

# AGREEMENT FOR ARBORISTS RETAINED BY PRIVATE PROPERTY OWNERS TO UNDERTAKE WORK ON CITY TREES

THIS AGREEMENT made this \_\_\_\_\_ (day) of \_\_\_\_\_ (month, year)

**BETWEEN**

**CITY OF TORONTO**

(the "City")

and

the "Owner"

and

the "Arborist"

**WHEREAS** The *City of Toronto Municipal Code, Chapter 813, Trees, Article II*, regulates the planting, care, maintenance and protection of trees on City highways/roads and street allowances, and *Chapter 608, Parks, Article VII*, (the "**Municipal Code**") regulates the protection of trees in City parks, and through its associated policies, ensures sustainability of the urban forest; and

**WHEREAS** the Executive Director of Environment, Climate and Forestry ("the **Executive Director**") is authorized to care for and maintain, or cause to be cared for and maintained, trees located on City streets and in City parks and may authorize work to be performed on City trees by an Arborist that has been retained by an **immediately adjacent** private property owner in accordance with the Municipal Code and this agreement;

**IN CONSIDERATION** of the **Permission** granted herein by the City of Toronto (the "**City**") and the mutual covenants and agreements set out below, the Arborist and the Property Owner agree as follows:

1. The Property Owner(s) signing below (the "Owner") is/are the registered owner(s) of the property municipally known as:

Street Number		Street Name		Suite #	
Toronto	Ontario			Postal Code	

and have/has requested permission to retain an arborist to undertake certain work (the "Work") on certain City trees immediately adjacent to their property, as requested in the application form attached as Schedule "A" (the "Application") and approved as set out in Schedule "B" ("the Permission").

2. Arborists performing Work on City trees must meet one or more of the following requirements:

- Be qualified by the Ontario College of Trades
- Be a certified arborist qualified by the International Society of Arboriculture
- Be a consulting arborist registered with the American Society of Consulting Arborists
- Be a Registered Professional Forester (R.P.F.) or
- Have equivalent qualifications as approved by the Executive Director

3. The Arborist signing below ("the **Arborist**") represents and warrants that he/she meets one or more of the arborist requirements as set out above and is qualified to undertake the Work.

4. The Owner and the Arborist acknowledge and agree that the Work is to be undertaken and completed at the sole risk and expense of the Owner. All agreements for payment shall be between the Arborist and the Owner. The Arborist shall receive no compensation, remuneration or reimbursement by the City whatsoever. For greater certainty, the City shall not be responsible for any non-payment on the part of the Owner.

5. The Arborist is responsible for arranging for all necessary utility clearances including, but not limited to: hydro, gas, water and sewage, telephone and cable and for providing all necessary clearance receipts to Urban Forestry prior to execution of this agreement by the City. More specifically, and without limiting the generality of the foregoing, the Arborist acknowledges that no Work shall take place within 3 meters of primary conductors (the "**Limit of Approach**"). The Arborist is responsible for any damage to Toronto Hydro property and other utilities.

6. The Arborist shall obtain all necessary permits, licenses and approvals, required in connection with the undertaking of the Work including without limitation, any permits required in accordance with *Municipal Code Chapter 743, Streets and Sidewalks* and shall pay all fees as required by law or policy prior to commencement of the Work.

7. The Arborist shall be qualified to perform and shall carry out the Work to the satisfaction of the Executive Director, in a good and professional manner in accordance with the terms and conditions of this Agreement, the City's current policies, standards and requirements, the terms and conditions of the Permit, or any other permit or written approval issued by the City and all other legislative requirements including, without limitation the *Infrastructure, Health and Safety Association Rules*, the *Occupational Health and Safety Act*, the *Highway Traffic Act*, the *Workplace Safety and Insurance Act*, the *Pesticides Act* and the *Pest Control Products Act*, and the American National Standards, *ANSI 300* and best management practices identified by the International Society of Arboriculture.

