

City of Fayetteville Staff Review Form

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

9/18/2012

City Council Meeting Date
 Agenda Items Only

Megan Dale (MD) Submitted By Park Planning/Urban Forestry Division Parks and Recreation Department

Action Required:

A resolution awarding Bid #12-67 and approval of a contract with Second Nature Property Management, LLC in the amount of \$48,206 with a 10% project contingency of \$4,820.60 for a total project cost of \$53,026.60 for the planting and maintenance of trees for the Tree Escrow Fund.

\$ 53,026.60	\$ 161,797.00	Tree Escrow Funds
Cost of this request	Category / Project Budget	Program Category / Project Name
4470.9470.5315.00	\$ 34,759.00	Contract Services
Account Number		Program / Project Category Name
08001.2-5	\$ 127,038.00	Sales Tax/Tree Escrow
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

(in Council's absence)

Alison J. Napp Department Director 8/31/12 Date Previous Ordinance or Resolution # _____

[Signature] City Attorney 9-4-12 Date Original Contract Date: _____
 Original Contract Number: _____

Paul a. Becher Finance and Internal Services Director 9-4-2012 Date

Received in City Clerk's Office 9-1-12 P03:06 RCVD
 US

[Signature] Chief of Staff 9-4-12 Date

Received in Mayor's Office
 ENTERED 9/4/12

[Signature] Mayor 9/5/12 Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director
Alison Jumper, Park Planning Superintendent *aj*

From: Megan Dale, Urban Forester *(MD)*

Date: August 31, 2012

Subject: **Bid # 12-67, Construction - 2012 Tree Planting Project
Agenda Request for September 18, 2012 Meeting**

PROPOSAL:

Chapter 167 of the Unified Development Code requires developers to pay money in-lieu to the Tree Escrow Fund when it is not practical to meet minimum preservation requirements or plant mitigation trees at the time of final plat approval. Monies received must be spent within seven years. Trees must be planted within the street rights-of-way of the development. If the planting space is not adequate for trees, then the trees may be planted within a 1-mile radius of the development. If a proper planting space cannot be located within one mile, the trees must be planted within the associated Park Quadrant. Approximately \$36,522.00 must be spent by December 2012. This money will be used to plant trees and restore tree canopy in various sections of the city where canopy was removed by development.

The bid for the 2012 Tree Planting Project was advertised on August 15th and 22th and opened on August 29th. Two (2) vendors including B & A Property Maintenance and Second Nature Property Management, LLC submitted bids, with Second Nature Property Management, LLC being the low bid in the amount of \$48,206.

If approved, the trees will be planted by December 31, 2012.

RECOMMENDATION:

A resolution awarding Bid #12-67 and approval of a contract with Second Nature Property Management, LLC in the amount of \$48,206 with a 10% project contingency of \$4,820.60 for a total project cost of \$53,026.60 for the planting of trees for the Tree Escrow Fund.

BUDGET IMPACT:

The project is funded with Tree Escrow funds. Total project cost including a 10% project contingency is \$53,026.60.

Attachments:

Staff Review Form
Certified Bid Tab
Bid Submission- Second Nature Property Management, LLC
Contract Agreement Signed by Contractor
Purchase Requisition

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #12-67 AND AUTHORIZING A CONTRACT WITH SECOND NATURE PROPERTY MANAGEMENT, LLC IN THE AMOUNT OF \$48,206.00 FOR THE PLANTING AND MAINTENANCE OF TREES FROM THE TREE ESCROW FUND, AND APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #12-67 and authorizes a contract with Second Nature Property Management, LLC in the amount of \$48,206.00 for the planting and maintenance of trees from the Tree Escrow Fund.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a ten percent (10%) project contingency.

PASSED and APPROVED this 18th day of September, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



BID: 12-67
DATE: 08/29/12
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Bid 12-67 Construction - 2012 Tree Planting

BIDDER	TOTAL BASE BID
1 B&A Property Maintenance	\$55,333.00
2 Second Nature Property Management, LLC	\$48,206.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED: *A. Foren*
A. FOREN, CPPB, CPPO, PURCHASING AGENT

Julie Paladino
WITNESS

8/29/2012
DATE



Project Check List

Bid 12-67, Construction - 2012 Tree Planting Project

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.

- 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)
 - In lieu of a bid bond, the bidder may submit a cashier's check from a bank located in the State of Arkansas for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.

- All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).

- All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.

- All bidders shall submit the following forms with each bid: Bid Form, Debarment Certification Form, & Statement of Disclosure.

- All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents.

