



## City of Winona Legal Notice

### Request for Proposals ("RFP")

#### City of Winona 2025 Tree Planting

**Overview:** Notice is hereby given that proposals will be considered by the City of Winona ("City" or "Owner") from qualified firms or individuals to provide the City of Winona Department of Public Works ("Public Works Department") with a proposal to plant trees on City properties and in the City right-of-way in 2025.

**Specifications:** All submissions must comply with the specifications on file in the Public Works Department, which will be furnished free to each contractor/proposer upon request.

**Instructions:** All proposals submitted by contractor/proposers must be sent to the City Clerk's office: email ([cityclerk@winonamn.gov](mailto:cityclerk@winonamn.gov)) or hard copy: 207 Lafayette St., 3<sup>rd</sup> Floor, Winona, MN 55987. Please include Company name, title, address, email, and contact phone number. The City reserves the right to reject any or all proposals, to waive irregularities, informalities or technicalities, to request additional information from all responders, to negotiate with contractors, and to select a contractor based upon the best interests of the City in the City's sole judgment and discretion. The approval of the proposal selected will be made by the City Council. Proposal pricing must be valid for a period of thirty days after the proposal due date. Due to budget constraints, the Owner reserves the right to add or delete from the Contract as required. Proposals received after the deadline stated herein will not be accepted. It is neither the City's responsibility nor practice to acknowledge receipt of any proposal. It is the proposer's/responder's responsibility to assure that a proposal is received in a timely manner by the City. The City will not reimburse any expenses incurred by the proposer/responder including, but not limited to, expenses associated with the preparation and submission of the response and/or attendance at any interviews, if required.

The City reserves the right to negotiate the final terms and conditions of the contract to be executed. Should the City and a proposer/responder be unable to mutually agree upon the entire contract, the City reserves the right to discontinue negotiations, select another proposer/responder or reject all of the proposals. Upon completion of negotiations agreeable to the City and the proposer/responder selected, a contract shall be executed. The form of the contract for services with the City shall be the City's standard services contract included with this RFP as Attachment B; a copy of which may also be requested from the City Clerk. By submitting a proposal, all proposers/responders hereby agree to the terms and conditions contained in the City's standard services contract, Attachment B.

**Proposal Deadlines:** Proposals including the forms in Attachment A of this RFP must be received by no later than Friday, March 7, 2025, at 4:00 pm.

#### **A. SCOPE OF WORK**

This work shall consist of planting trees and furnishing necessary components (all labor, tree support equipment, materials and tools) to successfully establish trees in City Parks and along road right of way. City staff anticipate approximately 250-275 trees will be planted in 2025, the majority going into boulevard areas. Specific locations of trees, and in some cases the specific species of trees, will be determined by the City. The City desires a diverse mix of trees to fit the varying parameters and conditions of planting locations. The contractor will be responsible for calling in utility locates and assuring no damage to underground utilities.

The Contractor will provide a three-year survival guarantee after planting. Therefore, a watering plan and care plan will be required once the contract is executed.

#### **B. EQUIPMENT**

In furnishing the trees for planting, the stock must have a minimum trunk diameter at chest height of 1" or more. In select cases, smaller stock will be permitted. Stock must be bare root or containerized size #20 or less. At the end of this section, a suggested species list is provided. The City may request specific trees for specific locations which will be communicated prior to the start of the planting season.

The Contractor will be responsible for purchasing the trees and providing all equipment required for the planting, watering and care of the trees. The exception is the City has a stock of watering bags and tree staking straps suitable for up to 60 trees that can be made available to the contractor for project related trees. Any staking gear or watering bags provided by the contractor will become the property of the City if remaining on the tree after the 3-year planting guarantee.

