

[NOT BINDING IF USED FOR AGREEMENTS FOR
PUBLIC WORKS COSTING MORE THAN \$80,000]

PUBLIC WORKS CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20 __, by and between the CITY OF GREAT FALLS, MONTANA, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 5021, Great Falls, Montana 59403, hereinafter referred to as "City," and _____, hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform for City the public works described in the Scope of Services attached hereto as **Exhibit A** and by this reference made a part hereof. "Public Work" is a construction service with a total cost in excess of \$25,000 that is for construction, heavy construction, highway construction, or remodeling work.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the ____ day of _____, 20 __. No extensions will be granted. Trees not trimmed by ending date will be deleted from the contract and contracts ending price will be reduced to reflect the actual number of trees trimmed during contract period.

3. **Scope of Work:** Contractor will perform the public works in accordance with the specifications and requirements of the Scope of Services (**Exhibit A**).

4. **Payment:** City agrees to pay Contractor a maximum total of _____ Dollars (\$_____) or per tree for trees completed .For the public works described in the Scope of Services. Contractor may request monthly progress payments as follows:

a. After the commencement of work, the Contractor may request monthly progress payments by submitting an application for payment to the City during each successive calendar month, with a copy to the project architect or engineer. The application for payment must be made in the form provided by the City and based upon the actual or estimated percentage of work completed and materials supplied for the work prior to the date of the Application and shall be filled out and signed by the Contractor. Contractor shall attach all supporting documentation to the application, including certified payroll records and receipts, to verify that the work claimed in the application has been completed. Only one application for payment may be submitted within a calendar month.

b. Beginning with the second application for payment, each application shall also include an affidavit signed by the Contractor stating that all previous monthly progress payments received have been applied on account to discharge Contractor's obligations associated with the prior applications for payment.

c. City and its architect or engineer shall promptly review all applications for payment and, within twenty-one (21) days after receipt of each Application, determine whether a progress payment should be disapproved in whole or in part. An Application for Payment is considered to have been received when it is submitted to City's Representative and is considered approved unless prior to the expiration of the 21-day period the City or its architect or engineer provides the Contractor with a written statement containing specific items that are being disapproved. A progress payment or any portion may be disapproved upon a claim of: (1) unsatisfactory job progress; (2) failure to remedy defective construction work or materials; (3) disputed work or materials; (4) failure to comply with material provisions of this Agreement, drawings, plans, specifications for the work, or other required documents, including but not limited to, payroll certifications, insurance coverage, bonding, lien releases, warranties, material certifications, and test data; (5) failure of Contractor to make timely payment for claims including, but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; (6) damages to the City; (7) the existence of reasonable evidence that the Agreement cannot be completed for the unpaid balance of the Agreement's Payment; and (8) Contractor's non-compliance with applicable federal, state, and local laws, rules, and ordinances.

d. The City will furnish Contractor a written statement specifying a reason for disapproval that is listed in sub-section c. above for which approval of the Application for Payment or a portion thereof is being withheld. If the City disapproves only a portion of an application for payment, the remainder of the application for payment is considered approved.

5. **Retainage:** City shall retain five percent (5%) of the total amount of compensation to be paid to the Contractor to ensure compliance with the terms and conditions of this Agreement and the timely completion of the public works project and any and all "punch list" items ("Retainage Amount"). At all times the City will retain no less than One Thousand Dollars (\$1,000) until termination of this Agreement. The Retainage Amount shall be paid to Contractor upon the City's final approval of the public works project and agreement that all work required to be performed on the public works project is complete and satisfactory to the City. This provision does not prevent the Contractor from seeking withdrawals of the Retainage Amount in excess of One Thousand Dollars (\$1,000), pursuant to the requirements of §18-1-301, MCA.

