

AGREEMENT

Attachment # 6

**New York State
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235-0001
Agency Code 06000**

Contract Authority Agriculture and Markest Law:

Contract Number:

Amount of Agreement: \$

Contract Period:

Renewal Date:

Federal ID:

Contractor Name/Project Sponsor:

Street: City: State: **NY** Zip:

Billing Address (if different from above):
Street: City: State: Zip:

Title/Description of Project: **Asian Longhorned Beetle Tree Removal**

THIS AGREEMENT INCLUDES THE FOLLOWING:

- This Coversheet
- Appendix A (Standard Clauses for all New York State Contracts)
- Appendix B (Project Budget)
- Appendix C (Scope of Work or RFP and Proposal)
- Appendix D (The Department's General Conditions)
- Appendix E (The Department's Special Conditions)
- Appendix F - Other (Identify)

FOR AMENDMENTS CHECK THOSE THAT APPLY:

- Additional Work
 - Extension of Time
From to
 - Increase Amount
 - Decrease Amount
 - Renewal: Remaining
 - Revised Budget
 - Revised Scope of Work
 - Other
- If Increase/Decrease in Amount:
Previous Amount: \$
Increase/decrease _____
New Total: \$

The Contractor and the Department agree to be bound by the terms and conditions contained in this Agreement

CONTRACTOR

NYS DEPARTMENT OF AGRICULTURE & MARKETS

Signature of Contractor's Authorized Representative:

Signature of Authorized Official:

Date: _____

Date: _____

Typed or Printed Name of Above Representative:

Typed or Printed Name of Above Official:

Title of Authorized Representative:

Title of Authorized Official

Notary Public: On this _____ day of _____, 20__ before me personally appeared, _____ to me known, and known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

State Agency Certification: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Attorney General:

Approved: Thomas P. DiNapoli, State Comptroller
By:
Date:

APPENDIX D

GENERAL CONDITIONS FOR AGREEMENTS

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.

PAYMENT

Payment shall be made to the **Contractor** under this Agreement upon the submission of a payment request (standard voucher), the required progress report and a budget report in the format prescribed by the **Department**.

The **Contractor** shall submit all requests for payment and reports to the following address: New York State Department of Agriculture and Markets, Division of Fiscal Management, 10B Airline Drive, Albany, NY 12235. Invoices, Standard Vouchers and any reports will not be considered received by the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received by the Division of Fiscal Management.

Initial payment to the **Contractor** under this Agreement shall not be made unless the **Contractor** shall have submitted to the **Department** a written payment request together with such information as required by the Agreement. Initial payment shall not be due until the latter of either the last day of the calendar month of the term of this Agreement, or the thirtieth calendar day after receipt of the payment request, where contract funds have been appropriated and made available to the **Department**.

Payments shall not be made if the **Contractor** fails to file the progress reports and budget reports, if any, as required by this Agreement. The **Contractor's** payment requests shall include a Statement of expenses and charges by major budget category for work actually performed or expenses incurred in accordance with the terms of this Agreement during the period covered by the request.

Upon examination of the **Contractor's** payment requests and supporting material, the **Department** may, in its sole discretion, modify or adjust the amount requested to reflect contract funds expended as of the date of the request. Subsequent to its review and approval of the payment request, the **Department** will transmit the request to the Comptroller for payment.

The total payment made under this Agreement will not exceed the **Contractor's** actual costs and expenses arising from the completion of the work under this Agreement.

Final payment, including payment of retained amounts if any, shall not be made until work under the Agreement is completed to the satisfaction of the **Department** and the **Contractor's** final performance report and a final budget report detailing receipt and expenditure of all funds received pursuant to this Agreement by major budget category are received and accepted by the **Department**. Satisfactory completion and acceptance shall be defined as conformance to established standards for such reports and conformance to the attached plan of work.

PAYMENT CONTINGENCY

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York State's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payments under this Agreement were or are expected to be appropriated to the **Department** during fiscal year . Payments made after fiscal year or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement is (\$) and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

NON-DUPLICATION OF PAYMENTS

The payments received by the **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** promptly notify the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

NON-SECTARIAN PURPOSE

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, nor its agents, employees, suppliers or subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

TERMINATION

Either party may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a Statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) days written notice. Cause for termination shall include the failure of the **Contractor** to perform according to the standards set forth in the IFB attached as Appendix C of this Agreement.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

MODIFICATION

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor** and approved by the Attorney General and Comptroller of the State of New York.

NECESSARY SIGNATURES

This Agreement shall not be binding and effective upon the **Department** unless and until approved by the Attorney General and the Comptroller of the State of New York.

APPENDIX E SPECIAL CONDITIONS FOR AGREEMENTS

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These special conditions apply to the administrative aspects of this particular agreement.
These special conditions cannot be changed

RENEWAL

This Agreement may be renewed by the **Department** in its sole discretion for successive term not to exceed one (1) year, subject to the approval of the Attorney General and Comptroller of the State of New York.

SUBCONTRACTS

Subcontracting of any portion of the services required under this Agreement shall not be permitted without the expressed prior written approval of the **Department**. Any request to use subcontractors must include a complete description of the proposed subcontractor, its location, the services it will provide, and its qualifications to provide such services.

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE

For this Agreement the **Department** has established the following goals:

Minority business enterprises	1%
Women owned business enterprises	1%

TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor**.

DIESEL EMISSION REDUCTION ACT OF 2006

Therefore, the successful bidder will be required to certify and warrant that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by New York Department of Environmental Conservation. Qualification and application for a waiver under this Law will be the responsibility of the contractor.