8. Without limiting the generality of the foregoing, the Arborist shall comply with the *Occupational Health and Safety Act* ("**the OHSA**") and acknowledges that the Arborist is competent, as defined in the OHSA. The Arborist acknowledges that all personnel engaged by the Arborist are qualified to undertake the Work, are trained in the health and safety hazards expected to be encountered in carrying out the Work, and possess the knowledge and skills to allow them to work safely. The Arborist will provide all necessary personal protective equipment for their protection and the protection of all workers engaged in the undertaking of

the Work. The Arborist acknowledges and agrees that employees of the City, including senior officers, have no authority to direct, and will not direct, how employees, workers or other persons employed or engaged by the Arborist undertake the Work. The Arborist will immediately notify the City in the event of any accident or critical injury that arises out of the performance of this Agreement.

9. The Arborist represents and warrants that it is in good standing with the Workplace Safety and Insurance Board ("**the WSIB**") and shall provide the City with a Clearance Certificate issued by the WSIB, confirming that the Arborist has paid its assessment based on a true statement of the amount of its current payroll prior to the City signing this agreement. The Arborist shall also ensure that any subcontractors retained by the Arborist shall have secured WSIB coverage.

10. Upon approval of the Application, the City will issue a Permission in the form attached to this agreement, which the Arborist shall post in a conspicuous location, visible from the street, for a minimum period of one day prior to the commencement of the Work and until such time as the Work has been completed to the satisfaction of Urban Forestry.

11. a) Where the Work to be performed includes tree planting, trees shall be planted in the locations set out in Schedule A, as approved by the Executive Director. The selected tree species must be acceptable to Urban Forestry. They must be a minimum of 50 mm (2 inch) caliper and conform to Canadian Nursery Standards.

11. b) Where proposed tree planting includes planting in a tree pit, raised bed, raised planter or sidewalk opening, the planting must be completed in accordance with the latest City of Toronto tree planting details and drawings and in consultation with Urban Forestry Commercial Trees unit.

11. c) The Owner agrees to maintain the newly planted trees in good and healthy condition, as determined by the Executive Director, for 2 years after the date of planting.

12. Tree pruning shall be carried out in accordance with the following general standards, to the satisfaction of the Executive Director:

- To encourage the health of a tree
- According to good arboricultural practice to prune to provide for moderate clearance of tree limbs and branches interfering with structures, street lighting, pedestrian and vehicular traffic, utility conductors and traffic signals or signs
- To encourage the natural form of the tree species
- To remove dead limbs
- To maintain structural stability and balance of a tree
- In accordance with line clearing standards

Tree pruning will only be approved and shall only be undertaken if deemed to be necessary under the above noted criteria. Pruning is not to be used to improve scenic views, to obtain uninterrupted paths for signals or satellite dishes, to increase light to swimming pools, solar panels, patios, lawns or gardens.

13. a) Any approved tree removal, must be followed by stump removal to a minimum depth of 30 cm. Stump grindings must be removed, and the hole must be filled with topsoil and dressed with grass seed.

13. b) Where the trees to be removed are planted in hard surface infrastructures such as planter, tree pits, raised beds, raised planter boxes or sidewalk openings, the Arborist shall ensure the following:

- root masses must be exposed using hydro-vac, or similar non-invasive excavation and extracted from the tree pit, raised bed, raised planter or sidewalk opening without compromising or damaging utilities, sidewalks, tree planting infrastructure, street furniture, or any other City or private property
- if guards, rails, panels, grates etc. are present, the Arborist must inform the local BIA (business improvement area office) of the Work to be performed and arrange for removal and reinstallation of guards, rails, panels, grates or other infrastructure
- the site may not be left unoccupied until it is made safe for pedestrian and vehicular traffic in accordance with Transportation Services standards

14. Prior to commencing the Work, the Arborist shall provide the City with a certificate of insurance in the form attached and with an insurer acceptable to the City, evidencing the following policies of insurance:

1. Commercial General Liability, provided that the policy:

- i. is in the amount of not less than two million dollars (\$2,000,000.00) per occurrence;
- ii. adds the City of Toronto as an additional insured;
- iii. includes Non-Owned Automobile Liability, Employer's Liability and / or Contingent Employer's Liability, and any other provisions relevant to the Work;

2. Automobile Liability insurance with a minimum limit of one million dollars (\$1,000,000.00) for all owned or leased licensed motorized vehicles used in the performance of the Work.