6. **Additional Services:** Any alteration or deviation from the described work that involves extra costs will be permitted only upon written request by the City to Contractor and

will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

7. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

8. **Indemnification; Insurance; Bonds:**

a. To the fullest extent permitted by law, Contractor shall fully indemnify, defend, and save City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Contractor's performance of this Agreement and Contractor's work on the Construction Project or work of any subcontractor or supplier to Contractor.

b. Contractor shall maintain those insurances as may be required by City as set forth on the attached **Exhibit B**, Required Insurance Coverage, and Contractor shall provide City with proof of such insurance coverage with this Agreement. Contractor shall notify City thirty (30) days prior to the expiration of any such required insurance coverage and shall ensure such required insurance coverage is timely renewed during the term of this Agreement so that there is no lapse in coverage during Contractor's performance of this Agreement. Contractor shall further notify City within two (2) business days of Contractor's receipt of notice that any required insurance coverage will be terminated or Contractor's decision to terminate any required insurance coverage for any reason. In Addition, an Additional Insured Endorsement must be provided as evidence that the City is an additional insured on the general liability insurance policy.

c. Contractor shall maintain those security guarantees set forth on the attached **Exhibit C, Required Bonds**.

9. **Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the greater of a period of one (1) year from the time services are completed or any warranty described in the Scope of Services. The warranty survives the termination of this Agreement.

10. **Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to purchase a City business license.

11. **Labor Preferences and Prevailing Wages:**

a. For purposes of prevailing wage requirements, the project under the Scope of Services is considered as Tree Trimmers and Pruners. The Montana Prevailing Wage Rates for this type of project, as attached to this Agreement as **Exhibit D**, are incorporated herein by this reference.

b. Contractor shall post a legible statement of all wages and fringe benefits to be paid to the Contractor's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the site of the project and shall be made no later than the first day of work. Such posting shall be removed only upon the final completion of the Scope of Services and the termination of this Agreement.

c. In performing the terms and conditions of this Agreement and the work on the public works project, Contractor shall give preference to the employment of bona fide residents of Montana, as required by §18-2-403, MCA, and as such term is defined by §18-2-401(1), MCA, and the Administrative Rules of Montana, including but not limited to A.R.M. 24.17.147, obliging Contractor to hire 50% bona fide Montana residents, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law. When making assignments of work, Contractor shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.

d. Pursuant to §§18-2-403 and 18-2-422, MCA, Contractor shall pay wages, benefits, and expenses as set forth herein. Contractor shall pay all hourly wage employees on a weekly basis. Violation of the requirements may subject the Contractor to the penalties set forth in §18-2-407, MCA. Contractor shall maintain payroll records and provide certified copies to the City. Contractor shall maintain such payroll records

during the term of this Agreement, the course of the work on the public works project, and for a period of three (3) years following the date of final completion of the public works project and termination of this Agreement.

12. **Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

13. **Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

14. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

15. **Liaison:** City's designated liaison with Contractor is Todd Seymanski and Contractor's designated liaison with City is _____.

16. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF GREAT FALLS, MONTANA

CONTRACTOR (Type Name Above)

By _____
Gregory T. Doyon, City Manager

By _____
Print Name _____
Print Title _____

ATTEST:

Lisa Kunz, City Clerk (SEAL OF THE CITY)

APPROVED AS TO FORM:

By _____
Sara R. Sexe, City Attorney

Exhibit A
Scope of Services

SCOPE OF WORK
EXHIBIT A

General Information

1. Agrees to furnish all labor, supervision, equipment, materials, and expertise necessary for tree pruning on the public right-of-way in the City of Great Falls, all in accordance with the attached specifications. Since the work is of a potentially dangerous nature and requires special expertise, it is to be performed by a company that derives a majority of its annual income from arboricultural work and whose employees are highly trained and skilled in all phases of tree service work.
2. Contract receiving contract will adhere to all "ANSI-A300 tree pruning standards"

Examination of Site

1. Bidders shall inform themselves of all the conditions under which the work is to be performed concerning the site of the work, the obstacles that may be encountered and all other relevant matters concerning the work to be performed and the type of treatment required under this contract.
2. The Contractor to whom the contract is awarded will not be allowed any extra compensation by reason of any such matters of things concerning which the contractor did not inform himself prior to bidding. The successful Contractor must employ, so far as possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other contractor.

