

Attachment A

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made effective January 4th, 2023, by and between the City of Arden Hills, 1245 Highway 96 W 55112 (the "City") and Rainbow Treecare (the "Contractor") whose business address is 11571 K-Tel Drive, Minnetonka, MN 55343.

PRELIMINARY STATEMENT

The purpose of this agreement is to set forth terms and conditions for the provision of certain professional tree care services by the Contractor to residents and property owners within the City, and to the City.

The City and the Contractor agree as follows:

1. **Contractor's Services.** The Contractor agrees to provide professional tree care services as described in Attachment A—Scope of Services and made a part of this Agreement ("the Work"). If there is any conflict between the language of this document and the language of Attachment A, the language of this document prevails.
2. **Project Manager and Staffing.** The Contractor has designated Ryan Spencer to be the project superintendent for the Work. This person may be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms of this Agreement. The Contractor may not remove or replace the designated project superintendent without the City's prior approval.
3. **Time for Performance of Services.** The Contractor must perform the Work within the timeframe set forth in the attached Scope of Services. If Contractor is delayed in performance due to any cause beyond its reasonable control, such as strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of City, the time for performance will be extended by the period of time lost by reason of the delay.
4. **Compensation for Services.** Contractor shall be paid for the Work in the manner and at the costs described in Attachments B and C, which are made a part of this Agreement. A change in the Scope of Services that may increase the compensation due to Contractor will not be effective unless the City has given prior written approval.
5. **Method of Payment.** The Contractor must submit an itemized invoice for Work provided to the owner of the property on which the services are provided. Invoices submitted for Work provided to the City will be paid in the same manner as other invoices submitted to the City. The Contractor must verify all statements submitted to the City for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391.

6. **Audit Disclosure.** The Contractor must allow the City or its duly authorized agents reasonable access to the Contractor's books and records that are pertinent to all Work provided to the City under this Agreement, including books and records of any approved subcontractors, for six years after the effective date of this Agreement. Any reports, information, data, etc. given to, or prepared or assembled by, the Contractor and its subcontractors under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval.
7. **Data Privacy and Security.** The Contractor will take all reasonable and prudent measures to ensure the security of all data that it handles in connection with the Work. The Contractor agrees to comply with the applicable provisions of the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.
8. **Document Ownership.** All finished or unfinished documents, data, and reports prepared by the Contractor related to Work for the City will become the property of the City upon termination of this Agreement, but Contractor may retain copies of such documents as records of the Work provided. Except to the extent that Minnesota Statutes Chapter 466 limits the City's liability, the City agrees to defend and indemnify the Contractor for any claims or losses resulting from the City's use of such documents not contemplated by the parties at the time of the preparation.
9. **Term.** The term of this Agreement is from the Effective Date through October 31st, 2023, the date of signature by the parties notwithstanding.
10. **Termination.** This Agreement may be terminated by either party by thirty days advance written notice delivered to the other party at the address written above. Upon termination under this provision if there is no fault of the Contractor, the Contractor will be paid for Work rendered and reimbursable expenses hereunder until the effective date of termination. If however, the City terminates the Agreement because the Contractor has failed to perform in accordance with this Agreement, no further payment will be made to the Contractor, and the City may retain another Contractor to undertake or complete the Work.
11. **Subcontractor.** The Contractor may not enter into subcontracts for Work provided in this Agreement without the express prior written consent of the City. The Contractor agrees to pay any subcontractor within ten days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1.5% per month or any part of a month to the subcontractor on any undisputed amount not

paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For any unpaid balance of less than \$100, the Contractor must pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. This paragraph is inserted in this Agreement pursuant to Minn. Stat. §471.425, Subd. 4a.