Suggested Tree species:

<b>Species</b>	<b>Scientific Name</b>
Serviceberry	<i>Amelanchier spp.</i>
River Birch (single stem)	<i>Betula nigra</i>
American Hornbeam/Blue Beech	<i>Carpinus caroliniana</i>
Bitternut Hickory	<i>Carya cordiformis</i>
Shagbark Hickory	<i>Carya ovata</i>
Hackberry	<i>Celtis occidentalis</i>
Red Bud	<i>Cercis canadensis</i>
Yellowwood	<i>Cladrastis kentukea</i>
Cockspur Hawthorn	<i>Crataegus crus-galli</i>
Downy Hawthorn	<i>Crataegus mollis</i>
Honey Locust	<i>Gleditsia triacanthos</i>

Kentucky Coffee Tree	<i>Gymnocladus dioicus</i>
Tulip Tree	<i>Liriodendron tulipifera</i>
Iron wood/Hop hornbeam	<i>Ostrya virginiana</i>
Pin Cherry	<i>Prunus pensylvanica</i>
Black Cherry	<i>Prunus serotina</i>
White Oak	<i>Quercus alba</i>
Northern Pin Oak	<i>Quercus ellipsoidalis</i>
Bur Oak	<i>Quercus macrocarpa</i>
Chinkapin Oak	<i>Quercus muehlenbergii</i>
Red Oak	<i>Quercus rubra</i>
American Linden	<i>Tilia americana</i>
American elm with Dutch elm disease resistance (Princeton, New Harmony, Jefferson, Prairie Expedition)	<i>Ulmus americana</i>
Viburnum	<i>Viburnum lentago</i>

#### **C. PLANTING AND REPORTING PROTOCOLS**

Trees may be planted at any time after the contract is executed and must be completed by Nov. 15. The City envisions providing a list of planting locations to the contractor, who will then subdivide which trees will be planted when. Throughout the course of the planting season, new locations will be added to the planting list. The contractor will provide an estimated planting work list every two weeks, which the City will use to inform residents of upcoming tree planting.

The contractor will provide a summary of work report on June 1<sup>st</sup>, September 1<sup>st</sup> and a final report by Dec. 1<sup>st</sup> stating the address and species of tree planted. If trees die and are replaced, that detail will also be noted.

It is also very likely that residents will have questions for the planting crew, and the contractor will be expected to reply in a courteous manner. Neighbors may have questions about also receiving trees for their boulevard, and the City will provide a fact sheet that the contractor will give to the residents to be added to the planting list.

#### **D. PROFESSIONAL QUALIFICATIONS**

The Contractor shall at all times maintain a force of qualified personnel to sufficiently and effectively execute the contract. Personnel descriptions of experience and credentials are welcomed in the application.

#### **E. BASIS OF PAYMENT**

Payment will be based on unit prices for trees planted and may be sought every other week. This estimated cost should be included in the proposal.

**F. INSURANCE**

At the time the executed contract and performance bond is delivered to the City, the contractor must also furnish a certificate of insurance. The certificate of insurance must specifically state and verify that the contractor has the required insurance coverage and meets all requirements for the same as provided in the City's standard services contract, Attachment B.

**G. INDEMNIFICATION**

The Contractor must indemnify and hold harmless the City and meet all requirements for the same as provided in the City's standard services contract, Attachment B.

**J. CONTRACT FORM**

The contract form of agreement will be furnished by the City of Winona. The required form of the City's service contract is attached as Attachment B. By submitting a proposal, all proposers/responders hereby agree to the terms and conditions contained in the City's standard services contract, Attachment B.

**K. Contractor Selection**

The City will select the contractor based on its evaluation of the proposer's experience and price per tree. Scoring will be on a 100 point scale with 40 points for experience, and 60 for price. The top scoring applicant in each category will be awarded the full points, with a 5 point deduction for the next highest applicant ranking. For instance, the best price will be awarded 60 points, the second best will receive 55, and the third best will get 50, and so on. The City reserves the right to reject any and all proposals and to add or delete from the Contract to meet the allocated budget. The City also reserves the right to seek clarification and interview contractors prior to awarding the contract.

Proposals are due in electronic or hard copy format by no later than Friday, March 7, 2025, at 4pm. An electronic version should be emailed to the City Clerk's office: [cityclerk@winonamn.gov](mailto:cityclerk@winonamn.gov) and hard copies need to be delivered to 207 Lafayette St. (Winona City Hall), Third Floor, Winona, MN 55987.

**L. Non-Discriminatory Practices**

The contractor agrees during the life of this contract not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age. The Contract may be cancelled or terminated by the City, and all money due to become due hereunder may be forfeited, for a second or subsequent violation of the terms and conditions of this paragraph.

