



City of Winona Legal Notice

Request for Proposals

Ash Tree Injections for Emerald Ash Borer Prevention

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 provide trunk injection services for selected ash trees growing on City properties and in the City right-of-way.

Specifications: All submissions must comply with the specifications listed in this RFP.

Instructions: All proposals submitted by proposers/responders must be sent to the City’s Clerk’s office: by either email to cityclerk@winonamn.gov, or by hard copy to 207 Lafayette St., Third Floor, Winona, MN 55987. **Proposals must be received by Friday, April 25, 2025, at 4 pm.** Please include Company name, contact person, title, address, email, and contact phone number with the proposal. 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 proposers/responders; and to select a proposer/responder based upon the best interests of the City in the City’s sole judgment and discretion.

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 proposers/responders in preparing a proposal including, but not limited to, expenses associated with the preparation and submission of the proposal 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 professional services contract included as Attachment C. By submitting a proposal, all proposers/responders hereby agree to the terms and conditions contained in the City's standard services contract, unless otherwise amended by the City in its sole judgment and discretion.

Proposal Deadlines: Proposals including the forms in Attachment A and B of this RFP must be received by Friday, April 25, 2025 at 4:00 pm. Questions must be received by Friday, April 18, 2025 at 4 pm.

A. SCOPE OF WORK

This work shall consist of furnishing necessary components (all labor, equipment, materials and tools) for the trunk injection of emamectin benzoate pesticide to ash trees for the purpose of managing Emerald Ash Borer (EAB) tree disease. The Owner is seeking to establish unit prices for ash treatment of City selected Ash trees located on City-owned property and public right-of-way.

The Contractor shall apply pesticide material via the trunk injection method at the 5 mL/DBH inch rate to the selected ash trees located within City-owned property and City public street right-of-way in accordance with State and Federal requirements, manufacturer's recommendations, and as further described within these specifications. Approximately 285 trees are selected for treatment, although this number may be reduced if the budget cannot be met. Maps and addresses of trees will be provided.

If a contractor is unable to treat the full quantity of trees outlined in this request for proposals, a quote for a portion of the trees will still be considered. A quote for only a portion of the trees should list the number of trees being quoted on and sizes that would be treated in Attachment A.

B. EQUIPMENT

It is the responsibility of the Contractor to provide all necessary equipment to complete the contract under these specifications:

- Equipment must remain in proper operating condition throughout the term of the contract. The Contractor is responsible for cleaning and providing upkeep to the injection system on a daily basis. Any maintenance issues or repairs are the sole responsibility of the Contractor.
- Contractor must use a high-helix drill bit and must replace the drill bits periodically to maintain high efficiency. Drilled holes must be the size recommended by the injection equipment manufacturer. The City may give preference for injection systems that require the smallest diameter holes. Indicate the diameter of drilled holes in Attachment A-Contractor Qualifications.
- Injection holes on ash must be drilled to a depth of approximately 1 inch beyond the outer bark to maximize delivery of Emamectin benzoate into ash trees.

- Emamectin benzoate must be injected into ash trees using current industry standard injection systems that have efficiency data that supports their use. Preference will be given to injection systems that do not require a plastic insert to be left in the tree.
- All injected trees must be tagged with the year of injection clearly indicated on the tag. The tags must be of a design and type that can persist on the tree for at least 3 years.

C. PRODUCT

Formulation Rates

- All injections of ash trees must be with a liquid formulation of 4% or greater Emamectin benzoate active ingredient. No substitutions of the formulations shall be allowed.
- Contractors must inject emamectin benzoate at the 5 mL/DBH inch rate specified in the chart in Appendix (A).
- Injections must be made at the base of the tree near the soil line to ensure the best distribution of the insecticide throughout the tree.
- Contractor may have to pull back mulch, grass, or soil.
- It is the responsibility of the Contractor to follow all insecticide label instructions. Any alterations in the formulation or equipment must be approved in advance and in writing by the City. In order to remain responsive to emerging research, the City reserves the right to request a change in formulation rates or application methods for the duration of the contract. Any such change and additional costs incurred would be agreed to in writing between the City and the Contractor.

