

AGENDA

**CITY OF POCATELLO  
REGULAR CITY COUNCIL  
MEETING**

JANUARY 2, 2025 • 6:00 PM

COUNCIL CHAMBERS | 911 NORTH 7TH AVENUE

*City Hall is accessible to persons with disabilities. Program access accommodations can be provided with two (2) days' advance notice by contacting Skyler Beebe at [sbeebe@pocatello.gov](mailto:sbeebe@pocatello.gov); 208.234.6248 or 5815 South 5th Avenue, Pocatello, Idaho.*

***The meeting will be live-streamed at:  
<https://streaming.pocatello.gov/> and available on Sparklight Cable  
channel 56***

Any citizen who wishes to address the Council shall first be recognized by the Mayor, and shall then give their name and address for the record. If a citizen wishes to read documentation of any sort to the Council, they shall first seek permission from the Mayor. A three (3) minute time limitation is requested for Council presentations.

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The purpose of the agenda is to assist the Council and interested citizens in the conduct of this public meeting. **Citizens should examine the agenda for the item of their interest. However, citizens are advised that only Public Hearings allow for public comment during the discussion/consideration process.**

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RECESS: In the event the meeting is still in progress at 7:30 p.m., the Mayor may call a ten-minute recess to allow Council members and participants a brief rest period.

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## 1. ROLL CALL AND PLEDGE OF ALLEGIANCE

## 2. INVOCATION

The invocation will be offered by Pastor Jim Jones, representing Blazing Grace Ministries.

## 3. CONSENT AGENDA

The following business items may be approved by one motion and a vote. If any one member of the Council so desires, any matter listed can be moved to a separate agenda item. **(ACTION ITEM)**

(a) MATERIAL CLAIMS: Council may wish to approve the Material Claims for the period of December 16-31, 2024.

(b) TREASURER'S REPORT: Council may wish to approve the Treasurer' Report for November 2024 showing cash and investments as of November 30, 2024.

(c) COMMUNITY DEVELOPMENT BLOCK GRANT ADVISORY COMMITTEE APPOINTMENT: Council may wish to confirm the Mayor's appointment of Dakota Neifert to serve as a member of the Community Development Block Grant Advisory Committee, filling a long-term vacancy. Dakota's term will begin January 3, 2025 and expire January 3, 2028.

(d) PARKS AND RECREATION ADVISORY BOARD APPOINTMENT: Council may wish to confirm the Mayor's appointment of Amy Commendador to serve as a member of the Parks and Recreation Advisory Board, replacing Kathryn Hickok whose term expired. Amy's term will begin January 3, 2025 and expire January 3, 2027.

(e) POCATELLO REGIONAL AIRPORT COMMISSION REAPPOINTMENTS:

Council may wish to confirm the Mayor's reappointments of Kristen Jensen and Molly Beseris to continue serving as members of the Pocatello Regional Airport Commission. Kristen's term will begin January 4, 2025 and expire January 4, 2027. Molly's term will begin January 18, 2025 and expire January 18, 2027.

#### **4. PROCLAMATIONS**

#### **5. CALENDAR REVIEW**

Council may wish to take this opportunity to inform other Council members of upcoming meetings and events that should be called to their attention.

#### **6. PUBLIC HEARING – ZONING MAP AMENDMENTS – 155 WILLARD**

This time has been set aside for the Council to hear comments from the public regarding a request from Brandon Desfosses (mailing address: 5109 Tree Valley Road, Chubbuck, ID 83202) to rezone property located at 155 Willard Avenue from Commercial General (CG) to Residential Medium Density Single-family (RMS). **(ACTION ITEM)**

Documents:

[\*\*AGENDA-ITEM-6.PDF\*\*](#)

#### **7. BID ACCEPTANCE AND AWARD – MOUNTAIN VIEW CEMETERY TREE PRUNING**

Council may wish to award the following bids for the Mountain View Cemetery tree pruning and removal project and authorize the Mayor's signature on all pertinent documents, including change orders, subject to Legal Department review:

- a) Top Notch Trees in the amount of \$124,400.00; and
- b) Intermountain Tree Service in the amount of \$39,600.00.

Funding for the project has been provided through the USFS Urban and Community Forestry grant. **(ACTION ITEM)**

Documents:

## **8. ITEMS FROM THE AUDIENCE**

This time has been set aside to hear items from the audience not listed on the agenda. Items which appeared somewhere else on the agenda will not be discussed at this time. The Council is not allowed to take any official action at this meeting on matters brought forward under this agenda item. Items will either be referred to the appropriate staff or scheduled on a subsequent agenda. You must sign in at the start of the meeting in order to be recognized.

(Note: Total time allotted for this item is fifteen (15) minutes, with a maximum of three (3) minutes per speaker.)

## **9. STATE OF THE CITY**

This time has been set aside for the Annual State of the City report.

## **10. ADJOURN**

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### **PUBLIC HEARING PROCEDURE**

1. Explanation of hearing procedures by Mayor or staff.
  - Ten (10) minute time limit on applicant presentation.
  - Three (3) minute time limit on public testimony.
  - Names and addresses are required from those presenting/testifying.
  - Questions/comments should be addressed to the Mayor and Council.
  - Council members must make their decision regarding the application on facts already in the record and information presented at the public hearing. Conflicts of interest, site visits and ex-parte contacts by Council members will be acknowledged.
  - Protocol requires that Council and audience be recognized by the Mayor prior to speaking.
2. Mayor opens hearing.

3. Presentation by applicant.

Note: Remember, applicant bears the responsibility for making his/her case.

This is also the time for Council members to ask their questions of the applicant.

4. Presentation by staff.
5. Written correspondence submitted for the record.
6. Testimony by those supporting the application.
7. Testimony by those uncommitted on the application.
8. Testimony by opponents to the application.
9. Rebuttal by the applicant.
10. Mayor closes the hearing and initiates motion/deliberations.  
**Note: The Mayor may choose to require a motion prior to the discussion in order to focus deliberations, or, the Mayor may choose to allow deliberations prior to the motion in order to facilitate wording of the motion.**
11. Develop a written and reasoned statement supporting the decision.



# Planning & Development Services

PLANNING SERVICES

NEIGHBORHOOD & COMMUNITY SERVICES

911 NORTH 7<sup>th</sup> AVENUE | PO BOX 4169 | POCATELLO, IDAHO 83205-4169 208.234.6184 <https://www.pocatello.gov>

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**POCATELLO CITY COUNCIL  
HEARING: JANUARY 2, 2025  
ZONING MAP AMENDMENT  
EXECUTIVE SUMMARY**

**REQUEST:**

Brandon Desfosses has submitted a zoning map amendment to rezone property located at 155 Willard Avenue from Commercial General (CG) to Residential Medium Density Single-family (RMS).

**RECOMMENDATION:**

In consideration of the application, and City staff review, the Planning & Zoning Commission recommended **approval** of the application after a public hearing was held on December 11, 2024 finding the application meets the standards for approval under section 17.02.170.E of Pocatello City Code.

**ATTACHMENTS:**

- a. Planning & Zoning Commission Findings of Fact
- b. Planning & Zoning Commission Staff Report Packet

**FINDINGS OF FACT & RECOMMENDATION  
CITY OF POCA TELLO  
PLANNING & ZONING COMMISSION  
HEARING DECEMBER 11, 2024**

**APPLICANT:** Brandon Desfosses  
**REQUEST:** Zone Map Amendment  
**GENERAL LOCATION:** 155 Willard Avenue  
**FILE:** MA24-0004  
**STAFF:** Jim Anglesey, Long-Range Senior Planner

- I. GENERAL BACKGROUND:** Brandon Desfosses has submitted a zoning map amendment to rezone the subject property where half is zoned Residential Medium Density Single-Family (RMS) and half is zoned Commercial General (CG) with a Future Land Use designation of Residential (R). The request is to rezone the CG portion of the property to RMS.
- II. PUBLIC HEARING:** A public hearing was held before the Planning & Zoning Commission on the evening of December 11, 2024. The applicant provided a summary of the proposed zone map amendment. Staff provided a brief presentation and recommendation regarding the application. There were no comments from the public provided.
- III. NOTIFICATION:** Notice was published in the Idaho State Journal and a sign was posted on the subject property on November 26, 2024. All property owners within three hundred feet (300') of the external boundaries of the land being considered have been provided notice of the public hearing in order that they may provide comment on the proposed zone map amendment. No written comments were received from the public.
- IV. CRITERIA FOR REVIEW:** The Planning and Zoning Commission and City Council shall review the facts and circumstances of each proposal in terms of the standards listed in the table below:

