage to property while performing the Work and that its employees are covered under workers’ compensation laws.
- (b) The scope of ongoing operations of the Work shall be defined as beginning when the performance on the site

begins and ending when the performance on the site concludes.

2.3 Compliance

- (a) Bartlett Tree Experts shall perform the Work competently and in compliance with the law and industry standards, including the American National Standards Institute’s A-300 Standards for tree care.
- (b) The Client is responsible for obtaining and paying for all required local permits.

2.4 Access over Roads, Driveways, and Walkways

- (a) The Client shall arrange for Bartlett Tree Experts’ representatives, vehicles, and equipment to have access during work hours to areas where the Work is to be performed. The Client shall keep roads, driveways, and walkways in those areas clear during work hours for the passage and parking of vehicles and equipment. Unless the Client Agreement states otherwise, Bartlett Tree Experts is not required to keep gates closed for animals or children.
- (b) The Client acknowledges that Bartlett Tree Experts is not responsible for damage to driveways, walkways, septic tanks, wells, underground irrigation, and other human-made surface or subsurface features caused by Bartlett Tree Experts trucks and equipment accessing, and being present in, areas where the Work is performed.

2.5 Access through a Dwelling or Building

If the Work requires access through the interior of the Client’s dwelling or the common interior areas of a multi residence or commercial building, the Client states that they have the authority to allow this access, or the owner has authorized the Client to allow this access in order for the Work to be completed as stated on the Client Agreement.

2.6 Concealed Features

- (a) The Client acknowledges that the Work could be delayed or made more expensive by the presence of features that are not apparent to Bartlett representatives (“**Concealed Features**”). Concealed Features could be above ground or underground and could be human-made (including irrigation systems, underground lighting, septic systems, pipes, oil tanks, utility lines, masonry, or concrete) or natural (including rocks and insect nests). The Client states that it has notified Bartlett Tree Experts of all Concealed Features that it is aware of in those areas where the Work is to be performed.
- (b) Bartlett Tree Experts will not be liable for damage to Concealed Features that the Client does not notify Bartlett of in writing.

- (c) If Concealed Features prevent the Work from continuing, the Client agrees to pay Bartlett Tree Experts for the all portions of the Work completed up until the time the concealed features became apparent and delayed or prevented the Work from continuing. The Client also agrees that in the event that the Concealed Features prevent any further Work from proceeding, or significantly alter the costs of the remainder of the Work within the Agreement, then the remainder of the Agreement between the Client and Bartlett Tree Experts will be considered nullified, with neither party having any further obligations to the other, and a new written agreement will be formed prior to any further Work being performed.

2.7 Potential Harm to Animals

The Client acknowledges that pets and other animals might be harmed if they swallow tree debris, such as sawdust, leaves, or branches, created during performance of the Work. Bartlett Tree Experts cleans up sawdust and other debris it creates in working on a tree, but it is unrealistic to expect that it will dispose of every piece of sawdust or debris. The client is responsible for ensuring that pets and other animals are kept from any area where debris created during the Work is present until such time as exposure of any remaining debris to the elements has sufficiently reduced the risk of harm to animals.

2.8 Weather-Event Damage

The Client acknowledges that because remediating weather-event damage might result in further damage to a structure, property, or landscaping feature already damaged in that weather event regardless of the care taken, Bartlett Tree Experts will not be responsible for any such further damage to any structure, property or landscaping feature when remediating or removing trees or tree parts that have fallen on structures, patios, decks, fences, driveways, or hardscapes are part of the Work.

2.9 Cables, Braces and Tree-Support Systems

- (a) The Client acknowledges that cables, braces or tree support systems are intended to reduce the risk associated with tree part breakage by providing supplemental support to certain areas within trees and in some cases by limiting the movement of leaders, limbs, or entire trees, and are intended to mitigate the potential damage associated with tree part breakage; but that such supplemental support systems cannot eliminate the risk of breakage or failure to trees or tree parts entirely, and future breakage and damage is still possible.
- (b) The Client acknowledges that for cables, braces or tree-support systems to function optimally, the Client must arrange for them to be inspected and maintained by a qualified arborist periodically and after each major weather event.