Damage to Property

1. Any damage to property as the result of the Contractor's operations shall be the responsibility of the Contractor. Should the damage not be rectified within the time agreed upon or to the satisfaction of the City Forester, the City of Great Falls reserves the right to repair or replace that which was damaged, or assess the Contractor such costs as may be reasonable and related to damage caused by the Contractor, and deduct these costs from any payment due the Contractor. The Contractor shall inform the City Forester of any damage caused by the Contractor's operation on the day such damage occurs.

Basis of Payment

1. The Contractor shall be paid for the work described herein on a per tree basis. Partial payment shall be made to the contractor as work progresses but, in no case, shall payment be made on trees not completed to the satisfaction of the City Forester and in accordance with these specifications and accepted arboricultural practices.

Daily Report

1. A written daily report shall be prepared during the contract period and submitted weekly to the City Forester listing locations and numbers of trees pruned, on forms provided by the City of Great Falls.

Starting and Completion Requirements

1. Work shall begin on or before the **6th day August, 2014** (pending City Commission approval) or at a time mutually agreed upon by the contractor and the City Forester. All work shall be completed prior to **October 31, 2014**.

Pruning Specifications

1. All pruning shall follow ANSI-A300 pruning standards, an overview of which includes the following:
 - a. To remove all dead, dying, diseased, interfering, objectionable, and weak branches of 1 inch diameter at the branch collar or larger.
 - b. To remove under branches to permit clearance of approximately eight (8) feet on the sidewalk or pedestrian side of any street.
 - c. To removal all interior interfering branches, and one of all crossed or rubbing branches where practicable so the removal thereof will not leave large holes in the general form of the tree.
 - d. To remove trunk suckers and water sprouts especially where they are present below the lower one half (1/3) of the tree. Partial suckering may be left in the upper half (2/3) of the tree as to not cause a lion-tailing effect in the branching structure.
 - e. To improve the appearance of trees pruned.
2. Attention is to be given to the eventual symmetrical appearance of the trees. Appropriate pruning shall be done in order to maintain a tree-like form typical of the species of the tree being pruned.
3. In lifting the bottom branches of trees for clearance, care should be given to the symmetrical appearance of the entire crown.
4. All final cuts shall be made sufficiently close to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub, so that wound closure can readily begin under normal conditions. Clean cuts shall be made at all times. All drop crotch pruning cuts will be made back to branches with a minimum of 1/3 the diameter of the parent branch.

Inspection of Work

1. All work must be completed to the satisfaction of the City Forester, or a designated representative, and any questions as to proper procedures or quality of workmanship will be resolved by the same.

Discontinuance of Work

1. Any practice obviously hazardous as determined by the City Forester, or a designated representative shall be immediately discontinued by the contractor upon receipt of either written or oral notice to discontinue such practice.

Personnel and Equipment

1. Contractor will be required to have an International Society of Arboriculture Certified Arborist on staff during the term of contract. This person shall be readily available for on-site questions

and directions. The contractor shall supply all material, equipment and personnel necessary to complete the work specified.

Work Crew Supervision

1. The contractor shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by the contractor to accept and act upon all directives issued by the City Forester or their representative.

Protection of Overhead Utilities

1. Tree pruning operations may be conducted in areas where overhead electric, telephone, and cable television facilities exist. The contractor shall protect all utilities from damage, shall immediately contact the appropriate utility if damage should occur, and shall be responsible for all claims for damage due to his/her operation. The contractor shall make arrangement with the utility for removal of all necessary limbs and branches which may conflict with or create a hazard in conducting the operations of this contract. If the contractor has properly contacted the utility in sufficient time to arrange for the requires work by the utility, delays encountered by the contractor in waiting for the utility to complete its work shall not be the responsibility of the contractor and a time extension may be requested if deemed necessary.