Table 1. Zoning Map Amendment Review Criteria Analysis

| <b>REVIEW CRITERIA (17.02.170.E):</b> |                          |                          |                                       |                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------|--------------------------|--------------------------|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Compliant</b>                      |                          |                          | <b>City Code and P&amp;Z Findings</b> |                                                                                                                                                                                                                                                                                                                                          |
| <b>Yes</b>                            | <b>No</b>                | <b>N/A</b>               | <b>Code Section</b>                   | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                          |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E1</b>                   | <b>How the requested zoning at the location in question would be in the community's best interest.</b>                                                                                                                                                                                                                                   |
|                                       |                          |                          | <i><b>Finding</b></i>                 | The applicant's proposal to rezone the subject property from Commercial General (CG) to Residential Medium Density Single-Family (RMS) aligns with the City's Future Land Use Map where the property is designated Residential (R). The subject property is surrounded by residential development in close proximity to commercial uses. |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E2</b>                   | <b>How the list of uses permitted by the zoning ordinance would blend with surrounding land uses.</b>                                                                                                                                                                                                                                    |
|                                       |                          |                          | <i><b>Finding</b></i>                 | Code Section 17.03.300 states that "The RMS zoning district is designed to accommodate single-family dwellings, and a mix of other housing types such as accessory dwellings, townhomes, and two-family dwellings. Development                                                                                                           |

|                                     |                          |                          |                     |                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------|--------------------------|--------------------------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     |                          |                          |                     | <i>standards for this zoning district promote pedestrian travel to a variety of neighborhood services within close proximity. Neighborhood park and recreation areas are encouraged. Some civic and institutional uses are also conditionally permitted.” The proposed change will blend with surrounding development and meet the purpose and intent of the RMS zone.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E3</b> | <b>If the subject site is physically suitable for the type and intensity of land uses permitted under the proposed zoning district.</b>                                                                                                                                                                                                                                    |
|                                     |                          |                          | <b>Finding</b>      | This property is currently developed with a single-family house and accessory structure on lots 10 & 11 with lots 12 & 13 underdeveloped. Lots 12 & 13 are currently zoned CG. The subject site would be physically suitable for the types and intensities of uses permitted in the RMS zoning district.                                                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E4</b> | <b>If the uses permitted in the proposed zoning district would be adequately served by public facilities and services such as thoroughfares, police and fire protection, drainage, refuse disposal, water, sewer, and schools, to ensure the public health, safety and general welfare.</b>                                                                                |
|                                     |                          |                          | <b>Finding</b>      | All utilities and services are readily available to the subject property. Bannock Transportation Planning Organization classifies Willard Ave. as a Local Street which is in close proximity to Oak St. which is designated as a Minor Arterial.                                                                                                                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E5</b> | <b>If the uses permitted in the zoning district would be compatible in terms of their scale, mass, coverage, density, and intensity with adjacent land uses.</b>                                                                                                                                                                                                           |
|                                     |                          |                          | <b>Finding</b>      | Adjacent land uses predominately includes single-family residential development that is in close proximity to commercial development along Oak Street. Any development within the RMS zoning district shall adhere to the standards/regulations of Municipal Code associated with that zone.                                                                               |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E6</b> | <b>Whether the proposed zoning designation is consistent with the Future Land Use Map designation.</b>                                                                                                                                                                                                                                                                     |
|                                     |                          |                          | <b>Finding</b>      | The adopted Future Land Use Map designation for the subject property is Residential (R), which is consistent with the proposed rezone.                                                                                                                                                                                                                                     |

**V. PLANNING & ZONING COMMISSION RECOMMENDATION:** In consideration of the application, the Planning & Zoning Commission recommends **approval** of the Zone Map Amendment application from Brandon Desfosses to rezone the subject property from Commercial General (CG) to Residential Medium Density Single-Family (RMS) finding the application meets the standards for approval under Chapters 17.02.170 E. Criteria for Review of Pocatello City Code.

  
Adam Geyer, Vice Chair  
Planning & Zoning Commission  
Authorized to sign 12/11/2024

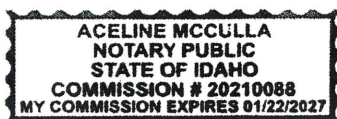
STATE OF IDAHO )

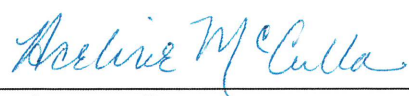
ss:

County of Bannock )

On this 12<sup>th</sup> day of December, 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared Adam Geyer, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Aceline McCulla  
Notary Public for Idaho  
Residing in Pocatello, Idaho



# Planning & Development Services

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911 NORTH 7<sup>TH</sup> AVENUE | P.O. Box 4169

POCATELLO, IDAHO 83205-4169

208.234.6184 WEB <https://www.pocatello.gov>

## PLANNING & ZONING COMMISSION

HEARING: DECEMBER 11, 2024

### STAFF REPORT

FILE: MA24-0004

**APPLICANT:** Brandon Desfosses  
**OWNER:** Doug North  
**REQUEST:** Zone Map Amendment  
**LEGAL DESCRIPTION:** Lots 10-11-12-13, Block 2, Martin Subdivision  
**GENERAL LOCATION:** 155 Willard Avenue  
**STAFF:** Jim Anglesey, Long-Range Senior Planner

#### SUMMARY & CONDITIONS:

In consideration of the application, staff concludes that the proposed zoning map amendment is **compliant** with Pocatello City Code Section 17.02.170.E. A full analysis is detailed within this staff report.

#### OPTIONAL MOTIONS:

**1. Approval of the Application:** "Move to recommend **approval** of the zoning map amendment application from Brandon Desfosses to rezone the subject property from Commercial General (CG) to Residential Medium Density Single-family (RMS), finding the application meets the standards for approval under section 17.02.170.E of Pocatello City Code, and authorize the Chair to sign the Findings of Fact & Recommendation.

**2. Denial of the Application:** "Move to recommend **denial** of the zoning map amendment application from Brandon Desfosses, finding the application **does not** meet the standards for approval under section 17.02.170.E of Pocatello City Code (**state reason for denial**) and authorize the Chair to sign the Findings of Fact & Recommendation.

#### GENERAL BACKGROUND:

**Request:** Brandon Desfosses has submitted a zoning map amendment to rezone the subject property from Commercial General (CG) to Residential Medium Density Single-family (RMS).

**Physical Characteristics of the Site:** The site addressed as 155 Willard Ave. consists of four (4) lots totaling 0.3 acres or 12,800 square feet (more or less). The property is currently developed with one (1) single-family unit and one (1) accessory structure on lots 10 & 11.

**Notification:** Notice was posted on the subject property and published in the Idaho State Journal on November 26, 2024. All property owners within three hundred feet (300') of the external boundaries of the subject property have been provided notice of the public hearing in order that they may provide comment on the proposed zoning map amendment. No written comments were received from the public prior to the publishing of this staff report.

**Planning & Zoning Commission Action:** After notice, the Planning and Zoning Commission shall hold a hearing to consider the request and render a recommendation. The commission shall submit findings of fact and recommendation to the City Council within forty-five (45) days following closure of the public hearing.