2.10 Lightning Protection Systems

- (a) The Client acknowledges that lightning protection systems are intended to direct a portion of the electricity from a lightning strike down through the system into the ground, and mitigate the potential damage to the tree from a

lightning strike, but that such systems cannot prevent damage to structures, nor can such systems prevent damage to trees caused by lightning entirely.

- (b) The Client acknowledges that for lightning protection systems to function optimally, the Client must arrange for them to be inspected and maintained by a qualified arborist periodically and after each major weather event.

2.11 Recreational Features

- (a) The Client acknowledges that Bartlett Tree Experts recommends stopping the use of, and removing, any tree house, ropes course, swing, or other recreational feature attached to a tree. Regardless of the health or condition of the tree, such features might be unsuited for the intended use or might place unpredictable forces on the feature or the tree, resulting in failure of the feature or the tree and injury to persons or damage to property. Bartlett Tree Experts is not responsible for the consequences of use of any such feature.
- (b) The Client acknowledges that if a recommendation is made to mitigate an observed and immediate safety issue on a tree with any such device or feature attached, such as the removal of a dead, dying, or broken limb that could fall and injure a person or damage property, the Client should not infer that following the recommendation and mitigating the immediate safety issue makes the tree in question safe for the use of the attached device or feature.

2.12 Tree Removal and Pruning

- (a) The Client acknowledges that in removing or cutting down a tree as part of the Work, Bartlett Tree Experts will cut the tree approximately 12 inches from the ground. The Client understands that any remaining stump may present a tripping hazard, and the Client should mark the area if necessary. Removing or grinding stumps is not included as part of tree removal unless stated in the Client Agreement.
- (b) If pruning tree limbs or shrubs is part of the Work, Bartlett Tree Experts will develop specifications to help meet the present goals of the Client, in accordance with industry standards. Trees and shrubs will typically require follow up pruning at various intervals to maintain a Client's goals. Based on those goals; and the species, size, location, health, and growth pattern of the tree(s) or shrub(s) which are pruned, the Client should conduct routine monitoring of each tree or shrub and communicate the need for future pruning to a qualified arborist in order to maintain the established or desired plant form or objectives.

2.13 Trees Infested with Emerald Ash Borer

- (a) The Client acknowledges that Ash trees or other trees infested with emerald ash borer can become extremely brittle and dangerous within a short period of the infestation, and the conditions of such trees could adversely change between the time a proposal to work on such a tree was written, and the time that the work is scheduled for completion.
- (b) The Client understands that if any tree or trees infested with emerald ash borer have become too dangerous to access,

climb, prune, or rig from without risking injury or damage to the Client's property, then that portion of the proposal will be considered nullified, with neither Bartlett Tree Experts nor the Client owing anything to the other for that portion of the Work, and a new proposal will need to be written and agreed upon before any work can proceed on any such infested tree.

2.14 Tree Care Maintenance or Recurring Programs

- (a) If the Client Agreement is for ongoing tree care or landscape maintenance or for a recurring maintenance or plant health care program for trees, plants or turf areas, the Client acknowledges that the purpose of this type of agreement is to maintain tree, shrub, or turf health and beauty.
- (b) The Client understands that any inspections that may be conducted during any such ongoing tree care, landscape maintenance, or recurring maintenance or plant health care type contracts are for the purpose of evaluating plant health, and determining any appropriate treatment recommendations according to the client's tree, shrub or turf health needs, and are not meant to be a safety inspections, or tree risk assessments.
- (c) The Client also understands that in no way does Bartlett Tree Experts imply nor should the Client infer that Bartlett Tree Experts assumes the responsibility for inspecting, identifying, or correcting hazards or safety issues on or near the Client's property, or conducting tree risk assessments during the course of any of its ongoing tree care, landscape maintenance, or reoccurring maintenance contracts.