Safety Standards

1. All equipment to be used and all work to be performed must be in full compliance with the most current revision of the American National Standards Institute Standard Z-133.1-1988, or as amended.
2. Blocking of public streets shall not be permitted unless prior arrangement have been made with the City of Great Falls and is coordinated with the appropriate City departments.
3. The contractor shall provide adequate barricades, flaggers, signs and/or public safety warning devices during the performance of the Contract to protect and control motorists and pedestrians. Questions of sufficiency shall be resolved to the satisfaction of the City Forester.

Tree Locations

1. Trees to be pruned will be those designated by attached list and mapping areas. Tree locations are listed as F (front), L (left), or R (right) on the pruning contract location list. These are referenced by looking at the boulevards facing the address of the house (front of the house). The numbers 1-8 represent the trees from left to right for the F locations and front to back for the L and R trees.

Waste Disposal

1. Disposal of chipped organic waste generated by work described within this contract can be taken to the City of Great Falls compost site for disposal. No waste shall be left on work site overnight.

Exhibit B

Required Insurance Coverage

Contractor shall purchase and maintain insurance coverage as set forth below. The insurance policy must, unless not available from the insured, name the City as an additional insured and be written on a “primary—noncontributory basis.” Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of “A.M. Best Rating” of A-, VI, as will protect the Contractor, the various acts of subcontractors, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from operations and completed operations under this Agreement. All insurance coverage shall remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor’s warranties. All insurance policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least forty-five (45) days prior written notice has been given to Contractor, City, and all other additional insured to whom a certificate of insurance has been issued.

Required Insurance Coverage:

- | | | |
|----|---|---|
| 1. | Commercial General Liability
(bodily injury and property damage) | \$1,000,000 per occurrence
\$2,000,000 aggregate |
| 2. | Products and Completed Operations | \$2,000,000 |
| 3. | Automobile Liability
(all owned, hired, non-owned) | \$1,000,000 per accident |
| 4. | Workers’ Compensation | Not less than statutory limits |
| 5. | Employers’ Liability | \$1,000,000 |
| 6. | Professional Liability (E&O)
(only if applicable) | \$1,000,000 |
| 7. | Builder’s Risk/Property Insurance (for buildings)
compensation or full replacement (covering all work, buildings, materials and equipment, whether on site or in transit, loss due to fire, lightening, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws, water damage, flood if site within a flood plain, repair or replacement costs, testing and start-up costs) | Equal to greater of Contractor’s |

Exhibit C

Required Bonds

Contractor shall make, execute, purchase, maintain and deliver to City performance and

payment bonds in an amount at least equal to the Contractor's compensation under this Agreement, conditioned that the Contractor shall faithfully perform of all of Contractor's obligations under this Agreement and pay all laborers, mechanics, subcontractors, material suppliers and all persons who supply the Contractor or Contractor's subcontractors with provisions, provender, material, or supplies for performing work on the Construction Project. All bonds must be obtained with a surety company that is duly licensed and authorized to transact business within the state of Montana and to issue bonds for the limits so required. The surety company must have a Best's Financial Strength Rating of A, as rated by the A. M. Best Co., or an equivalent rating from a similar rating service. All bonds must remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor's warranties. A certified copy of the agent's authority to act must accompany all bonds signed by an agent. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business within the state of Montana is terminated, Contractor shall promptly notify City and shall within twenty (20) days after the event giving rise to such notification, provide another bond with another surety company, both of which shall comply with all requirements set forth herein.

Bond Types and Amounts:

- | | | |
|----|--------------------------|---|
| 1. | Performance Bond | Equal to Contractor's compensation amount |
| 2. | Labor and Materials Bond | Equal to Contractor's compensation amount |

Exhibit D

Contractor's Rates of Wages, Benefits, and Expenses

For purposes of prevailing wage requirements, this Project is considered as

_____. The Montana Prevailing Wage Rates for this type of project, as included in these Contract Documents, are incorporated herein by this reference.