#### ATTACHMENTS:

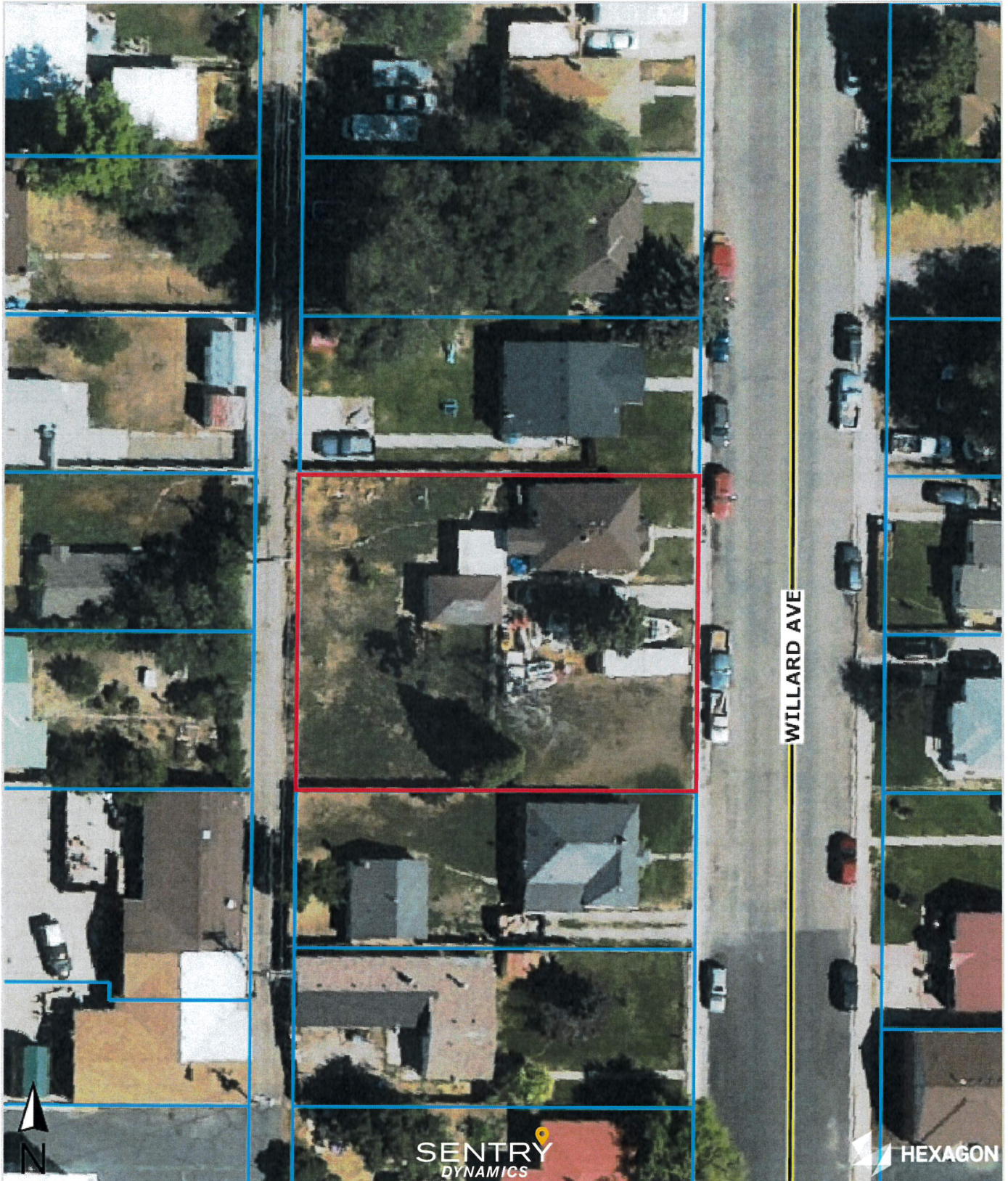
- A. Application Documents
- B. Future Land Use Map Designation & Current Zoning

**CRITERIA FOR REVIEW:** The Planning and Zoning Commission and City Council shall review the facts and circumstances of each proposal in terms of the standards listed in the table below:

Table 1. Zoning Map Amendment Review Criteria Analysis

| <b>REVIEW CRITERIA (17.02.170.E):</b> |                          |                          |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
|---------------------------------------|--------------------------|--------------------------|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Compliant</b>                      |                          |                          | <b>City Code and Staff Review</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| <b>Yes</b>                            | <b>No</b>                | <b>N/A</b>               | <b>Code Section</b>               | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E1</b>               | <b>How the requested zoning at the location in question would be in the community's best interest.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|                                       |                          |                          | <b>Staff Review</b>               | The applicant's proposal to rezone the subject property from Commercial General (CG) to Residential Medium Density Single-Family (RMS) aligns with the City's Future Land Use Map where the property is designated Residential (R). The subject property is surrounded by residential development in close proximity to commercial uses.                                                                                                                                                                                                                                                                  |  |
|                                       |                          |                          | <b>Applicant Response</b>         | Its currently surrounded by homes zoned residential. So, it would be in the right place.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E2</b>               | <b>How the list of uses permitted by the zoning ordinance would blend with surrounding land uses.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
|                                       |                          |                          | <b>Staff Review</b>               | Code Section 17.03.300 states that <i>"The RMS zoning district is designed to accommodate single-family dwellings, and a mix of other housing types such as accessory dwellings, townhomes, and two-family dwellings. Development standards for this zoning district promote pedestrian travel to a variety of neighborhood services within close proximity. Neighborhood park and recreation areas are encouraged. Some civic and institutional uses are also conditionally permitted."</i> The proposed change will blend with surrounding development and meet the purpose and intent of the RMS zone. |  |
|                                       |                          |                          | <b>Applicant Response</b>         | It would fit perfect since all surrounding lots are residential single family.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E3</b>               | <b>If the subject site is physically suitable for the type and intensity of land uses permitted under the proposed zoning district.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
|                                       |                          |                          | <b>Staff Review</b>               | This property is currently developed with a single-family house and accessory structure on lots 10 & 11 with lots 12 & 13 underdeveloped. Lots 12 & 13 are currently zoned CG. The subject site would be physically suitable for the types and intensities of uses permitted in the RMS zoning district.                                                                                                                                                                                                                                                                                                  |  |
|                                       |                          |                          | <b>Applicant Response</b>         | It's a great piece of land for a single family home similar to the homes around it.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E4</b>               | <b>If the uses permitted in the proposed zoning district would be adequately served by public facilities and services such as thoroughfares, police and fire protection, drainage, refuse disposal, water, sewer, and schools, to ensure the public health, safety and general welfare.</b>                                                                                                                                                                                                                                                                                                               |  |
|                                       |                          |                          | <b>Staff Review</b>               | All utilities and services are readily available to the subject property. Bannock Transportation Planning Organization classifies Willard Ave. as a Local Street which is in close proximity to Oak St. which is designated as a Minor Arterial.                                                                                                                                                                                                                                                                                                                                                          |  |
|                                       |                          |                          | <b>Applicant Response</b>         | It would fit the comprehensive map of the city.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| <input checked="" type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E5</b>               | <b>If the uses permitted in the zoning district would be compatible in terms of their scale, mass, coverage, density, and intensity with adjacent land uses.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
|                                       |                          |                          | <b>Staff Review</b>               | Adjacent land uses predominately includes single-family residential development that is in close proximity to commercial development along Oak Street. Any development within the RMS zoning district shall adhere to the standards/regulations of Municipal Code associated with that zone.                                                                                                                                                                                                                                                                                                              |  |
|                                       |                          |                          | <b>Applicant Response</b>         | It would be compatible since its already annexed. Would add another affordable new home to our housing issue.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |

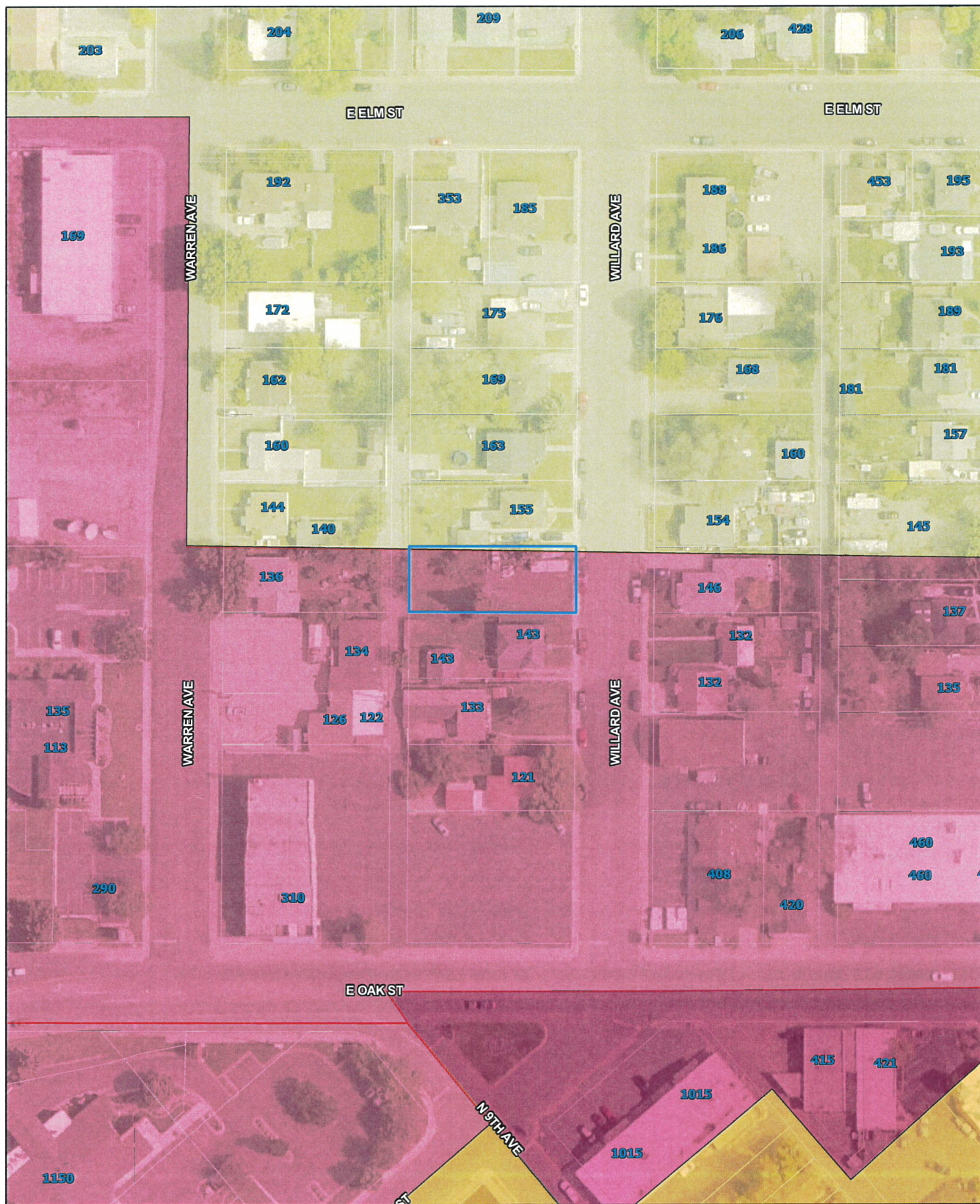
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|-------------------------------------|--------------------------|--------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <b>17.02.170.E6</b>              | <b>Whether the proposed zoning designation is consistent with the Future Land Use Map designation.</b>                                 |
|                                     |                          |                          | <b><i>Staff Review</i></b>       | The adopted Future Land Use Map designation for the subject property is Residential (R), which is consistent with the proposed rezone. |
|                                     |                          |                          | <b><i>Applicant Response</i></b> | The future land zoning is residential.                                                                                                 |