2.15 Stump Grinding

- (a) If the Work includes stump-grinding services, the Client acknowledges that grinding will take place well below ground level, and the Client understands that the stump grinding area might present a tripping hazard, and the Client should mark the area if necessary until the Client removes the stump grinding debris and fills the stump grinding holes with soil to grade.
- (b) Unless the Client Agreement states otherwise, Bartlett Tree Experts is not required to remove stump-grinding debris filling stump-grinding holes, or fill stump grinding holes to grade with soil.
- (c) If tree grates or metal grates or other man made protective features existed prior to the stump removal, it is the Client's responsibility to ensure that the grates or manmade features are re-installed correctly after the stump removal and do not pose a tripping hazard.

2.16 Root Pruning

In the right circumstances, root pruning is a valuable and necessary service, but it might pose a risk to the health and structural integrity of trees. To limit that risk, Bartlett Tree Experts performs root pruning to industry standards, but the Client acknowledges that the health and structural integrity of trees within the scope of the Work might nevertheless be adversely affected by any root pruning performed as part of the Work. Bartlett Tree Experts shall assist the Client in

understanding the risks involved before opting for root pruning, but the Client will be responsible for deciding to proceed with root pruning.

2.17 Tree Risk Assessments and Inventories

- (a) If the Client Agreement is specifically for Bartlett Tree Experts to provide a level I, II, or III Tree Risk Assessment for any tree or group of trees to the Client in accordance with industry standards, the Client understands that any risk ratings and recommendations for mitigating such risks will be based on the observed defects, conditions, and factors at the time of the tree risk assessment or inventory,
- (b) The Client acknowledges that any recommendations made to mitigate risk factors or manage tree populations will be made in accordance with industry best practices and standards, but that the decision to implement the recommended mitigation practices, remove the risk factors, or manage the trees rests solely with the client.
- (c) The Client understands that all risk ratings used are intended to assist the Client with understanding the potential for tree or tree part failure, and are not meant to be used to declare any tree or tree part to be safe or free from any defect. As such, the Client should not infer that any tree or trees not having a condition class of poor or dead, or not showing a potential failure to be likely or imminent, are "safe" or will not fail in any manner.
- (d) The Client understands that it is the Client's responsibility to ensure that the assessed tree or trees are continually inspected and reassessed periodically, or after any major weather event, in order to ensure that risk rating information or any other information is kept current, and to enter any changes to risk ratings or mitigation measures to the inventory or tracking system used by the Client.

2.18 Client Trees in Hazardous Condition

If the Client Agreement specifies that one or more trees within the scope of the Work are in hazardous condition, are high or moderate risk, or should be removed for safety reasons, the Client acknowledges that removing those trees would prevent future damage from trees or tree limbs falling. If the Client requests that one or more of those trees be pruned instead of removed, the Client acknowledges that although pruning might reduce the immediate risk of limbs falling, it does not preclude the possibility of future limb, stem, or root failure. Bartlett Tree Experts is not responsible for any such future failure.

2.19 Plant Health Care or Soil Care and Fertilization Treatments

- (a) Bartlett Tree Experts states that plant health care and/or soil care and fertilization treatments will be conducted in accordance with industry standards for such services.
- (b) The Client acknowledges that if the Client Agreement requires markers or notification signs to be left on the property, then the signs must be left in place for twenty-four hours or however long is stated on the Client Agreement, whichever is longer. At the end of the prescribed period, it

will be the Client's responsibility to remove and dispose of the signs.

- (c) Bartlett Tree Experts will provide the Client with copies of all pertinent product label or safety data sheet information upon request.
- (d) The Client acknowledges that plant health care treatments are intended to mitigate pest levels to an acceptable degree, and are not intended to eradicate or eliminate any insect, disease, or other pest entirely.
- (e) The Client acknowledges that soil care and fertilization treatments may not have the intended effect if drought conditions or lack of irrigation prevent the tree, shrub, or turf area from receiving adequate water throughout the growing season.