- All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: SECOND NATURE PROPERTY MANAGEMENT, LLC
ARKANSAS CONTRACTOR'S LICENSE #: 0200190313

Section 00 41 13

BID FORM

Item	Estimated	Unit	Description of Item	Nursery Source	Unit Price	Total Amount
1	1	Lump Sum	Mobilization - (not to exceed 5% of total bid) (1)	Sanders Nursery OKLAHOMA	\$/L.S. in figures	\$ 2,000 ⁰⁰ in figures
Total calculated amount written in words						
2	64	Each	Frontier Elm <i>Ulmus carpinifolia x parvifolia</i> 'Frontier' - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 18,092 ⁰⁰ in figures
Total calculated amount written in words, for all 64 trees						
3	39	Each	American Smoketree <i>Cotinus obovatus</i> - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 11,025 ⁰⁰ in figures
Total calculated amount written in words, for all 39 trees						
4	12	Each	Bur Oak <i>Quercus macrocarpa</i> - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 3,392 ⁰⁰ in figures
Total calculated amount written in words, for all 12 trees						
5	19	Each	Shumard Oak <i>Quercus shumardii</i> - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 5,371 ⁰⁰ in figures
Total calculated amount written in words, for all 19 trees						
6	17	Each	Red Maple <i>Acer rubrum</i> - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 4,806 ⁰⁰ in figures
Total calculated amount written in words, for all 17 trees						
7	11	Each	Sweetgum <i>Liquidambar styraciflua</i> , Cultivar 'Rotundiloba' - Complete in place per specifications & details (2) (3)	Sanders Nursery OKLAHOMA	\$(282.69)/EA. in figures	\$ 3,110 ⁰⁰ in figures
Total calculated amount written in words, for all 11 trees						
8	1	Lump Sum	Site Restoration (4) (5)	SITE RESTORATION	\$(410)/L.S. in figures	\$ 410 ⁰⁰ in figures
Total calculated amount written in words						
TOTAL BASE BID						
Forty eight thousand two hundred SIX dollars						\$ 48,206 ⁰⁰ in figures
Total calculated amount written in words						

BID FORM Continued

Costs include a complete turn-key price for obtaining specified plant material and properly installing it in sites to include street rights-of-way, at locations provided by the Project Manager plus any site restoration required to return the site to its original form. All improvements listed above shall include applicable shipping, sales tax, and any other costs incurred to the City of Fayetteville.

All trees must be a minimum 2" caliper regardless of container or rootball size and meet minimum ANSI - Z60.1 standards. The Bidder shall designate the nursery source for each tree on the Bid Form. The City of Fayetteville reserves the right to reject the lowest bid based on quality concerns after inspection of the product.

The Bidder shall state the price bid in words and figures (written in ink or typed) for each pay item, and the total bid. In case of conflict between words and figures, the words, unless obviously incorrect, shall govern.

Bidder understands that the Owner reserves the right to award the total project, or to reject any or all bids and to waive any informalities in the bidding.

Bidder agrees that this Bid shall be good and will not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

Respectfully submitted,

Firm Name SECOND NATURE PROPERTY MANAGEMENT, LLC
By William L. Kirby
Address 144 HARBREY LANE
City FAYETTEVILLE, AR 72703
** Arkansas State Contractor's License Number 20 0917052

**** A Contractor's License is required to bid this project. This project requires a five (5) percent bid bond at time of bid opening. After contract award, a one hundred (100) percent performance and payment bond is required along with proof of insurance before construction begins.**

End of Section 00 41 13

Section 00 21 17

**City of Fayetteville
Bid 12-67, 2012 Tree Planting Project
Statement of Disclosure (please submit with Bid)**

ATTENTION: Please submit this form with your bid.

DISCLOSURE STATEMENT:

Bidder must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

1.) NO KNOWN RELATIONSHIP EXISTS

2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID:

1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and

2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

WILLIAM R. KIMBROUGH
Printed Name


Signed

Section 00 21 19

City of Fayetteville
Bid 12-67, 2012 Tree Planting Project

Certification of Debarment – THIS FORM NEEDS TO BE SUBMITTED WITH EVERY BID
ATTENTION: Please submit this form with your bid.