  
**AmeriTitle**

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

# Pocatello Zoning Map

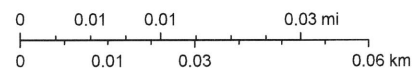


## Zoning Areas

-  Commercial General (CG)  
 Residential Commercial Professional (RCP)  
 Residential Medium Density Multi Family (RMM)  
 Residential Medium Density Single Family (RMS)

## Parcels

1:1,128



Maxar, Microsoft

# Pocatello Future Land Use Map



Future Land Use

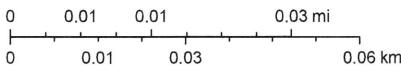
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Maxar, Microsoft



SCIENCE AND ENVIRONMENT DIVISION

911 North 7th Ave  
P O Box 4169  
Pocatello, Idaho 83205-4169  
(208) 239-6983 (208) 234-6518  
[www.pocatello.us/sustainable](http://www.pocatello.us/sustainable)



## Executive Summary

**TO:** Mayor and City Council

**CC:** Brayden Millward & Anne Butler, Parks and Recreation

**FROM:** Hannah Sanger, Science & Environment Division Manager

**DATE:** January 2, 2025 Council Meeting

**RE:** BID ACCEPTANCE AND AWARD – MOUNTAIN VIEW CEMETERY TREE PRUNING

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### **Recommendation:**

Staff recommends that Council award the bids for the Mountain View Cemetery tree pruning and removal project to: 1) Top Notch Trees in the amount of \$124,400 and 2) Intermountain Tree Service in the amount of \$39,600 and authorize the Mayor's signature on all pertinent documents, including Change Orders, subject to Legal Department review. Funding for the project is from the USFS Urban and Community Forestry grant.

### **Summary**

On December 9, 2024, the City of Pocatello received one responsive bid for the north portion of the Mountainview Cemetery tree pruning and removal project. City staff have reviewed the bid and recommend accepting this bid from Top Notch Trees. This work includes pruning 118 trees and removing 35 trees. On December 17, 2024 the City of Pocatello received one bid for the south portion of the Mountainview Cemetery tree pruning and removal project. City staff have reviewed the bid and recommend accepting the apparent low bid from Intermountain Tree Service Trees. This work includes pruning 46 trees and removing 14 trees.

### **Discussion**

This work will complete the tree pruning and removal in the north third of the cemetery (from the north fence to Stansbury Court). The remainder of the cemetery will be bid out in future years. Per City Code contracts are awarded to ISA certified arborists.

To: City Council and Mayor  
From: Matt Kerbs, Deputy City Attorney MK  
Date: December 24, 2024  
Re: Bid Awards for Mountain View Cemetery Tree Pruning Project

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I have reviewed the above referenced documents and have no legal concerns with Council awarding the bids for the project to the following contractors and authorizing the Mayor to sign any contract documents associated with the awards:

1. Top Notch Trees - \$124,400 (118 pruned trees and 35 removed trees)
2. Intermountain Tree Service - \$39,600 (46 pruned trees and 14 removed trees)

**City of Pocatello**  
**Bid Opening for 2024 Tree Pruning – Mountainview Cemetery**  
Held in the Council Chambers at City Hall December 9, 2024 at 2:00pm

| Bidder                     | Bid Amount                                                | ISTA #   | Addendum | 3 References |
|----------------------------|-----------------------------------------------------------|----------|----------|--------------|
| Top Notch Trees            | \$ 124,400 — 118 prune for 64,900<br>35 remove for 59,500 | RM0848A  | X        | X            |
| Intermountain Tree Service | \$ 87,730 110 trees total                                 | PN 5436A | X        | X            |
|                            |                                                           |          |          |              |
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Non-responsive bid  
↑  
wrong bid sheet

## BID FORM

### TREE PRUNING – MOUNTAINVIEW CEMETERY

Submit Sealed Bid To: City Clerk, City of Pocatello, 911 N. 7<sup>th</sup>  
Avenue, Pocatello, ID 83201

Bidder Name (printed):

Address:

Bidder Authorized Representative/  
Contact Person:

Email:

|                   |
|-------------------|
|                   |
| City, State, Zip: |
| Telephone:        |
|                   |

Dirk Anderson / Top Notch Tree

Pocatello, ID 83201

208 233 8233 or 208 241 2463  
topnotchtreedir@gmail.com

ISTA Certification #: Rm0848A

### Receipt of Addenda

Bidder hereby acknowledges receipt of the following Addenda:

[Add rows as needed. Bidder is to complete table.]

| Addendum Number | Addendum Date |
|-----------------|---------------|
| #3              | 11/26/24      |
|                 |               |
|                 |               |

It is the City of Pocatello's intent to award the bid to one or more contractors. The City may make multiple contract awards based on the price and completion timeline. All work must be completed by April 15, 2025 in order for the contract to be awarded.

The City of Pocatello (City) reserves the right to reject any and all bids/proposals, to waive any irregularities in the bids/proposals received and to accept the proposal(s) that are in the best interest of the City.

### REQUIRED ATTACHMENTS TO BE SUBMITTED WITH SEALED BID

**A. Statement of Bidder's Qualifications.** *City may check to determine if references provided support Bidder's ability to comply with the requirements of this Bid Package. City may use references to obtain additional information, break tie scores, or verify any information needed. City may contact any reference (submitted or not) to verify Bidder's*

*qualifications.*

1. Bidder must have a minimum of three (3) years' experience performing services. Provide 2 references, for projects of similar scope, who can be contacted regarding the quality of service provided in the last 5 years. Information provides shall include:
  - a. Reference name, telephone number and email
  - b. Project name, description (treatment types, size, scope) and year(s).
2. Describe key personnel for the project and their relevant experience. Provide anticipated crew size.
3. Describe equipment and techniques to be used for completing the project.
4. Describe anticipated schedule including anticipated project start and completion date.

## **BIDDER'S REPRESENTATIONS**

B. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.
5. Based on the information and observations referred to in

the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

6. Bidder is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Bidding Documents.
7. Bidder has given City Project Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by City Project Manager is acceptable to Contractor.
8. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

## **BIDDER'S CERTIFICATIONS**

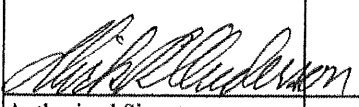
### **C. The Bidder certifies the following:**

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph:
  - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.