2.20 Schedule of Plant Health Care or Soil Care and Fertilization Treatments

- (a) Bartlett Tree Experts will schedule all treatments for the appropriate period, given the type of plant, pest, infestation levels, weather patterns, the objectives, and other environmental considerations.
- (b) If the Client has requested a specific date within that period for the Client's plant health care treatment, the date will be placed on the agreement. If Bartlett Tree Experts is unable to perform the services on the agreed upon date, due to weather conditions, or other unforeseeable delays, Bartlett Tree Experts will reschedule the treatment for a date agreeable to the Client.
- (c) If weather conditions or other unforeseen conditions prevent or delay treatment during periods specified in the Client Agreement, and the Client has not requested a specific date, then Bartlett Tree Experts will automatically reschedule the treatments for the next most appropriate period and notify the Client.

2.21 Integrated Pest Management

- (a) If the Work includes integrated pest management services, the Client understands that this service will involve plant health care treatments which will be tailored to meet the Client's needs for specific trees, shrubs, turf areas, or plants. In delivering this service, Bartlett Tree Experts will consider the Client's objectives, priorities, budgetary concerns, plant materials, site conditions, pest and disease infestation levels and the expectations of those levels, and timing issues.
- (b) The Client acknowledges that this service may involve one or more inspections of specific plants to help determine insect and disease concerns, the sampling of specific plant materials or soil areas, an understanding of the cultural needs of certain plants, consideration of biological control concepts and limitations (natural and/or introduced predators), recommended improvements to physical site conditions, or the use of pesticide treatments. The integrated pest management service does not combine all possible controls and concepts for every tree, shrub, turf area, or plant, but rather it considers the most reasonable option or options for control of and mitigation of insect and

disease damages to the specific trees, shrubs, turf areas or plants as designated by the Client to meet the Client's goals.

- (c) The Client also understands and acknowledges that during the course of an integrated pest management program, as inspections are taking place, and treatments or other services are being performed to certain trees or shrubs, not every tree or shrub inspected will require a specific treatment or other service, and in fact, some trees or shrubs may not require any specific treatment or other service throughout the course of a season to maintain health and vigor if the inspections show insignificant pest thresholds, and sound environmental and cultural conditions.
- (d) The Client also understands that tree, shrub, plant and turf inspections conducted during the integrated pest management program are for the purpose of determining plant health issues and, insect and disease thresholds; and are not conducted for the purposes of determining tree, shrub, plant, or turf safety.

2.22 Trees in Poor Health or a Severe State of Decline

The Client acknowledges that if a tree is in poor health or in a severe state of decline, Bartlett Tree Experts cannot predict how that tree will respond to any recommended plant health care or soil care and fertilization treatment and might not be able to prevent that tree from getting worse or dying.

2.23 Fruit-Reduction Treatment

If fruit-reduction (including olive-reduction) treatment forms part of the Work, the Client acknowledges that although Bartlett Tree Experts will take steps to minimize the extent to which the pesticide used in this treatment comes into contact with plants under or near the treated trees or shrubs, it is likely that some contact will occur and might damage or kill understory plants. Bartlett Tree Experts will not be liable for any such damage.

2.24 Fruit Tree or Crop Treatment

If the Work includes plant health care treatments to mitigate pest damage to fruit trees or other crops, the Client will be responsible for instructing Bartlett Tree Experts which fruit trees or other crops to treat. The Client acknowledges that no such treatments can eliminate pests entirely and such treatments might not increase crop yield or value and might not prevent the plants in question from dying.

2.25 Tick, Mosquito, or Biting Fly Treatment

The Client acknowledges that if the Client Agreement specifies a treatment program to mitigate the presence of ticks, mosquitos, or biting flies, such treatment can only lower pest thresholds, and cannot eliminate the pests or prevent such pests from biting, stinging, or entering the treated area.

2.26 Termite or Wood Destroying Organism Treatment

- (a) The Client acknowledges that if the Client Agreement specifies a treatment program to mitigate Formosan termites or any other wood destroying organism from any

tree or trees, that the treatment cannot provide protection against any present or future damage to any structure or structures on the property, nor can it reverse any damage already caused to any such structure or structures on the property.

- (b) If Formosan termites or other wood destroying organisms are present on the property, Bartlett Tree Experts recommends that the Client has a qualified structural home inspector inspect the structure or structures for the presence of any termites or wood decaying organisms, as well as any damage, and provide the Client with an appropriate recommendation and report to treat, mitigate or repair the damage.