**M. Contract Period and Project Completion Dates**

The contract will commence on the date specified in the contract award which is anticipated to be in mid-March and terminate December 15, 2025, or upon completion of all planting work – whichever occurs first. The three-year survival guarantee will not expire at the conclusion of the contract. The contract may be terminated sooner in accordance with the provisions contained in the contract.

Prior to beginning planting work under the contract, the contractor must arrange for a meeting with the City forester and Natural Resources & Sustainability Coordinator at which time specifications will be reviewed and the scheduling and progression of work will be discussed.

**N. Subcontractor**

No subcontractors will be allowed for the contract unless approved by the City. The qualifying contractor must be capable of completing the services required hereby or specify the number of trees they are responsible for. The prime contractor will need to provide an IC134 form before final payment if using any subcontractors.

**O. Maps**

At the beginning of the contract performance period, the City will provide maps with expected planting locations.

**P. Prevailing Wage**

Pursuant to Minnesota Statutes 177.41 to 177.44, and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Job code 103 will apply for tree planting. A current rate for this job code is available at the Minnesota Department of Labor and Industry (DLI) website: [https://workplace.doli.state.mn.us/prevwage/commercial\\_data.php?county=85](https://workplace.doli.state.mn.us/prevwage/commercial_data.php?county=85). The Contractor will provide certified payroll reports for project work to the City for compliance purposes.

**Q. Contact Information/Questions**

Questions about the project should be directed to project coordinator John Howard: [jhoward@winonamn.gov](mailto:jhoward@winonamn.gov). Questions received on or before Fri. Feb. 28<sup>th</sup> will be answered and replies posted to the City website.

**R. Attachments**

- A) Proposal Form
- B) Required Contract Form

**Attachment A:** Proposal

Name of Company/bidder: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Info: \_\_\_\_\_

Average Unit Price per planted tree: \_\_\_\_\_

Maximum number of trees able to plant in 2025: \_\_\_\_\_

Project Understanding statement:

Proposer Qualifications

1. List the number of years in tree planting business: \_\_\_\_\_
2. Relevant experience, qualifications or certifications:

### 3. List of References

Community Name    Contact Name    Phone Number    Last Work Date

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4. Personnel available for this contract and their qualifications.

Authorized Signature: \_\_\_\_\_

Title:

Date:

## **SERVICE CONTRACT**

This Contract (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF WINONA, a Minnesota municipal corporation, 207 Lafayette Street, Winona, MN 55987 (“CITY”), and [name of service provider] \_\_\_\_\_, a *[insert type of entity - corporation, limited liability company, etc.]* \_\_\_\_\_ under the laws of the State of *[insert state of registration/incorporation]* \_\_\_\_\_, [insert address] \_\_\_\_\_ (“CONTRACTOR”); (collectively the “PARTIES”).

WHEREAS, CITY requires services in conjunction with City of Winona 2025 Tree Planting (the “Project”); and

WHEREAS, CONTRACTOR agrees to furnish the various services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

### **SECTION I – CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

- A. **Scope of Services.** CONTRACTOR agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference (the “services”).
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the parties hereto pursuant to Section VI, Paragraph I of this Contract, a change to the scope of services detailed in Exhibit 1 may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONTRACTOR, CONTRACTOR shall be entitled to additional compensation consistent with Section III of this Contract. CONTRACTOR shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONTRACTOR, and upon receipt of the request, CONTRACTOR shall furnish such cost estimate, prior to CITY’s authorization of the changed scope of services.
- C. **Changed Conditions.** If CONTRACTOR determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONTRACTOR’s effort required to perform its services under this Contract exceeds the estimate that formed the basis for CONTRACTOR’s compensation, CONTRACTOR shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph I of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONTRACTOR first provides notice to CITY as required by this Paragraph and

CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

D. **Standard of Care.** Services provided by CONTRACTOR or its subcontractors under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONTRACTOR's profession or industry. CONTRACTOR shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONTRACTOR's breach of this standard of care. CONTRACTOR shall put forth reasonable efforts to complete its duties in a timely manner. CONTRACTOR shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONTRACTOR shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties or services.