- b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
- c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
- d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

### BID SCHEDULE

The following bid is submitted for furnishing all equipment, materials and labor for tree pruning in the Mountainview Cemetery Area. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum price(s):

| Scope of Work Item                                                                             | # of Trees | Price per Tree          | TOTAL PRICE<br>(# of Trees x Price<br>per Tree) |
|------------------------------------------------------------------------------------------------|------------|-------------------------|-------------------------------------------------|
| 1. Total # of trees that can be pruned by April 15, 2024 (within the November 26 updated map)  | 118        | \$ 550. <sup>00</sup>   | \$ 64,900. <sup>00</sup>                        |
| 2. Total # of trees that can be removed by April 15, 2024 (within the November 26 updated map) | 35         | \$ 1,700. <sup>00</sup> | \$ 59,500. <sup>00</sup>                        |
| TOTAL PRICE FOR FULL PROJECT<br>(sum of Work Item 1 and 2)                                     |            |                         | \$ 124,400. <sup>00</sup>                       |
| 1                                                                                              | 2          |                         |                                                 |
|             |            |                         | 12/9/24                                         |
| Authorized Signature                                                                           |            |                         | Date                                            |
| Mark R. Anderson                                                                               | 4          |                         |                                                 |
| Co-owner                                                                                       | 3          |                         | 5                                               |
| (Printed Name and Title)                                                                       | 6          |                         |                                                 |

00410 Bid Form – Tree Pruning- Mountainview

Cemetery

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## References

- Idaho Mobile Home Parks LLC  
Tom DeHart  
208-223-8408  
[idahomobile@gmail.com](mailto:idahomobile@gmail.com)

The Meadows, Sunnybrook, Overlook MHP, Hillcrest  
+or- 200 trees, elms, ash, box elder, poplar and spruce trimmed or removed  
2010-2024

- Juniper Hills Country Club  
Dan Harding  
208-380-2767

+or- 100 trees, Russian olive, Elm, Spruce, Ash trim and remove  
2000-2024

## Personnel

6-8 ground crew members – 1 to 2 yrs

2-4 trimmers, aerial lift operators – decades of tree work

## Equipment/Techniques

Boom Truck

Dump Truck

Chipper

Stumper

## Schedule

Start February 1<sup>st</sup>

Completion April 15th

## **Scope of Work**

### **Tree Pruning – Mountainview Cemetery**

**Mandatory Pre-bid tour (required for bid submittal): Tuesday, November 19, 2024, beginning at 10:00 AM.** Meet at Brady Chapel, Mountainview Cemetery, 1520 S. 5<sup>th</sup> Ave.

**Project Overview:** This City-owned cemetery contains many tree-lined streets and alleyways, which have previously received pruning only on an as-needed basis (e.g. in response to storm events). The City has assessed tree condition for all trees in the project area and would like to use this information to bid out prescriptive pruning work. The project is funded through the U.S. Department of Agriculture Forest Service Inflation Reduction Act – Urban and Community Forestry Grant (U&CF).

Trees in need of pruning have been assessed. This information will be made available online to the awarded bidder for pulling up on a smartphone/tablet in the field. See attached map of tree locations indicating work to be performed. The Project includes the following work in the Cemetery (north of Stansbury Court): 55 trees removed, 151 trees pruned for crown maintenance, and 13 trees pruned for crown raising on approximately 17 acres within Mountainview Cemetery.

#### **Treatment Specifications:**

##### **I. General BMPs:**

1. **ISTA Certification and Standards.** All work shall be performed by, or under the direct supervision of skilled and qualified ISA Certified Arborists who are familiar with these specifications, and it shall be the sole responsibility of the tree service to see that these specifications are adhered to. All tree work shall be performed according to the most recent ANSI A300 Tree Care Standards. Current ANSI Z133 Safety Standards shall be adhered to at all times. Climbing spurs (aka spikes, hooks, or gaffs) shall not be used unless tree is being removed, or otherwise in accordance with terms identified in ANSI A300 B-2.2 or 4.5.3 and pre-approved by project manager.
2. **Signage & traffic control.** Contractor shall be responsible for pedestrian and vehicular safety and control within and about the work site, and obtain all permits and bonds required by such regulating agencies, and shall provide all necessary warning devices, barricades, signage, and ground personnel needed to give safety, protection, and warning to persons and vehicular traffic within the area as approved by the City of Pocatello.
3. **Erosion Control and Spills.** Operations shall be conducted to prevent soil and vegetative debris from entering paved roadways or the stormwater system. Limit work in muddy conditions (which may occur in fall/winter freeze-thaw cycles). If soil or debris accumulates on paved roadways or in stormwater facilities, it shall be removed daily. Contractor shall be responsible for appropriate and immediate response to Hazardous Material Spills, including containment, cleanup, and notifying all appropriate agencies.
4. **Debris removal.** All equipment, tools, wood, trimmings, brush, wood chips or any other form of debris shall be removed by the tree service as well as having the area swept clean of all materials related to the work operation at the end of each working day, unless otherwise specified by work order.
5. **Permits and Utility Locates.** The Contractor is responsible for all necessary permits and Utility Locates.
6. **Equipment Standards.** All equipment to be used and work to be performed must be in full compliance with all standards set forth by Occupational Safety and Health Administration (OSHA), American National Standards Institute (ANSI). All equipment and tools used in tree care operations shall be maintained according to manufacturer's recommendations.

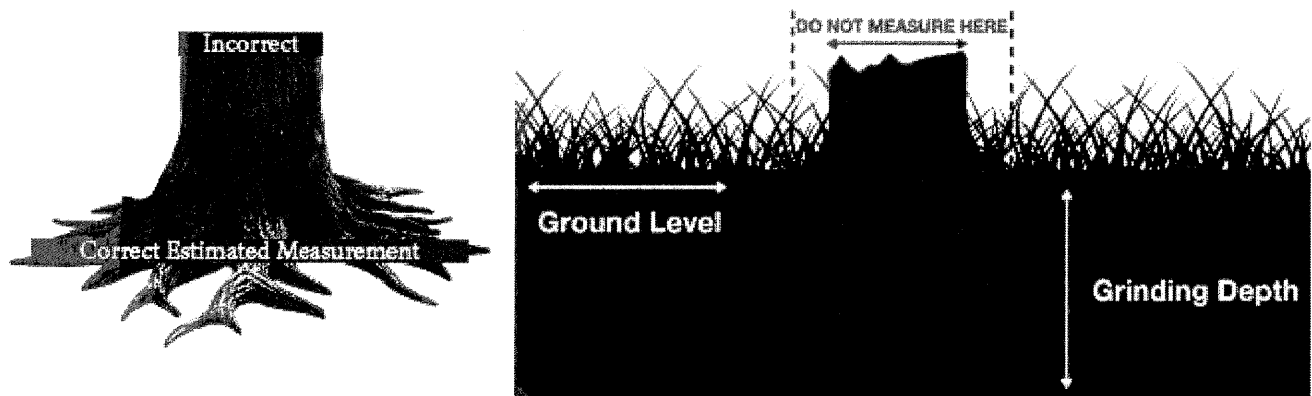
## II. Pruning

1. The Contractor is expected to consistently display a thorough knowledge of strong and weak branching structure, as well as the proper pruning techniques that are used to improve branching structure.
2. The extent of pruning will vary depending on species, and the current size and age of the tree.
3. No more than 10% of live healthy canopy should be removed at one time, unless otherwise specified by the Project Manager.
4. All pruning shall be performed in accordance with the American National Standards Institute (ANSI) A300-2023 Standard Practices (a copy of which may be supplied upon request).
5. All pruning shall be conducted in accordance with the “Natural Pruning System” which aims to preserve the characteristic growth pattern and adaptations of each plant (see ANSI A300 Clause 5 C5-Annex B) and will consist of any combination of one (1) or more of the following practices, specified in the Scope of Work:
  - a. **Crown Maintenance**, unless otherwise specified by the Project Manager, shall consist of the selective removal of branches one inch and larger at the point of attachment which are dead, dying, damaged, decayed, diseased, weak, crossing, poorly structured, interfering with structures and/or streetlights, stubbed, or otherwise considered hazardous or undesirable for the tree. Subordinate or remove “Co-Dominant Leaders”, branches with “Included Bark”, crossing and rubbing branches, and upright competitive branches that have the potential to compromise tree structure or health. Incomplete Crown Maintenance (i.e., not pruning out previously described branches) will be considered incorrect pruning and not in accordance with these specifications. Crown Maintenance includes ‘Crown Raising.’
  - b. **Crown Raising** shall consist of the removal of lower branches of a tree over the street and sidewalk (including in parking lots) in order to provide clearance for vehicular or pedestrian traffic. Generally, clearance for larger trees will be 14 feet or more over the street and 8 feet over sidewalks while also providing an acceptable visual balance of the entire lower canopy. Trees in parks, will require clearance for lawnmowers and other equipment up to 8 feet. Smaller trees which cannot be pruned up to 14 feet over the street are to be pruned to establish as much clearance as possible while maintaining the natural character, structure and visual balance of the canopy.
    - i. Low branches that are considered “Temporary Branches” shall be pruned off to the extent that allows for a desired “Permanent Branching” structure to be established at a point that is appropriate for the site the tree is growing in. It is recognized that some trees will not yet have reached a size that allows for the removal of all temporary branches.
    - ii. **Crown Restoration** may be necessary if a tree has previously been topped, headed or otherwise damaged by substandard pruning, a storm or vandalism etc. This type of pruning shall be conducted with the objective to redevelop or improve the structure, form and appearance following any such damage and should aim to retain as much as possible, the natural, strong structure of the tree.
  - c. **Other types of pruning may be specified, including:**
    - i. **Thinning** (the selective pruning to reduce density of branches and foliage) is necessary only for structural or tree health considerations. Known areas of excessive decay or poor structure that have a high risk of failure shall be pruned out or reduced back to appropriate living tissue unless otherwise approved by project manager to allow for preservation/promotion of wildlife habitat.
    - ii. **Structural Pruning** is intended to develop or improve plant architecture, and/or structure. It shall consist of removing or reducing branches to develop a strong