15. It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the Arborist in the performance of the Work. It is also agreed that the above insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Arborist. At the expiry of the policies of insurance, original signed certificates evidencing renewal will be provided to the City without notice or demand.

16. The Arborist is responsible for any loss or damage whatsoever to any of its material, goods equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The Arborist shall have no claim against the

City or the City's insurer for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the City.

17. The Arborist hereby waives any claim whatsoever that the Arborist may have against the City that may arise as a result of, or in connection with this agreement and the permission being granted for the Work herein described to be undertaken by the Arborist.

18. The City assumes no liability for any damages or injury that may occur to City or private property during, as a result of, or in connection with this agreement and any Work undertaken, or omitted to be undertaken by the Arborist. In the event that the Arborist causes unauthorized damage or injury to City trees, in the course of carrying out the Work, and such injury or damage is not rectified to the satisfaction of the City, the City may issue an order to comply and penalties or set fines may apply in accordance with the *Municipal Code Chapters 813 and 608*.

19. The Owner hereby waives any claim whatsoever that the Owner may have against the City in connection with this Agreement or that may arise as a result of the permission being granted for the Work herein described and to be undertaken by the Arborist.

20. The Arborist and the Owner shall indemnify and save harmless the City, its employees, officers, directors, agents, representatives and elected officials (collectively, the "**City**") from all actions, suits, claims and demands whatsoever, which may be brought against or made upon the City in connection with this agreement and from and against all losses, costs, damages, charges and expenses whatsoever for injuries and/or damages, including but not limited to, damage to trees, property, equipment and utilities, that may be incurred, sustained or paid by the City for, or by reason of, or on account of the permission hereby granted.

21. The Work shall commence by:

yyyy-mm-dd		the " <b>Commencement Date</b> "
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and shall be completed by:

yyyy-mm-dd		the " <b>Completion Date</b> "
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unless the City agrees in writing to an extension of these dates. In the event that the Work is not commenced within 15 days of the Commencement Date, or such extended date as the City may have agreed to in accordance with this section, this agreement and the permission granted herein shall expire on the 15<sup>th</sup> day following the Completion Date.

22. The Arborist shall advise Urban Forestry upon completion of the Work and shall submit photos of the completed Work to the assigned Urban Forestry staff. Following review of the photographs, Urban Forestry may perform an inspection of the Work. In the

event that the City is not satisfied with the Work, the Arborist shall, at the expense of the Owner, undertake such further work as may be required by Urban Forestry in order to ensure that the Work is completed to the satisfaction of the City. The Arborist and the Owner agree that no payment shall be made until such time as the City has advised the owner and the Arborist in writing that the Work has been completed to the satisfaction of the City.

23. Any notice required or permitted to be given under this Agreement shall be mailed or delivered personally or sent by facsimile transmission as set out below or to such person or such address as the parties may advise in writing:

**The City at:**

City of Toronto  
Urban Forestry Data Management Centre  
18 Dyas Road, 1st Floor  
Toronto, ON, M3B 1V5  
Fax: 416 392 1915

**The Owner at:**

Name	
Attention	
Address	
Postal code	
City	
Email:	
Fax:	
Phone:	

Any notice given in accordance with this section is deemed to have been given and received on the day of personal delivery, mail or facsimile transmission if such day is a business day and delivery is made prior to 3:30 p.m. and otherwise on the next business day.

The parties shall give notice under this section of any change of address and the changed address shall then be substituted for the address set out above.

In Witness whereof, the parties have executed this agreement on \_\_\_\_\_ (d/m/y)

**OWNER(S)** (where owner(s) are individuals)

Please print clearly

Name(s) of Owner(s)			
Signature		Witness	
Signature		Witness	

**Where Owner is a corporate entity**

Name of Corporation			
Signature		Signature	

I/We have the authority to bind the corporation

**ARBORIST**

Name of Arborist			
Signature		Witness	

**Where Arborist is a corporate entity**

Name of Corporation			
Signature		Witness	

We have the authority to bind the corporation.

**CITY OF TORONTO**

Signature		Print name	
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For Executive Director, Environment, Climate and Forestry