12. **Independent Contractor.** At all times and for all purposes under this Agreement, the Contractor is an independent contractor and not an employee of the City. No statement in this Agreement may be construed to find the Contractor an employee of the City.
13. **Assignment.** Neither party may assign this Agreement without the written consent of the other party.
14. **Services not Provided For.** No claim for services furnished by the Contractor not specifically provided for in this Agreement will be honored by the City or its residents.
15. **Severability.** The provisions of this Agreement are severable. If any portion is held by a court of competent jurisdiction to be contrary to law, that decision will not affect the remaining provisions of the Agreement.
16. **Entire Agreement.** The entire agreement of the parties is contained in this Agreement. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter of this Agreement as well as any previous agreements presently in effect between the parties relating to the same subject matter. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and signed by the parties, unless otherwise provided in this Agreement. The residents and property owners of the City of Arden Hills who are provided Work under the terms of this Agreement are third party beneficiaries and shall have all of the rights afforded to the City hereunder related to such Work.
17. **Compliance with Laws and Regulations.** In providing services under this Agreement, the Contractor must abide by all statutes, ordinances, rules, and regulations pertaining to the provision of services to be provided. Any violation constitutes a material breach of this Agreement and entitles the City to immediately terminate this Agreement.
18. **Equal Opportunity.** 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. This contract may be cancelled or terminated by the City, and all money due or to become due hereunder may be forfeited, for a second or subsequent violation of the terms and conditions of this paragraph. The Contractor must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will

receive consideration for employment. The Contractor must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

19. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.

20. **Indemnification.** Contractor agrees to defend, indemnify and hold the City, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from an act or omission (including without limitation professional errors or omissions) of the Contractor, its agents, employees, or subcontractors in the performance of the Work and against all losses by reason of the failure of the Contractor fully to perform, in any respect, all obligations under this Agreement.

21. **Insurance.** During the term of this Agreement, Contractor must maintain the following insurance and furnish a certificate of insurance. The certificate must specifically state and verify that the contractor has the required insurance coverage:

1. Worker's Compensation Insurance

a. Statutory Compensation Coverage

b. Coverage B - Employers Liability with limits of not less than:

\$100,000 Bodily Injury by Disease per Employee

\$500,000 Bodily Injury by Disease Aggregate

\$100,000 Bodily Injury by Accident

2. Automobile Liability Insurance

a. Minimum Limits of Liability:

\$1,000,000 - Per Occurrence- Bodily Injury and Property Damage Combined Single Limit.

b. Coverages:

Owned Automobile

Non-owned Automobile

Hired Automobile

3. General Liability Insurance

a. Minimum Limits of Liability:

\$1,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

\$2,000,000 - Annual Aggregate applying to Products/Completed Operations

- b. Coverages:
 - X Premises and Operations Bodily Injury and Property Damage
 - X Personal & Advertising Injury
 - X Blanket Contractual
 - X Products and Completed Operations
 - X Other; if applicable, please list: _____
 - X City of City is named as Additional Insured

The contractor must obtain insurance policy(ies) from insurance companies having an "AM Best" rating of A-(minus), Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota. An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

The contractor and authorized insurance representatives must maintain coverage in these amounts during the term of the contract and notify the City thirty (30) days before the required insurance is cancelled or changed.

The insurance policies must name the City as an additional insured for the services provided under this Agreement and must provide that the Contractor's coverage will be the primary coverage in the event of a loss. A certificate of insurance on the City's approved form that verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun. Any policy deductibles or retention shall be the responsibility of the Contractor. No deductible greater than \$50,000 is allowed on any required insurance policy without prior approval of the City's attorney.

21. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.

22. **Disputes.** In an effort to resolve any conflicts that arise during or following the completion of the Work described in this Agreement, the dispute will first be submitted to non-binding mediation unless the parties mutually agree otherwise. The cost of mediation will be shared equally by the parties.

23. **Attachments**

- A. Scope of Services
- B. Ash Tree Injection Pricing & Bid Form for City Property
- C. Ash Tree Injection Pricing & Bid Form for Private Property

SIGNATURES

City of Arden Hills

By _____
(NAME/TITLE)

By _____
(NAME/TITLE)

Contractor

DocuSigned by:
Ryan Spencer
C8D802E98B08456...