- branching structure throughout the canopy to maximize benefits and value, reduce the potential for future failure and reduce long term maintenance costs.
- iii. **Juvenile Tree Pruning** seeks to develop a strong branching structure throughout the canopy that is appropriate for the urban environment and to improve the potential for long-term good tree health. Pruning specifications are the same as “Crown Maintenance” and “Crown Raising” described herein. Often “structural Pruning” is of particular importance with this size tree.
  - iv. **Preservation Tree Pruning** is similar to “Crown Maintenance” with its primary objective. It aims to preserve the vitality of the tree by not removing too much live tissue (no more than 10%) and focuses on reducing risks associated with existing structural defects, dead wood, and overextended limbs. Mature trees seldom require much pruning if they have been managed appropriately throughout their life.
  - v. Other types of ANSI A300 Standards may be specified including “**Restoration Pruning**” (C5-Annex A A-4.1) or “**Retrenchment (regenerative) Pruning**” (C5-Annex A.A6.1) and **other Specialty Pruning Systems** (ANSI A300 5.3.3).
- d. If specified by the terms identified in this Scope of Work, it may be appropriate to leave damaged parts or intentionally apply specialized cuts to establish or preserve wildlife habitat.
  - e. **No Lion Tailing** (ANSI A300 5.5.20) or unnecessary thinning shall be done.
  - f. **NO TOPPING** (as defined by ANSI A300 5.5.21) or similar cutting shall be done at any time. No heading cuts shall be made, no exceptions. Instead, reduction cuts should be used to reduce the weight of heavy or weak branches.

### III. Stump Removal

1. Tree stumps are to be ground out completely with appropriate equipment, to a minimum depth of twenty-five (25) inches below grade and to sufficiently accommodate the planting of a large “Balled and Burlapped” (B&B) tree in the same location as the tree stump. Roots must be completely separated from the stump and adjacent roots to a size of no more than 3 inches in diameter. All surface roots greater than 2 inches in diameter must be removed.
2. The hole resulting from the stump removal shall be backfilled with the grinding material or soil to a level of two (2) to three (3) inches above the grade to allow for settling. All excess material must be removed from the site and the entire area should be completely cleaned of debris and dirt.
3. Any damage caused by stump removal operations must be repaired by the contractor at contractor’s expense and to the satisfaction of the City of Pocatello as soon as possible.
4. The contractor will be required to return to the site to correct any conditions that do not meet the above specifications.



#### **IV. Material Disposal:**

1. All chips, branches and masticated material must be removed from the project site and disposed of at contractor's expense.
2. If desired, some material may set aside for free firewood, pending approval by Project Manager. If so, it shall be cut into 2-foot lengths (maximum) and left for firewood collection at a designated location (marked by City).

#### **Seasonality, Hours, and Days of Operation:**

1. Work will take place when during winter months, when fire risk is low and stormwater runoff is generally minimal.
2. Work will take place from 8:00 AM to 6:00 PM or daylight hours, whichever is shorter.
3. Work will not take place on Saturday, Sunday, and/or legal national holiday, unless prior written authorization is obtained.

#### **Location of Project Areas:**

Work will be performed in Mountainview Cemetery as shown on the attached project location map.

#### **Project Boundary Marking:**

The location and access to the units will be shown on project location maps to be distributed during the pre-estimate tour.

#### **Notification of Cessation or Restart of work:**

The Contractor will notify the City's representative whenever he/she intends to cease operations and will notify them before starting operations.

#### **Personnel Requirements:**

1. Project Foreman: A crew foreman must be on-site directing work at all times. This person will also serve as an on the ground contact person to the City's representative. Failure to maintain a foreman will result in suspension of work until a foreman is provided.
2. Contractor will furnish all tools, labor, supervision, materials, supplies, transportation, training, and incidentals to accomplish work according to specifications.

#### **Licensing, Insurance and Bonding Requirements:**

1. The crew is responsible for maintaining a safe working environment. Contractor will be expected to provide certification of liability insurance in the minimum amount of \$1,000,000 as well as worker's compensation insurance. Contractor must submit a certificate of insurance naming the City of Pocatello as additional named insured upon award of estimate. Certificate of Insurance must be received by the City representative before commencement of work.
2. The Contractor will be responsible for any damages to the property resulting from the contractor's implementation of the contract.

#### **Stop Work Orders and Protection of Improvements:**

1. If roads or any type of access become subject to damage, because of adverse weather conditions or other natural and or political reasons, a Stop Work Order may be implemented by the City Representative until other access can be provided.
2. Stop Work Orders may also be issued when operations are expected to cause significant ground/soil disturbance. Such conditions usually develop where frozen ground is thawing, when snow is melting, and during or immediately following rainstorms. Any infrastructure damage or soil and ground disturbance caused by equipment during and after operations will be rehabilitated at contractor expense.

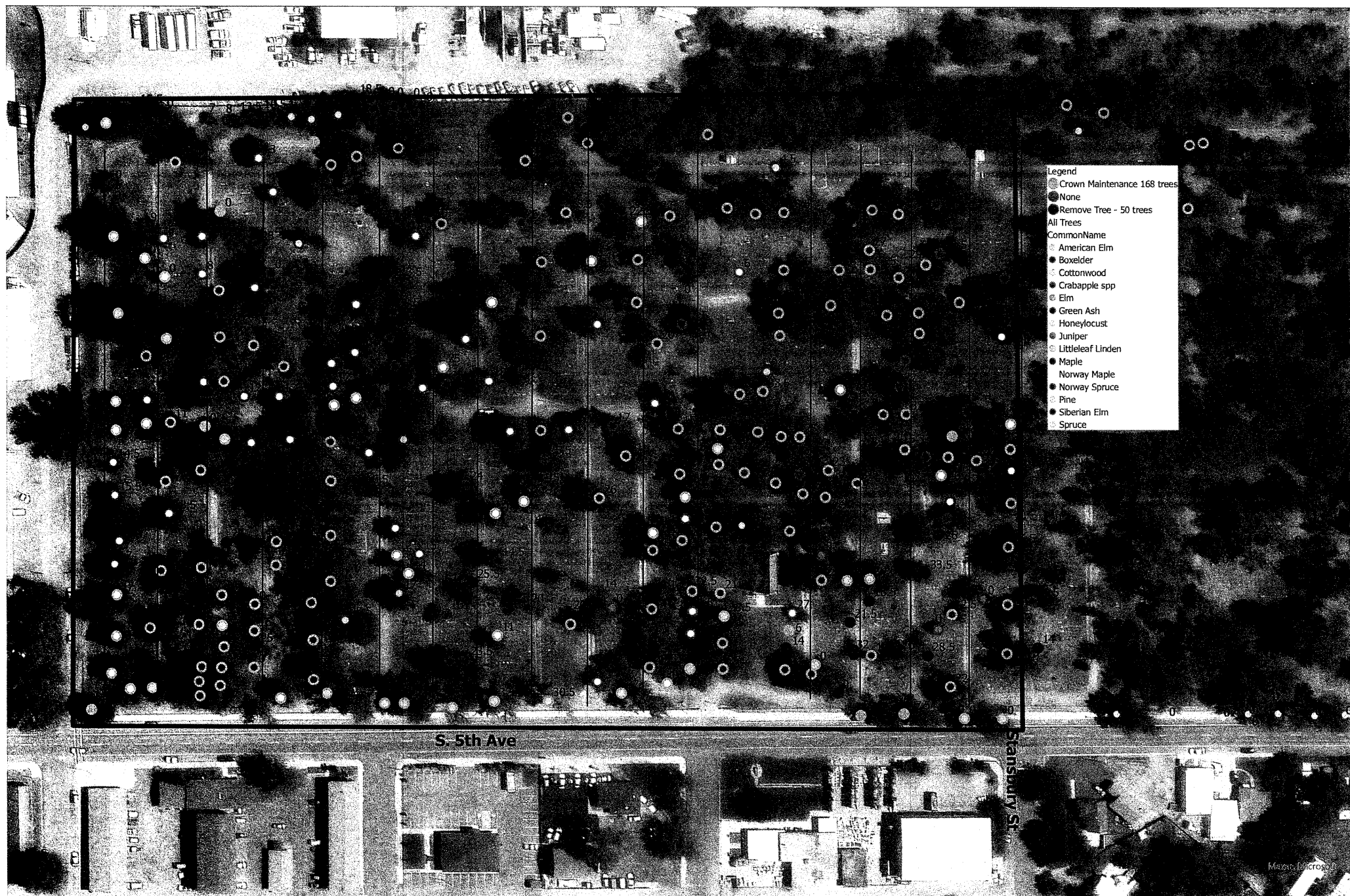
***SAFETY:*** All employees of the contractor shall work in a safe and prudent manner. Proper personal protection equipment (PPE) shall be worn at all times.