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: WILLIAM H. KIMBROUGH
COMPANY: SECOND NATURE PROPERTY MANAGEMENT LLC
PHYSICAL ADDRESS: 1481 W. VAN ASCHÉ
MAILING ADDRESS: 144 ABBEY LANE
PHONE: 479 530 9191 FAX: 479
EMAIL: whkimbrough@cox.net
SIGNATURE: William H. Kimbrough
DATE: 8/29/12

THE
CINCINNATI INSURANCE COMPANY
CINCINNATI, OHIO

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we Second Nature Property Management, LLC

as Principal, hereinafter called the Principal, and THE CINCINNATI INSURANCE COMPANY, 6200 S. Gilmore Road, Fairfield, Ohio 45014-5141, a corporation duly organized under the laws of the State of Ohio, as Surety, hereinafter called the Surety, are held and firmly bound unto
CITY OF FAYETTEVILLE

as Obligee, hereinafter called the Obligee, in the sum of 5% of bid

Dollars (\$ 5% of bid),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

Planting 162 trees

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 29 day of August, 2012

Second Nature Property Management, LLC

Diana Bratcher
(Witness)

(Principal) (Seal)

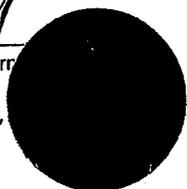
By: Wally Kelly PRESIDENT
(Title)

Tracy Smith
(Witness)

THE CINCINNATI INSURANCE COMPANY

(Surety) (Seal)

By: Mike G. Jethell
Attorney



The Company executing this bond vouches that this document conforms to American Institute of Architects Document A310, Edition.

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Mike A Luttrell, Kenneth L Galloway, Jacque Lindsey, Danny L Schneider, Billy Eugene Bennett, Jr., Adrian W Luttrell,

of Springdale, AR its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States,
Fifteen Million Dollars and 00/100 (\$15,000,000.00)

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 1st day of April, 2007.



STATE OF OHIO) ss:
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY

Vice President

On this 1st day of April, 2007, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

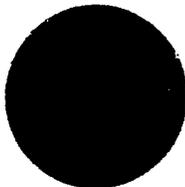


MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration
date. Section 147.03 O.R.C.

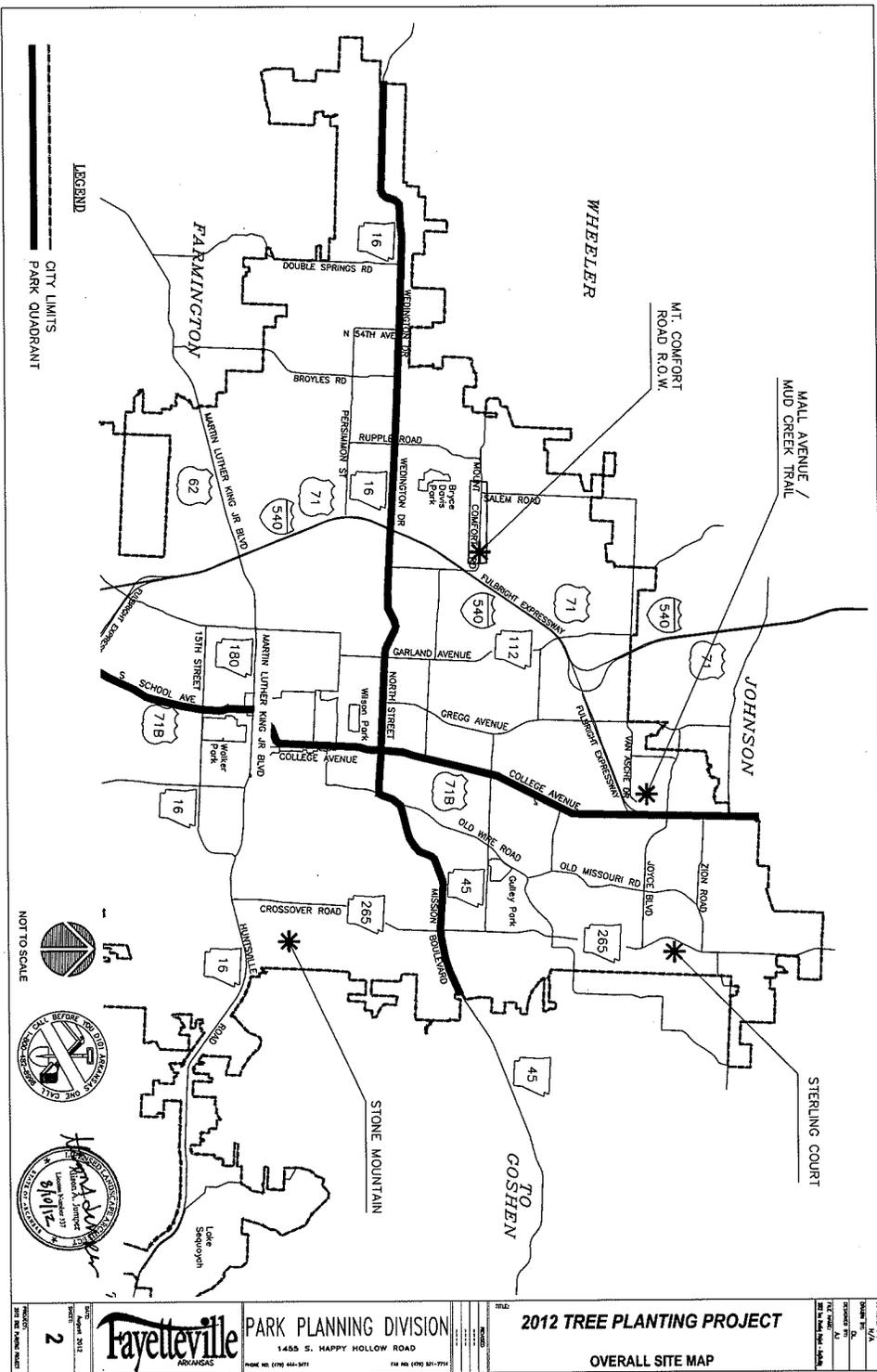
I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.