By: _____

Name: Ryan Spencer

Title: Municipal Consulting Arborist

Attachment A—Scope of Services

Ash Tree Injection Services to the City of Arden Hills

Project Understanding

The Emerald Ash Borer (EAB) threatens the lives of the thousands of ash trees located in the City of Arden Hills (the “City”).

As the City continues to manage this devastating infestation and infection, the City has agreed to enter a contract with Contractor to provide tree injection services for ash trees (“ash injections” or the “Work”) within two separate areas: City-owned property and private property as specified herein (the “Project”).

Project Goals

- Protect ash trees from emerald ash borer infestation on City-owned properties, including parks. Treatments of City-owned trees will begin after City staff makes the decision to begin treatments.
- Provide a bulk discount program to all private property owners within the City of Arden Hills to encourage residents to proactively inject their ash trees in order to help preserve the City’s tree canopy and the accompanying economic and environmental benefits.

Project Areas

Area 1- City property

Ash trees on City property identified by the City as trees to receive injection treatments will begin after staff has made the decision to proceed with such Work. Unless City staff directs otherwise, all ash injections must be completed between May 15th and October 15th of each year, or before fall leaf color, whichever occurs sooner.

- All invoices will be remitted to the City of Arden Hills and itemized by property name and unique number assigned to each tree

Area 2 – Private property

Homeowners will contact Rainbow Treecare directly to initiate an inspection, receive a quote and provide permission to perform the Work. The City will not be a party to any contract between the private owner and the proposer. Any agreement with the private owner and the Rainbow Treecare shall be subject to the following terms:

- The contractor will inspect the ash trees on private property and determine whether they are appropriate for treatment
- All ash tree injections must be completed between May 15th and October 15th of each year or before fall leaf color, whichever occurs sooner
- Any variances in dates must be approved by the City
- All invoices will be remitted to the homeowner

Area 3 – Unscheduled Public Property

With approval from the City, residents may hire Rainbow Treecare to treat trees growing on public property (Right-of-way) which are not being treated by the City. In the event that such treatment is undertaken, this circumstance shall meet the requirements of Area 2.

Project Period and Completion Dates

The tree injection period will run from approximately May 15th—October 15th of each year for one year, through the 2023 growing season. Rainbow Treecare may reserve the right to group tree injections based on geographic proximity within the injection period in order to achieve the efficiency needed to provide a discounted rate. Injections will occur on trees that have fully expanded leaves and have not reached fall senescence (fall leaf color). The city forester or person designated by the City Manager reserves the right to extend or limit the time period based on seasonal conditions.

Rainbow Treecare Qualifications

Founded in 1976, Rainbow Treecare (RTC) has built a reputation on a solid commitment to the science of tree care and is uniquely positioned to offer the most comprehensive ash and elm protection services in the state. A pioneer of Dutch elm disease protection since 1976 and emerald ash borer protection since 2004, RTC has been working on a national level to develop cost-effective management solutions for EAB. RTC currently has more than 70,000 ash trees under protection with numerous government and public agency clients.

With the most International Society of Arboriculture (ISA) Certified Arborists, Board-Certified Master Arborists, and members of the American Society of Consulting Arborists in Minnesota, no other company can offer the depth of skill, experience, and knowledge of tree pest and pathogen issues.

Full-time GIS/GPS staff is available to manage tree inventory data and develop interactive maps of public and private trees, and our in-house art and marketing department can produce materials that widely and effectively communicate the Project details and assist with homeowner enrollment and involvement.

Indemnification

Rainbow Treecare shall indemnify and hold harmless the City and its employees, and its residents and property owners 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 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.

The Project Team

Contract Supervisor: Ryan Spencer, ISA Certified Arborist MN-4926A, will act as the Contract Supervisor for this Project. Mr. Spencer, Rainbow Treecare's Municipal Consulting Arborist, has a bachelor's degree in Environmental Sciences, Policy, and Management from the University of Minnesota and brings five years of arboriculture and client service experience. As a dedicated full-time employee focused on municipal and governmental forestry, Mr. Spencer is available to quickly respond to any issues that might arise throughout the contract period.