2.27 Plant Nursery Services

If the Work includes treatment to mitigate pest damage to nursery trees or plants, the Client will be responsible for instructing Bartlett Tree Experts which trees or plants to treat. The Client acknowledges that no such treatments can eliminate pests entirely and such treatments might not increase the value of nursery plants and might not prevent the trees or plants in question from dying.

2.28 Trees Planted and Maintained by Other Contractors

The Client acknowledges that if trees within the scope of the Work were recently planted or are being maintained by one or more other contractors or if one or more other contractors will be watering and providing services with respect to trees within the scope of the Work, how those trees respond to treatment in the course of the Work might be unpredictable, and Bartlett Tree Experts cannot be responsible for the health of such trees or plants.

2.29 Trees with Cones and Large Seed Pods

The Client acknowledges that large tree cones or seedpods on some trees can become dislodged and fall without notice, creating a hazard to persons or property. If the Client has the type of tree on their property that produces large, heavy cones or seedpods, and the Client does not wish to remove the tree, Bartlett Tree Experts recommends that the Client marks off and restricts the area under and near the tree from pedestrian and vehicle traffic whenever possible, places a warning sign near the tree, remains aware of the hazardous conditions the falling cones can create, and inspects the tree annually and removes any observable cones if possible in order to mitigate the potential for damage from falling cones.

2.30 Snow Removal

- (a) If snow removal forms part of the Work, the Client acknowledges that the condition of snow and ice on a roof or other structure will vary based on the rate at which snow accumulates, how it is distributed, and the weather it has been exposed to. In removing snow, Bartlett Tree Experts aims to reduce the weight of snow and ice, not remove it entirely. The Client acknowledges that in most cases, existing snow will only be removed down to within a few inches of the roof surface or the ice covering the roof surface, as the case may be, and that any remaining snow and ice might still cause damage.

- (b) Bartlett Tree Experts will not be responsible for damage done during snow removal as a result of Concealed Features that the Client does not notify Bartlett of.

- (c) The Client acknowledges that because removing snow from a structure or landscaping feature that has already been damaged might result in further damage regardless of the care taken by Bartlett Tree Experts, Bartlett will not be responsible for any further damage to a previously-damaged structure or landscaping feature from which Bartlett Tree Experts removes snow as part of the Work.

2.31 Installing Lights

If installing lights and other lighting equipment forms part of the Work, the Client is responsible for providing the lighting equipment and instructing Bartlett Tree Experts where to install it. Bartlett Tree Experts is not responsible for performance and safety of the lighting equipment. The Client is responsible for retaining a licensed electrician to inspect the lighting equipment to check that it is in working order, is safe, and complies with the relevant codes. Bartlett Tree Experts is not responsible for damage done during installation and removal of lighting equipment to any structures (including gutters, decking, and patios), landscaping features (including trees and plants).

2.32 Tarpaulins

The Client acknowledges that if as part of the Work Bartlett Tree Experts places a tarpaulin, or touches a tarpaulin, over a damaged structure, that might not prevent further damage to the structure and its contents, and the tarpaulin might not stay secure during subsequent weather events, even if it is competently secured. Bartlett Tree Experts is not responsible for damage to a structure and its contents that occurs after Bartlett Tree Experts places or adjusts a tarpaulin over the structure. The Client acknowledges that if a structure experiences damage that requires placement of a tarpaulin, the Client should promptly contact an appropriate roofing or water-restoration contractor to assess any damage and conduct any needed repairs.

2.33 Fire Damage

- (a) Regardless of the species, trees exposed to fire can suffer structural damage that goes beyond whatever external damage might be visible. Fire can cause cracking and brittleness in tree structure and integrity; it can make preexisting defects worse; it can make roots less stable; and it can weaken the overall health of the tree, making it susceptible to disease and pest infestations. The effects of fire damage are unpredictable and difficult to determine. Bartlett Tree Experts is not responsible for any injury to persons or damage to property resulting from services performed on fire-damaged trees as part of the Work.
- (b) The Client acknowledges that if trees and shrubs on the Client's property have been exposed to fire, the Client should have qualified arborist periodically inspect trees and shrubs on the property for fire damage.