this 27th day of August, 2012



Secretary



AGREEMENT

BETWEEN CITY OF FAYETTEVILLE AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2012 by and between the City of Fayetteville, Arkansas (hereinafter called CITY OF FAYETTEVILLE) and Second Nature Property Management, LLC (herein after called CONTRACTOR).

CITY OF FAYETTEVILLE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

This project includes the installation of trees along street rights-of-way located within the city limits of Fayetteville, Arkansas. Street tree plantings include providing and installing minimum 2" caliper trees, mulch, water and site restoration as specified, along with any additional materials and equipment used in the performance of this contract.

Article 2. PROJECT MANAGER.

The Project is being managed by:

City of Fayetteville Parks and Recreation Department
1455 South Happy Hollow Road
Fayetteville, Arkansas 72701

and will hereinafter be called PARKS AND RECREATION DEPARTMENT PROJECT MANAGER and who is to act as CITY OF FAYETTEVILLE's representative, assume all duties and responsibilities, and have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

Article 3. CONTRACT TIME.

3.1. All trees must be installed no later than December 31, 2012.

3.2. *Liquidated Damages.* CITY OF FAYETTEVILLE and CONTRACTOR recognize that time is of the essence of the Agreement and that CITY OF FAYETTEVILLE will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus and extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CITY OF FAYETTEVILLE if the Work is not completed on time. Accordingly, instead of requiring any such proof, City of Fayetteville and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY OF FAYETTEVILLE, CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars

(\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY OF FAYETTEVILLE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined from the following Schedule of Values pursuant to paragraphs 4.1 and 4.2 below:

4.1. For all Work other than Unit Price Work, an amount equal to the sum of the established lump sums for each separately identified item of Lump Sum Work; and

4.2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.

PAYMENT ITEMS

Bid 12-67 2012 Tree Planting Project

Second Nature Property Management, LLC					
ITEM #	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL
1	Mobilization (not to exceed 5% of project bid)	L.S.	1	\$2,000.00	\$2,000.00
2	Frontier Elm <i>Ulmus carpinifolia x parvifolia</i> 'Frontier' - Complete in place per specifications & details	E.A.	64	\$282.69	\$18,092.16
3	American Smoketree <i>Cotinus obovatus</i> - Complete in place per specifications & details	E.A.	39	\$282.69	\$11,024.91
4	Bur Oak <i>Quercus macrocarpa</i> - Complete in place per specifications & details	E.A.	12	\$282.69	\$3,392.28
5	Shumard Oak <i>Quercus shumardii</i> - Complete in place per specifications & details	E.A.	19	\$282.69	\$5,371.11
6	Red Maple <i>Acer rubrum</i> - Complete in place per specifications & details	E.A.	17	\$282.69	\$4,805.73
7	Sweetgum <i>Liquidambar styraciflua</i> 'Rotundiloba' - Complete in place per specifications & details	E.A.	11	\$282.69	\$3,109.59
8	Site Restoration	E.A.	1	\$410.00	\$410.00
TOTAL CONTRACT AMOUNT					\$48,205.78

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or as modified in the Supplementary Conditions. Applications for Payment will be processed by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in the General Conditions.

5.1. Progress Payments. CITY OF FAYETTEVILLE shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, on or about the 1st day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below and SC-14.02 . All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions and based on the number of units completed in the case of Unit Price Work or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in case, less the aggregate of payments previously made and less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

95 percent of Work completed (with the balance of 5 percent being retainage), If Work has been 50 percent completed as determined by the PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and if the character and progress of the Work have been satisfactory to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, CITY OF FAYETTEVILLE, on recommendation of PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed.