Field Inspectors: Private property tree inspections will be primarily performed by Matt Nielsen, ISA Certified Arborist.

Technicians: All treatment technicians for this Project will be drawn from the production staff at RTC and will serve the citizens of Arden Hills with a commitment to the highest level of customer service during the protection of trees located within the City.

Equipment and Treatment Specifications

Upon request, Rainbow Treecare will demonstrate proficiency with the injection equipment and knowledge of the products used to prevent EAB.

Safety Standards: Contractor will use work methods, safety procedures and personal protective equipment conforming to all ANSI and OSHA standards in performing the work under this contract and will supply any Material Safety Data Sheets (MSDS) to the City upon request.

Formulation Rates: It is the responsibility of Contractor to follow all insecticide instructions. Any alterations in the formulations or equipment must be approved in advance by the city

forester or person designated by the City Manager. 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 written correspondence between the Contractor and the City.

Ash Trees

- 1) All injections of ash trees must be with a liquid formulation of 4% Emamectin benzoate every two years. No substitutions of the formulations shall be allowed.
- 2) Contractor shall inject Emamectin benzoate at a variable rate up to but not exceeding 5 ml per diameter inch. Determination of dosage shall be on the inches of diameter at breast height (DBH) within specific diameter classes listed in Attachment (B) and (C).
- 3) Injections must be made at the root flare to ensure the best distribution of the insecticide throughout the tree.

Equipment: Rainbow Treecare will provide all necessary equipment to complete the Work under these specifications:

- 1) Equipment will remain in proper operating condition throughout the term of the Agreement and RTC 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 Contractor.
- 2) Treatment technicians will use a high-helix drill bit and must replace the drill bits after every 100 DBH inches to maintain high efficiency. Drilled holes must be the size recommended by the injection equipment manufacturer.
- 3) Injection holes on ash must be drilled to a depth of approximately 1 inch below the bark to maximize delivery of Emamectin benzoate into ash trees.
- 4) Emamectin benzoate will be injected into ash trees using current industry standard injection systems that have efficacy data that supports their use, and follow all manufacturers' specifications.
- 5) All injected trees must be tagged with the year of injection clearly indicated on the tag. Contractor shall provide tags for all injected trees. The tags must be of a design and type that can persist on the tree for at least 3 years.

Property Access and Notification

Contractor shall not enter private property without having previously obtained permission from the property owner. If Contractor personnel desire to enter private property to access trees on a City owned property, it is their responsibility to notify the underlying property owner by knocking on the door at the time of the site visit or making a phone call ahead of time. Every

attempt shall be made to contact the City forester to notify of the intent on accessing a City owned site through private property.

Contract Supervision and Form of Order to Proceed

The City shall refer residents interested in private property tree injections throughout the treatment period of May-October of each year in a format mutually agreed upon prior to the start of the Project.

Private Property Tree Inspections

Prior to recommending treatment, all proposed ash trees shall be inspected by a qualified Contractor employee. There may be instances when a tree is not in suitable health or condition to recommend treatment. Contractor shall have an individual experienced in communicating tree information to the general public to explain such decisions. The person assigned to inspect the trees shall be, at the very minimum, a Certified Minnesota Tree Inspector, or have a degree in forestry, or be an ISA Certified Arborist. The individual shall be qualified to diagnose emerald ash borer; and have experience evaluating tree condition. Additionally, the individual shall be able to explain the benefits and risks of all ash protection options, with regard to pollinators, water quality, human health, and tree health and condition.

Hours of Operations and Uniform

The City reserves the right to set limits on hours of operation for Work on Saturdays, Sundays and holidays. All weekend or holiday Work must be approved by the city manager ahead of time. Certified applicators and GPS staff shall wear company uniform and/or a high visibility/safety vest at all times during field operations. Every vehicle associated with the Project shall display a company logo or name.