2.34 Cancellation

If the Client cancels or reduces the Work after the Work has started, the Client shall pay Bartlett for all the items of the Work that have been completed and all reasonable costs Bartlett has incurred in preparing to perform the remainder of the Work.

2.35 Payment

The Client shall pay for the Work when the Client receives Bartlett Tree Experts' invoice for the Work. If any amount remains unpaid 30 days after the date of the invoice or any period stated in the Client Agreement, whichever is longer, as a service charge the unpaid amount will accrue interest at the rate of 1.5% per month (or 18% per year) or the maximum rate permitted by law, whichever is lower. The Client shall reimburse Bartlett for any expenses (including attorneys' fees and court costs) it incurs in collecting amounts that the Client owes under the Client Agreement.

**Article 3
DISPUTE RESOLUTION**

3.1 Arbitration

- (a) As the exclusive means of initiating adversarial proceedings to resolve any dispute arising out of or related to the Client Agreement or Bartlett Tree Experts' performance of the Work, a party may demand that the dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules, and each party hereby consents to any such dispute being so resolved. Any arbitration commenced in accordance with this section must be conducted by one arbitrator. Judgment on any award rendered in any such arbitration may be entered in any court having jurisdiction. The parties also agree that the issue of whether any such dispute is arbitrable will be decided by an arbitrator, not a court.
- (b) The arbitrator must not award punitive damages in excess of compensatory damages. Each party hereby waives any right to recover any such damages in any arbitration.

3.2 Limitation of Liability

The maximum liability of Bartlett for any losses incurred by the Client arising out of the Client Agreement or Bartlett's performance of the Work will be the amount paid by the Client for the Work, except in the case of negligence or intentional misconduct by Bartlett.

**Article 4
MISCELLANEOUS**

4.1 Client Responsibilities

- (a) The Client is responsible for the maintenance of the client's trees, shrubs, and turf and for all decisions as to whether or not to prune, remove, or conduct other types of tree work on each respective tree, or when to prune, remove, or conduct other tree work on any respective tree, and all

decisions related to the safety of each respective tree, shrub, and turf area.

- (b) Nothing in this Agreement creates an ongoing duty of care for Bartlett Tree Experts to provide safety maintenance or safety inspections in and around the client's property. It is the responsibility of the client to ensure the safety of its trees and landscape, and to take appropriate actions to prevent any future tree or tree part breakage or failures, or otherwise remove any hazardous conditions which may be present or may develop in the future.

4.2 Unrelated Court Proceedings

The Client acknowledges that Bartlett Tree Experts has prepared the Client Agreement solely to help the Client understand the scope of the Work and the related costs. If a court subpoenas Bartlett Tree Experts' records regarding, or requires that a Bartlett representative testify about, the Client Agreement or the Work in connection with any Proceeding to which Bartlett Tree Experts is not a party or in connection with which Bartlett Tree Experts has not agreed to provide expert testimony, the Client shall pay Bartlett Tree Experts Two Hundred dollars (\$200.00) per hour for time spent by Bartlett representatives in collecting and submitting documents for those Proceedings and attending depositions or testifying as part of those Proceedings.

4.3 Notices

For a notice or other communication under the Client Agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), or (3) by email. If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

4.4 Amendment; Waiver

No amendment of the Client Agreement will be effective unless it is in writing and signed by the parties. No waiver under the Client Agreement will be effective unless it is in writing and signed by the party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.

4.5 Conflicting Terms

If these terms conflict with the rest of the Client Agreement, the rest of the Client Agreement will prevail. If these terms conflict with any other client documentation, terms, or purchase order agreement, then the Client Agreement and these terms will prevail.

4.6 Entire Agreement

The Client Agreement with these terms constitutes the entire understanding between the parties regarding Bartlett Tree Experts' performance of the Work and supersedes all other agreements, whether written or oral, between the parties.