100 percent of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to CITY OF FAYETTEVILLE as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions. That is, if any such items are setup for that type payment in the Specifications.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 98 percent of the Contract Price (with the balance of 2 percent being retainage), less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B & C of the General Conditions, CITY OF FAYETTEVILLE shall pay the remainder of the Contract Price as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in said paragraphs 14.07.B & C.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY OF FAYETTEVILLE to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the sites and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions.

CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by CITY OF FAYETTEVILLE and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. CONTRACTOR has given PARKS AND RECREATION DEPARTMENT PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CITY OF FAYETTEVILLE and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 7, inclusive).
- 7.2. Performance and Payment Bonds, (Exhibits A and B respectively).
- 7.3. Certificates of Insurance, (Exhibit C).
- 7.4. Documentation submitted by CONTRACTOR prior to Notice of Selection (Exhibit D).
- 7.5. General Conditions (pages 1 to 42, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 13 inclusive).
- 7.7. Specifications consisting of Divisions 1 through 32 as listed in table of contents thereof.
- 7.8. Addenda number 1, inclusive.
- 7.9. One set of drawings (not attached hereto) consisting of: a cover sheet and additional sheets numbered two through S4.1 with each sheet bearing the following general title: 2012 Tree Planting Project.
- 7.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 - 7.10.1. Notice to Proceed
 - 7.10.2 All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. CITY OF FAYETTEVILLE and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

8.6. Freedom of Information Act. City contract and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, CONTRACTOR will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7. **No liens against this construction project are allowed.** Arkansas law (A.C.A. §§ 18-44-501 through 508) prohibits the filing of any mechanics' or materialmen's liens in relation to this public construction project. Arkansas law requires and the Contractor promises to provide and file with the Circuit Clerk of Washington County a bond in a sum equal to the amount of this contract. Any subcontractor or materials supplier may bring an action for non-payment of labor or materials on the bond. The Contractor promises to notify every subcontractor and materials supplier for this project of this paragraph and obtain their written acknowledgement of such notice prior to commencement of the work of the subcontractor or materials supplier.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to CITY OF FAYETTEVILLE, and one counterpart has been delivered to CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by CITY OF FAYETTEVILLE and CONTRACTOR or identified by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER on their behalf.

This Agreement will be effective on _____, 2012 (which is the Effective Date of The Agreement).

CITY OF FAYETTEVILLE:

CONTRACTOR

By: _____
Mayor

By: 

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

*Attest _____

* If a Corporation, attest by the Secretary.

Address for giving notices

Address for giving notices

(If CITY OF FAYETTEVILLE is a public body, attach License No. _____ evidence of authority to sign and resolution or other documents Agent for service of process: authorizing execution of Agreement.)

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

City Of Fayetteville - Purchase Order (PO) Request							Requisition No.:	Date:		
(Not a Purchase Order)								8/31/2012		
All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)							P.O Number:	Expected Delivery Date:		
All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us										
Vendor #: 21427		Vendor Name: Second Nature Property Management, LLC					Mail Yes:___ No:___			
Address: 144 Abbey Lane					Fob Point:		Taxable Yes:___ No:___		Quotes Attached Yes:___ No:___	
City: Fayetteville		State: AR		Zip Code: 72703		Ship to code:		Divison Head Approval: <i>Alan Jumper</i>		
Requester: Megan Dale, Urban Forester					Requester's Employee #: 3617		Extension: 470			
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #	
1	2012 Tree Planting Project NW Per Bid 12-67	1	LS	45,414.57	\$45,414.57	4470.9470.5315.00	08001.2			
2	2012 Tree Planting Project NE Per Bid 12-67	1	LS	688.88	\$688.88	4470.9470.5315.00	08001.3			
3	2012 Tree Planting Project SE Per Bid 12-67	1	LS	2,102.33	\$2,102.33	4470.9470.5315.00	08001.5			
4					\$0.00					
5					\$0.00					
6					\$0.00					
7					\$0.00					
8					\$0.00					
9					\$0.00					
*	Shipping/Handling		Lot		\$0.00					
Special Instructions:							Subtotal: \$48,205.78			
Tax is included in the bid price.							Tax: _____			
We do not have any trees being installed in the SW Quadrant; hence, the omission of Subproject # 08001.4.							Total: \$48,205.78			
Approvals:										
Mayor: _____			Department Director: _____			Purchasing Manager: _____				
Finance & Internal Services Director: _____			Budget Manager: _____			IT Manager: _____				
Dispatch Manager: _____			Utilities Manager: _____			Other: _____				