E. **Insurance.** CONTRACTOR shall not commence work under this Contract until CONTRACTOR has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONTRACTOR allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

1. CONTRACTOR agrees to procure and maintain, at CONTRACTOR's expense, the following insurance policies, subject to the requirements in this Paragraph F and including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater (coverages under umbrella or excess policies may be combined with primary policies to meet the below stated insurance coverage requirements):

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)

**Umbrella or Excess Liability** \$1,000,000

2. Except as provided below, CONTRACTOR's Workers' Compensation insurance must provide coverage for all its employees. If Minnesota Statutes, section 176.041 exempts CONTRACTOR from Workers' Compensation insurance or if CONTRACTOR has no employees in the City, CONTRACTOR must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONTRACTOR from the Minnesota Workers' Compensation requirements. If at any time while this Contract is in effect CONTRACTOR ceases to be exempt from the requirements to maintain Workers' Compensation coverage, CONTRACTOR must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance documenting such coverage.
3. CONTRACTOR's Commercial General Liability ("CGL") and business automobile liability insurance coverage shall insure CONTRACTOR against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONTRACTOR or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or otherwise required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) (for purposes of clarity, CITY shall not be an additional insured on CONTRACTOR's professional liability policy if such insurance is required in this Contract) for the services provided under this Contract and shall provide that CONTRACTOR's coverage shall be primary and noncontributory in the event of a loss.
4. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONTRACTOR and are attached hereto and incorporated herein by reference as Exhibit 2.
5. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY in the event of claims.
6. CONTRACTOR's insurance policies and certificate(s) shall not be cancelled without at least Thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
7. CONTRACTOR's policies shall be primary noncontributory insurance to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONTRACTOR's performance under this Contract.

8. CONTRACTOR is responsible for payment of Contract related insurance premiums and deductibles. If CONTRACTOR is self-insured, a Certificate of Self-Insurance must be attached in Exhibit 2. Any program of self-insurance shall be subject to CITY's approval, which shall not be unreasonably withheld, conditioned or delayed.
9. CONTRACTOR shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
10. CONTRACTOR's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.
11. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
12. CONTRACTOR shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota or as approved by CITY.
13. CITY reserves the right to immediately terminate this Contract if CONTRACTOR is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONTRACTOR.

## **SECTION II – CITY'S RESPONSIBILITIES**

- A. CITY shall promptly compensate CONTRACTOR as services are performed to the satisfaction of the CITY's Director of Public Works, in accordance with Section III of this Contract.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1 in its custody to CONTRACTOR for its use, at CONTRACTOR's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONTRACTOR's performance of the services detailed in Exhibit 1.
- D. John Howard, Natural Resources Sustainability Coordinator, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY'S policies with respect to the Project and CONTRACTOR's services. Such person shall be the primary contact person between CITY and CONTRACTOR with respect to the services performed by CONTRACTOR under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify

CONTRACTOR thereof.

### SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONTRACTOR as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONTRACTOR's performance of services under this Contract.
- B. **Suspension for Nonpayment.** Except for a good faith dispute, if CITY fails to make any payment due CONTRACTOR for services performed to the satisfaction of CITY's Director of Public Works and expenses within Thirty (30) days after the date of CONTRACTOR's invoice, CONTRACTOR may, after giving Seven (7) days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability to CITY, suspend services and withhold Project deliverables due under this Contract until CONTRACTOR has been paid in full all amounts due for services rendered to the date of suspension along with applicable expenses and charges related to the services rendered by CONTRACTOR to CITY to the date of suspension.

### SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall commence on the date first above written and terminate on December 15, 2025, or as otherwise provided in this Contract, whichever occurs first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) days written notice. In the event of termination, CITY shall be obligated to CONTRACTOR for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination to the satisfaction of CITY's Director of Public Works, computed in accordance with Section III of this Contract. Termination shall not act to discharge any liability incurred by either PARTY during the term of this Contract. Such liability shall continue until discharged by law, this Contract, adjudication, or another subsequent agreement between the PARTIES discharging, settling, waiving, and/or releasing such liability.
- C. **Default.** If CONTRACTOR fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1 pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of this Contract or the services provided hereunder, this shall constitute default. Unless CONTRACTOR's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONTRACTOR's default, CONTRACTOR shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.
- D. **Suspension of Services / Work.** If any services/work performed by CONTRACTOR are abandoned or suspended in whole or in part by CITY, CONTRACTOR shall be paid for any services/work performed to the satisfaction of CITY's Director of Public Works prior to

CONTRACTOR's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONTRACTOR under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services in Exhibit 1 completed by CONTRACTOR to the satisfaction of CITY's Director of Public Works, as determined by CITY.

## **SECTION V – INDEMNIFICATION**

- A. CONTRACTOR shall indemnify, protect, save, and hold harmless CITY, and its respective officials, directors, employees, and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONTRACTOR or CONTRACTOR's subcontractors, agents, employees, members, vendors or delegates with respect to this Contract, the Project or the services. CONTRACTOR shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONTRACTOR's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONTRACTOR shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONTRACTOR's indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld, conditioned, or delayed. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONTRACTOR agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, CONTRACTOR will at all times during the term of this Contract keep in force policies of insurances required in Section I of this Contract. Nothing in this Contract shall be construed to waive any immunities, defenses, or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONTRACTOR, and its respective officers, directors, employees, members, and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONTRACTOR against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONTRACTOR, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONTRACTOR. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONTRACTOR. CONTRACTOR's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have

any claim against CONTRACTOR because of this Contract or the performance or nonperformance of services provided hereunder.

## SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it. Each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

**CITY:**

207 Lafayette Street  
Winona MN 55987  
Phone:  
Email:

**CONTRACTOR:**

[Name]  
[Position]  
[Address]  
  
Phone:  
Email:

- D. **Dispute Resolution.** CITY and CONTRACTOR agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONTRACTOR. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all

electronic/digital data developed by CONTRACTOR as part of the Project is acknowledged to be an internal working document for CONTRACTOR's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONTRACTOR and is not warranted to be compatible with other systems or software.

- F. **Independent Contractor Status.** CONTRACTOR, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONTRACTOR to be an employee of CITY, and CONTRACTOR shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONTRACTOR acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONTRACTOR under this Contract, and that it is CONTRACTOR's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONTRACTOR shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONTRACTOR is responsible for hiring sufficient workers to perform the services/work required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONTRACTOR specifying reasons in reasonable detail, and CONTRACTOR will, at no additional cost, conform the deliverable to stated requirements of this Contract.
- H. **Subcontracting.** CONTRACTOR shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONTRACTOR shall be responsible for the performance of all subcontractors. As required by Minn. Stat. § 471.425, CONTRACTOR must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONTRACTOR's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONTRACTOR.

K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONTRACTOR agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Contract. CONTRACTOR agrees to maintain these records for a period of six years from the date of termination of this Contract.

L. **Prevailing Wage.** Pursuant to Minnesota Statutes, sections 177.41 to 177.44, and corresponding Minnesota Rules, parts 5200.1000 to 5200.1120, which are incorporated herein by reference, this Contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Job code 103 will apply for tree planting. A current rate for this job code is available at the Minnesota Department of Labor and Industry (DLI) website: [https://workplace.doli.state.mn.us/prevwage/commercial\\_data.php?county=85](https://workplace.doli.state.mn.us/prevwage/commercial_data.php?county=85), and is incorporated herein by reference. The CONTRACTOR and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under this Contract. Failure to comply with the aforementioned may result in civil or criminal penalties. The CONTRACTOR and any subcontractors shall furnish to the CITY copies of any or all certified payroll reports for project work pursuant to the governing law not more than 14 days after the end of each pay period.

M. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, pandemic, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.

N. **Compliance with Laws.** CONTRACTOR shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONTRACTOR is responsible.

O. **Covenant Against Contingent Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

P. **Covenant Against Vendor Interest.** CONTRACTOR warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONTRACTOR's association with CITY.

Q. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.

R. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during their tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

S. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under services/work authorized by this Contract (“Materials”) shall become the property of CITY upon completion of the services/work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONTRACTOR. Notwithstanding any of the foregoing to the contrary; (a) CONTRACTOR may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONTRACTOR arising from such reuse and agrees to defend and indemnify CONTRACTOR from any claims arising from such reuse.

T. **Governing Law.** This Contract shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.

U. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota’s Government Data Practices Act (“Act”), Minnesota Statutes, Section 13.01 *et seq.* CONTRACTOR agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to data privacy or confidentiality. CONTRACTOR understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONTRACTOR in performing those services, work, and functions that the CITY would perform is subject to the requirements of the Act, and CONTRACTOR must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONTRACTOR to provide the public with access to public data if the public data is otherwise available from CITY, except as required by the terms of this Contract.

V. **Cybersecurity Incident Reporting.** CONTRACTOR acknowledges that CONTRACTOR by virtue of this Contract is subject to the requirements of Minn. Stat. § 16E.36 for reporting cybersecurity incidents impacting CITY.

W. **No Waiver.** Any PARTY’s failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY’s right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

X. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law,

CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONTRACTOR to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.

- Y. **Patented Devices, Materials and Processes.** If this Contract requires, or CONTRACTOR desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. If no such agreement is made as noted, CONTRACTOR shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract by CONTRACTOR, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- Z. **Mechanic's Liens.** CONTRACTOR hereby covenants and agrees that CONTRACTOR will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in CITY Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONTRACTOR shall take all steps necessary to see that it is removed within Thirty (30) days of its being filed; provided, however, that CONTRACTOR may contest any such lien provided CONTRACTOR first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- AA. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- BB. **Entire Contract.** These terms and conditions constitute the entire agreement between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- CC. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- DD. **Survivability.** All covenants, indemnities, guarantees, releases, liability, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONTRACTOR arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- EE. **Execution.** This Contract may be executed simultaneously in two or more counterparts that,

when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

*Remainder of page intentionally left blank.*

## **SECTION VII -SIGNATURES**

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

### **CONTRACTOR:**

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By: \_\_\_\_\_  
(Signature)  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

### **CITY OF WINONA:**

By: \_\_\_\_\_  
Scott D. Sherman, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Monica Hennesy Mohan, Its City Clerk

Date: \_\_\_\_\_

## **EXHIBIT 1**

### **SCOPE OF SERVICES**

Subject to the terms of this Contract, CONTRACTOR shall perform the following services:

1. All services identified in the CITY's Request for Proposals - City of Winona 2025 Tree Planting, dated \_\_\_\_\_, 2025, which is incorporated herein by reference, including but not limited to:
  - a. planting trees and furnishing necessary components (all labor, tree support equipment, materials and tools) to successfully establish trees in City Parks and along road right of way.
  - b. planting approximately 250-275 trees as directed by CITY in 2025, primarily in CITY designated boulevard areas.
  - c. Specific locations of trees, and in some cases the specific species of trees, will be determined by CITY.
  - d. CITY desires a diverse mix of trees to fit the varying parameters and conditions of planting locations.
  - e. CONTRACTOR will be responsible for calling in utility locates and assuring no damage to underground utilities.
  - f. CONTRACTOR will provide a three-year warranty and survival guarantee on all trees planted. CONTRACTOR shall prepare and implement a watering plan and care plan for approval by CITY.

**EXHIBIT 2**

**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**

*[Certificates of Insurance attached hereto]*

### **EXHIBIT 3**

#### **COMPENSATION**

Subject to the limitations set forth in this Exhibit, CITY will compensate CONTRACTOR in accordance with the schedule of fees below for the time spent in performance of services/work under this Contract, provided that under no circumstances shall CONTRACTOR's total charges to CITY, including expenses, exceed \$ \_\_\_\_\_ ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the Director of Public Works before they are incurred by CITY.

CITY will make periodic payment to CONTRACTOR upon billing at intervals not more often than every other week at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to CITY shall exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by CONTRACTOR to the satisfaction of the Director of Public Works as determined by CITY.

CITY shall be entitled to withhold five percent (5%) of the maximum price until such time as CONTRACTOR has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the CITY.