**Failure to Provide Services:**

1. Should the contractor fail to provide the ordered services, quit work early or leave work before being released, or fail to complete the project as the contract may be considered in default and the remaining work left on the contract may be lost.
2. The contractor may also be liable for costs associated with finding a new contractor to complete the remaining work.

**Expected Timeframe**

- Bid Advertised – November 12, 2024
- Pre-bid tour – Tuesday November 19, 2024, 10 AM.
- Bid Deadline – Tuesday, November 26, 2024, 2 PM.
- Approximate contract start date – January 1, 2025
- Contract completion date – as soon as possible, but no later than April 1, 2025.



# CONTRACT

## Tree Maintenance – Mountainview Cemetery

This Contract is by and between City of Pocatello (Owner) and  
Top Notch Tree (Contractor).

Owner and Contractor hereby agree as follows:

### ARTICLE 1 - THE WORK

#### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. **Tree Maintenance – Mountainview Cemetery**, which includes **tree pruning and removal per specified plan, beginning along the north edge of the cemetery and working south.**
  - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located **on ~17 acres of City-owned land within Mountainview Cemetery, Pocatello ID 83201.**

### ARTICLE 2 - CONTRACT DOCUMENTS

#### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Project Manager. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Project Manager. Project Manager will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Project Manager will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Project Manager or its consultants.

## 2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Scope of Work
  - 3. Project Map
  - 4. Addenda.
  - 5. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Change Orders (EJCDC C-941).

## ARTICLE 3 - PROJECT MANAGER

### 3.01 Project Manager

- A. The Project Manager for this Project is **the City of Pocatello and their designee, including Brett Hewatt.**

## ARTICLE 4 - CONTRACT TIMES

### 4.01 Contract Times

- A. The Work will be completed and ready for final payment on or before **April 15, 2025.**

### 4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$100 for each day that expires after the Contract Time for substantial completion.

### 4.03 Delays in Contractor's Progress

- A. If Owner, Project Manager, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those

for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.

- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

#### 4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Project Manager for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Project Manager.
- B. The Contractor shall update and submit the progress schedule to the Project Manager each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

### ARTICLE 5 - CONTRACT PRICE

#### 5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents at the following unit prices for each unit of Work completed:

| Item No. | Description                         | Price     |
|----------|-------------------------------------|-----------|
| 1        | Prune 118 trees and remove 35 trees | \$124,400 |

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Project Manager.

### ARTICLE 6 - BONDS AND INSURANCE

***NOTES TO USER: Requirements for bonds vary significantly between private and public owners, and with Laws and Regulations of the Project jurisdiction. Modify Paragraph 6.01 to comply with applicable Laws and Regulations.***

#### 6.01 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:
  - 1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
    - a. Workers' Compensation:

State:

Statutory

Employer's Liability:

|                                         |    |                             |
|-----------------------------------------|----|-----------------------------|
| Bodily Injury, each Accident            | \$ | <u>\$1,000,000</u>          |
| Bodily Injury By Disease, each Employee | \$ | <u>                    </u> |
| Bodily Injury/Disease Aggregate         | \$ | <u>                    </u> |

b. Commercial General Liability:

|                                                     |    |                    |
|-----------------------------------------------------|----|--------------------|
| General Aggregate                                   | \$ | <u>\$1,000,000</u> |
| Products - Completed Operations Aggregate           | \$ | <u>\$2,000,000</u> |
| Personal and Advertising Injury                     | \$ | <u>\$1,000,000</u> |
| Each Occurrence (Bodily Injury and Property Damage) | \$ | <u>\$1,000,000</u> |

c. Automobile Liability herein:

**NOTES TO USER: Automobile Liability Insurance may be listed as Bodily Injury and Property Damage or a Combined Single Limit that covers both. Choose Bodily Injury and Property Damage or a Combined Single Limit and delete the lines not used.**

Bodily Injury:

|               |    |                             |
|---------------|----|-----------------------------|
| Each Person   | \$ | <u>                    </u> |
| Each Accident | \$ | <u>                    </u> |

Property Damage:

|                           |    |                             |
|---------------------------|----|-----------------------------|
| Each Accident             | \$ | <u>                    </u> |
| Combined Single Limit of: | \$ | <u>\$1,000,000</u>          |

d. Excess or Umbrella Liability:

|                   |    |                    |
|-------------------|----|--------------------|
| Per Occurrence    | \$ | <u>\$1,000,000</u> |
| General Aggregate | \$ | <u>\$2,000,000</u> |

e. Contractor's Pollution Liability:

|                   |    |                             |
|-------------------|----|-----------------------------|
| Each Occurrence   | \$ | <u>                    </u> |
| General Aggregate | \$ | <u>                    </u> |

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and
  4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Project Manager and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Project Managers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the

Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.

- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Project Manager except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.05 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.06 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Project Manager shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Project Manager, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

#### 7.07 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Project Manager upon completion of the Work.

#### 7.08 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Project Manager and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Project Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Project Manager determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.09 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Project Manager specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Project Manager will provide timely review of shop drawings and samples.
- E. Project Manager's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Project Manager's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Project Manager and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.10 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Project Manager and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.11 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

#### 7.12 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Project Manager, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Project Managers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work

itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Project Manager.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 9 - PROJECT MANAGER'S STATUS DURING CONSTRUCTION**

### **9.01 Project Manager's Status**

- A. Project Manager will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Project Manager as Owner's representative during construction are set forth in this Contract.
- B. Neither Project Manager's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Project Manager in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Project Manager, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Project Manager to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Project Manager will make visits to the Site at intervals appropriate to the various stages of construction. Project Manager will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Project Manager has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.

- E. Project Manager will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Project Manager will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Project Manager will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Project Manager's decision, subject to the need for Project Manager's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other Project Management or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Project Manager in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection

therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Project Manager will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  - 3. Determine whether the condition falls within the differing site condition as stated herein;
  - 4. Obtain any pertinent cost or schedule information from Contractor;
  - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  - 6. Advise Owner in writing of Project Manager's findings, conclusions, and recommendations.
- C. After receipt of Project Manager's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Project Manager's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Project Manager promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Project Manager will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Project Manager timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Project Manager, Contractor shall, if requested by Project Manager, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### **13.02 Defective Work**

- A. Contractor shall ensure that the Work is not defective.
- B. Project Manager has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Project Manager has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR**

### **14.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Project Manager. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

### **14.02 Applications for Payments:**

- A. Contractor shall submit an application for payment in a form acceptable to the Project Manager, no more frequently than monthly, to Project Manager. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

#### 14.03 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Project Manager will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Project Manager's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Project Manager will recommend reductions in payment (set-offs) which, in the opinion of the Project Manager, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

#### 14.04 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 14.05 Substantial Completion

- A. The Contractor shall notify Owner and Project Manager in writing that the Work is substantially complete and request the Project Manager issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Project Manager an initial draft of punch list items to be completed or corrected before final payment.
- B. Project Manager will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Project Manager considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Project Manager will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Project Manager will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Project Manager's written recommendation of final payment.

#### 14.08 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

#### 15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Project Manager. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### 15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and

- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

#### 15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

### ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

#### 16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
  - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information

and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:

- a. The cost, progress, and performance of the Work;
  - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  7. Contractor has given 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 Project Manager is acceptable to Contractor.
  8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.02 Limitation of Damages**

- A. Neither Owner, Project Manager, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### **17.03 No Waiver**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.07 Israel Boycott

- A. Pursuant to Idaho Code §67-2346 (2), Contractor hereby certifies that is not currently engaged in, and will not for the duration of this contract engage in, a boycott of goods or services from Israel or territories under its control.