D. TREE TREATMENT SERVICE REQUIREMENTS

- Contractor shall only treat trees during the full leaf-on season.
- Treatment should be completed by Wednesday June 18th, 2025.
- Hours of Work: Working hours for tree injection services on public trees are limited to between 6:00 am and 8:00 pm unless specifically authorized in writing by the Director of Public Works.
- Work Progress: Contractor shall notify Owner prior to starting work, and report completed work progress on a bi-weekly basis.

E. PROFESSIONAL QUALIFICATIONS

The Contractor shall at all times maintain a force of qualified personnel to sufficiently and effectively execute the contract. Personnel must possess the required Pesticide Applicator License from the Minnesota Department of Agriculture.

F. METHOD OF MEASUREMENT

- Contractor will provide a written summary table listing completed tree injection work. Each entry shall list the property address and/or tree ID number, DBH, tag # and any relevant comments concerning the treatment.

- Payment will be provided at the contract unit prices based on DBH (Diameter Breast Height in inches). The City will allow quotes and payment based per number of trees treated in place of DBH.
- Due to budget restrictions, the Owner reserves the right to add or delete from the Contract as required.

G. BASIS OF PAYMENT

Payment and quote pricing shall include all services rendered by contractor under the contract, including but not limited to labor, materials, equipment, traffic control and other activities necessary to furnish and apply EAB inhibiting pesticide as specified herein.

H. INSURANCE

At the time the executed contract 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:**

1. Worker's Compensation and Employer's Liability Insurance
 - a. Statutory Compensation Coverage
 - b. Coverage B-Employer's Liability with limits of not less than:
 - \$500,000 Bodily Injury by Disease per Employee
 - \$500,000 Bodily Injury by Disease Aggregate
 - \$500,000 Bodily Injury by Accident
2. Comprehensive Automobile Liability Insurance
 - a. Minimum Limits of Liability
 - \$1,500,000-per Occurrence-Bodily Injury and Property Damage Combined Single Limit.
 - b. Coverages:
 - ☒ Owned Automobile
 - ☒ Non-Owned Automobile
 - ☒ Hired Automobile
3. Commercial General Liability Insurance
 - a. Minimum Limits of Liability:
 - \$2,000,000-per Occurrence
 - \$4,000,000-Annual Aggregate
 - \$2,000,000-Annual Aggregate applying to Products/Completed Operations
 - b. Coverages
 - ☒ Premises and Operations Bodily Injury and Property Damage
 - ☒ Personal & Advertising Injury

- ☒ Blanket Contractual
- ☒ Products and Completed Operations
- ☒ Other; if applicable, please list: _____
- ☒ City of Winona is named additional insured

4. Umbrella or Excess Liability \$1,000,000 or meets minimum requirements above without umbrella or excess liability policy

The contractor must obtain insurance policy (ies) from insurance companies having an “AM Best” rating of A-(minus) or better, Financial Size Category of VII or better, and be authorized to do business in the state of Minnesota.

The contractor and authorized insurance representatives must maintain coverage in these amounts during the term of the contract and notify the City ten (10) days before the required insurance is cancelled or changed.

I. INDEMNIFICATION

The Contractor must indemnify and hold harmless the City and its employees from and against all claims, damages, losses and expenses including attorney’s fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is:

- a) 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 there from, and
- b) Caused in whole or in part by any negligent or wrongful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them for whose acts any of them may be liable.

J. CONTRACT FORM

The contract form of agreement will be furnished by the City of Winona. A sample copy of the City’s contract is attached as Attachment C.

K. CONTRACTOR SELECTION

The City will select the contractor based on its evaluation of quality, experience, price and other factors it deems to be in the City’s best interest. The City reserves the right to reject any and all proposals and to add or delete from the Contract to meet the allocated budget.

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 assistant, familial status, disability, sexual orientation, or age. This 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 early May 2025 and terminate July 30, 2025 unless terminated sooner in accordance with the provisions contained in the contract.

Prior to beginning 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. At that meeting the contractor shall be represented by the superintendent and the individual (s) arborist (s) who will be representing the contractor during the progress of this contract. Assigned applicators may be required to provide an on-site demonstration prior to the start of the project.

All treatment work must be completed by June 18, 2025 unless the City approves an extension or alternate proposed timeline.

N. SUBCONTRACTOR

No subcontractors will be allowed for the injection contract unless approved by the City. The qualifying contractor must be capable of completing all tree injection services required hereby or specify the number of trees they are able to treat.

O. MAPS

At the beginning of the contract performance period, the City will provide lists and maps of ash trees to be injected denoted as points.

P. CONTACT INFORMATION/QUESTIONS

Questions about the RFP should be directed to John Howard, Natural Resources Sustainability Coordinator, at 507-457-8273 or via email at: jhoward@winonamn.gov. Questions must be received by Friday, April 18, 2025 at 4 pm.

Q. ATTACHMENTS

- A) Ash Tree Injection Price Quote Form
- B) Qualifications
- C) Example Contract Form

Attachment A: Ash Tree Injection Price Quote for Emamectin Benzoate

Injection Rate (ml. of product/DBH inch)	Tree Diameter (DBH) Class in inches	Estimated Number of Trees (A)	Price per Tree (B)	Quote (Number of trees X price per tree) (C)
5	6-8.99	1		
5	9-11.99	1		
5	12-14.99	10		
5	15-17.99	29		
5	18-20.99	54		
5	21-23.99	110		
5	24-26.99	41		
5	27-29.99	25		
5	30-32.99	8		
5	33-35.99	2		
5	36-38.99	1		
5	39-42.99	2		
5	43-45.99	0		
5	46-48.99	1		

Total Amount Quote (Sum of Column C) (Number of trees x price per tree)	\$ _____
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Name of Company: _____

Address: _____

Phone: _____

Authorized Signature: _____

Date: _____

Attachment B- Qualifications

Proposer Qualifications

1. List the number of years in ash treatment business: _____

2. List of References

Community Name	Contact Name	Phone Number	Last Work Date
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List of names of licensed Minnesota commercial pesticide applicators available for this contract and their qualifications.

Attachment C- Sample Services Contract

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 Ash Tree Treatment (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. **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.
- M. **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.
- N. **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.
- O. **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.
- P. **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.
- Q. **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.
- R. **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.

- S. **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.
- T. **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.
- U. **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.
- V. **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.
- W. **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.
- X. **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.

- Y. **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.
- Z. **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.
- AA. **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.
- BB. **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.
- CC. **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.
- DD. **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:

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:

A. SCOPE OF WORK

This work shall consist of furnishing all labor, equipment, materials and tools for the trunk injection of emamectin benzoate pesticide to ash trees for the purpose of managing Emerald Ash Borer (EAB) tree disease for the trees specified by the City. The contractor must attach a tag with the year for each successfully treated tree and record it on the list.

The Contractor shall apply pesticide in accordance with State and Federal requirements, manufacturer's recommendations, and at the 5mL/DBH injection rate for all trees.

Contractor must use a high-helix drill bit and must replace the drill bits as needed to maintain high efficiency. Drilled holes must be the size and depth recommended by the injection equipment manufacturer.

The size and quantity of ash trees to be treated:

Tree Diameter (DBH) Class in inches	Estimated Number of Trees
6-8.99	1
9-11.99	1
12-14.99	10
15-17.99	29
18-20.99	54
21-23.99	110
24-26.99	41
27-29.99	25
30-32.99	8
33-35.99	2
36-38.99	1
39-42.99	2
46-48.99	1

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. Compensation for performance of services under this Contract will be based on the number of trees per each tree diameter size class provided that under no circumstances shall CONTRACTOR's total charges to CITY, including expenses, exceed \$23,815 ("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 two weeks 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 City's 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.

Tree Diameter (DBH) Class in inches	Estimated Number of Trees	Price per Tree (B)	Quote (Number of trees X price per tree) (C)
6-8.99	1		
9-11.99	1		
12-14.99	10		
15-17.99	29		
18-20.99	54		
21-23.99	110		
24-26.99	41		
27-29.99	25		
30-32.99	8		
33-35.99	2		
36-38.99	1		
39-42.99	2		
46-48.99	1		