17.08 Dispute Resolution and Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

17.09 Designated Representatives

**CONTRACTOR**

Dirk Anderson  
Top Notch Tree  
Pocatello ID 83201  
(208) 233-8233; (208) 241-2463  
topnotchtreedirk@gmail.com

**OWNER & PROJECT MANAGER**

Hannah Sanger – Environmental  
Division Administrator  
City of Pocatello  
PO Box 4169  
Pocatello, ID 83201  
(208) 705-6360  
[hsanger@pocatello.us](mailto:hsanger@pocatello.us)

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

City of Pocatello

CONTRACTOR:

Top Notch Tree

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

Title: Mayor

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

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(where applicable)

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)*

**NOTE TO USER: Use in those states or other jurisdictions where applicable or required.**

# CONTRACT

## Tree Maintenance – Mountainview Cemetery

This Contract is by and between City of Pocatello (Owner) and  
Intermountain Tree Service (Contractor).

Owner and Contractor hereby agree as follows:

### ARTICLE 1 - THE WORK

#### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. **Tree Maintenance – Mountainview Cemetery**, which includes tree pruning and removal per specified plan, beginning along the north edge of the cemetery and working south.
  - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located on ~17 acres of City-owned land within Mountainview Cemetery, Pocatello ID 83201.

### ARTICLE 2 - CONTRACT DOCUMENTS

#### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Project Manager. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Project Manager. Project Manager will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Project Manager will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Project Manager or its consultants.

#### 2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Scope of Work
  - 3. Project Map
  - 4. Addenda.
  - 5. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Change Orders (EJCDC C-941).

### ARTICLE 3 - PROJECT MANAGER

#### 3.01 Project Manager

- A. The Project Manager for this Project is **the City of Pocatello and their designee, including Brett Hewatt.**

### ARTICLE 4 - CONTRACT TIMES

#### 4.01 Contract Times

- A. The Work will be completed and ready for final payment on or before **April 15, 2025.**

#### 4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$100 for each day that expires after the Contract Time for substantial completion.

#### 4.03 Delays in Contractor's Progress

- A. If Owner, Project Manager, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those

for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.

- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

#### 4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Project Manager for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Project Manager.
- B. The Contractor shall update and submit the progress schedule to the Project Manager each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

### ARTICLE 5 - CONTRACT PRICE

#### 5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents at the following unit prices for each unit of Work completed:

| Item No. | Description                        | Price    |
|----------|------------------------------------|----------|
| 1        | Prune 46 trees and remove 14 trees | \$39,600 |

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Project Manager.

### ARTICLE 6 - BONDS AND INSURANCE

**NOTES TO USER: Requirements for bonds vary significantly between private and public owners, and with Laws and Regulations of the Project jurisdiction. Modify Paragraph 6.01 to comply with applicable Laws and Regulations.**

#### 6.01 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:
1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
- a. Workers' Compensation:

State:

Statutory

Employer's Liability:

|                                         |    |                             |
|-----------------------------------------|----|-----------------------------|
| Bodily Injury, each Accident            | \$ | <u>\$1,000,000</u>          |
| Bodily Injury By Disease, each Employee | \$ | <u>                    </u> |
| Bodily Injury/Disease Aggregate         | \$ | <u>                    </u> |

b. Commercial General Liability:

|                                                     |    |                    |
|-----------------------------------------------------|----|--------------------|
| General Aggregate                                   | \$ | <u>\$1,000,000</u> |
| Products - Completed Operations Aggregate           | \$ | <u>\$2,000,000</u> |
| Personal and Advertising Injury                     | \$ | <u>\$1,000,000</u> |
| Each Occurrence (Bodily Injury and Property Damage) | \$ | <u>\$1,000,000</u> |

c. Automobile Liability herein:

**NOTES TO USER: Automobile Liability Insurance may be listed as Bodily Injury and Property Damage or a Combined Single Limit that covers both. Choose Bodily Injury and Property Damage or a Combined Single Limit and delete the lines not used.**

Bodily Injury:

|               |    |                             |
|---------------|----|-----------------------------|
| Each Person   | \$ | <u>                    </u> |
| Each Accident | \$ | <u>                    </u> |

Property Damage:

|                           |    |                             |
|---------------------------|----|-----------------------------|
| Each Accident             | \$ | <u>                    </u> |
| Combined Single Limit of: | \$ | <u>\$1,000,000</u>          |

d. Excess or Umbrella Liability:

|                   |    |                    |
|-------------------|----|--------------------|
| Per Occurrence    | \$ | <u>\$1,000,000</u> |
| General Aggregate | \$ | <u>\$2,000,000</u> |

e. Contractor's Pollution Liability:

|                   |    |                             |
|-------------------|----|-----------------------------|
| Each Occurrence   | \$ | <u>                    </u> |
| General Aggregate | \$ | <u>                    </u> |

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and
  4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Project Manager and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Project Managers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the

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Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.

- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Project Manager except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.05 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.06 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Project Manager shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Project Manager, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

#### 7.07 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Project Manager upon completion of the Work.

#### 7.08 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Project Manager and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Project Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Project Manager determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.09 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Project Manager specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Project Manager will provide timely review of shop drawings and samples.
- E. Project Manager's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Project Manager's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Project Manager and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.10 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Project Manager and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.11 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

#### 7.12 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Project Manager, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Project Managers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work

itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Project Manager.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 9 - PROJECT MANAGER'S STATUS DURING CONSTRUCTION**

### **9.01 Project Manager's Status**

- A. Project Manager will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Project Manager as Owner's representative during construction are set forth in this Contract.
- B. Neither Project Manager's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Project Manager in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Project Manager, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Project Manager to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Project Manager will make visits to the Site at intervals appropriate to the various stages of construction. Project Manager will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Project Manager has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.

- E. Project Manager will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Project Manager will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Project Manager will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Project Manager's decision, subject to the need for Project Manager's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other Project Management or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Project Manager in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection

therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Project Manager will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  - 3. Determine whether the condition falls within the differing site condition as stated herein;
  - 4. Obtain any pertinent cost or schedule information from Contractor;
  - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  - 6. Advise Owner in writing of Project Manager's findings, conclusions, and recommendations.
- C. After receipt of Project Manager's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Project Manager's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Project Manager promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Project Manager will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Project Manager timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Project Manager, Contractor shall, if requested by Project Manager, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### **13.02 Defective Work**

- A. Contractor shall ensure that the Work is not defective.
- B. Project Manager has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Project Manager has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR**

### **14.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Project Manager. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

### **14.02 Applications for Payments:**

- A. Contractor shall submit an application for payment in a form acceptable to the Project Manager, no more frequently than monthly, to Project Manager. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

#### 14.03 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Project Manager will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Project Manager's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Project Manager will recommend reductions in payment (set-offs) which, in the opinion of the Project Manager, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

#### 14.04 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 14.05 Substantial Completion

- A. The Contractor shall notify Owner and Project Manager in writing that the Work is substantially complete and request the Project Manager issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Project Manager an initial draft of punch list items to be completed or corrected before final payment.
- B. Project Manager will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Project Manager considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Project Manager will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Project Manager will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Project Manager's written recommendation of final payment.

#### 14.08 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

#### 15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Project Manager. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### 15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and

- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

#### 15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

### ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

#### 16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
  - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information

and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:

- a. The cost, progress, and performance of the Work;
  - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  7. Contractor has given 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 Project Manager is acceptable to Contractor.
  8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.02 Limitation of Damages**

- A. Neither Owner, Project Manager, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### **17.03 No Waiver**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.07 Israel Boycott

- A. Pursuant to Idaho Code §67-2346 (2), Contractor hereby certifies that is not currently engaged in, and will not for the duration of this contract engage in, a boycott of goods or services from Israel or territories under its control.

17.08 Dispute Resolution and Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

17.09 Designated Representatives

**CONTRACTOR**

Howard Cornwall  
Intermountain Tree Service  
1355 Kinghorn Road  
Pocatello, ID 83201  
(208) 237-0726  
[Loveracing81@gmail.com](mailto:Loveracing81@gmail.com)

**OWNER & PROJECT MANAGER**

Hannah Sanger – Environmental  
Division Administrator  
City of Pocatello  
PO Box 4169  
Pocatello, ID 83201  
(208) 705-6360  
[hsanger@pocatello.us](mailto:hsanger@pocatello.us)

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

City of Pocatello

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

Title: Mayor

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)

CONTRACTOR:

Intermountain tree service

By: Bill Cornwall

Title: Owner

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Edward Cornwall

Title: Owner

Address for giving notices:

1355 Kinghorn  
Pocatello, Id 83201  
208-251-0136

License No.: \_\_\_\_\_

(where applicable)

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.