



TERMS & CONDITIONS FOR PERFORMANCE OF WORK

THE PERFORMANCE OF ALL SERVICES (“WORK”) AS DESCRIBED IN THE QUOTATION, PROPOSAL, OR BID (THE “BID”), BY SPLINTERED FOREST, LLC, A COLORADO LIMITED LIABILITY COMPANY, ARE EXPRESSLY CONDITIONED UPON CUSTOMER’S AGREEMENT TO THESE TERMS & CONDITIONS WITHOUT MODIFICATION OR ADDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CUSTOMER ARE EXPRESSLY REJECTED AND WILL NOT BE BINDING UPON SPLINTERED FOREST UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SPLINTERED FOREST. THE CONTRACT BETWEEN CUSTOMER AND SPLINTERED FOREST SHALL INCLUDE ONLY THE BID, THE BID ADDENDUM, AND THESE TERMS & CONDITIONS (COLLECTIVELY, THE “CONTRACT”). BY PERMITTING SPLINTERED FOREST TO BEGIN THE WORK, CUSTOMER ACCEPTS THIS CONTRACT, IN ITS ENTIRETY AND WITHOUT CHANGES, ADDITIONS, OR MODIFICATIONS.

1. PARTIES: The term “Splintered Forest” shall mean Splintered Forest, LLC, a Colorado limited liability company, 59 W. Floyd Avenue, Suite 208, Englewood, Colorado, 80110. The term “Customer” shall mean the individual(s) or entity identified on the Bid.

2. VALIDITY OF BID: Unless otherwise specified in the Bid, any Bid shall expire thirty (30) days from its date, and any Bid may be modified or withdrawn by Splintered Forest before receipt of Customer’s acceptance of same.

3. PRICE: Unless otherwise stated in the Bid, the price for the Work (the “Price”) is fixed and firm and is exclusive of all taxes, fees, charges or assessments of any nature whatsoever as may be applicable to the Work. Any other taxes, fees, charges or assessments, if any, will be identified separately on the invoice and are in addition to the Contract Price.

4. PAYMENT TERMS: Customer shall pay to Splintered Forest the Contract Price pursuant to the terms of the Bid. Unless otherwise stated in the Bid, full payment from Customer is due and payable upon completion of the Work but, at the latest, full payment is due Net-7 days following delivery of the invoice for the Work or any portion thereof. If Customer’s check is returned for insufficient funds or if Customer places a stop payment order on any check, then Customer agrees to pay Splintered Forest the actual fees charged by Splintered Forest’s bank, or the sum of **\$35.00**, whichever is greater.

5. CREDIT CARD SURCHARGE: TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD TRANSACTION, AND PURSUANT TO COLORADO REVISED STATUTES SECTION 05-02-212 (SB 21-091), SPLINTERED FOREST MAY IMPOSE A PROCESSING SURCHARGE IN AN AMOUNT NOT TO EXCEED 2% OF THE TOTAL PAYMENT MADE FOR GOODS OR SERVICES PURCHASED FROM SPLINTERED FOREST BY USE OF A CREDIT OR CHARGE CARD AND THE CUSTOMER AGREES TO PAY SAID SURCHARGE. SPLINTERED FOREST SHALL NOT IMPOSE A PROCESSING SURCHARGE ON PAYMENTS MADE BY USE OF CASH, A CHECK, A DEBIT CARD OR REDEMPTION OF A GIFT CARD.

6. BONDING: Customer will not require Splintered Forest to post any type of payment or performance security including, but not limited to, any payment or performance bonds. If any form of payment or performance security is agreed to by Splintered Forest, then the cost of such security shall be charged to the Customer at actual cost plus 20%.

7. USE OF SUB-CONTRACTORS: Customer agrees Splintered Forest may use sub-contractors to perform some, or all, of the Work, and the Price is contingent upon use of such sub-contractors.

8. COOPERATION OF CUSTOMER; PET WASTE: Customer agrees to comply with all reasonable requests of Splintered Forest with respect to its performance of the Work, including but not limited to, Customer providing reasonable, unobstructed and safe

access to the site where the Work is performed. Customer further agrees that all pet waste shall be removed from the Work site prior to Splintered Forest commencing the Work, and if so not removed, then Customer agrees to pay a pet waste disposal fee to Splintered Forest of **\$150**. Customer will confine all pets such that they are not present in the areas where Splintered Forest will perform the Work.

9. CHANGES: Changes to the Work by Customer may significantly and disproportionately affect both the Price and/or completion date(s) (the “Work Schedule”). If Customer desires to make any modifications to the scope of work, Work Schedule, or any other changes (collectively, a “Change”), then Customer shall so notify Splintered Forest in writing and provide sufficient details and descriptions of the proposed Change such that Splintered Forest may evaluate the impact of the Change on the Price, Work Schedule, or both. Under no circumstances shall Splintered Forest be obligated to perform a Change without an agreement concerning modifications to the Price, Work Schedule, or both.

10. DELAYS BY CUSTOMER: If Customer delays performance of the Work for any reason, including but not limited to, modifications or Changes, suspension of the Work, lack of access to the Work site, non-compliance with the terms of Section 7 of this Contract, or any other cause (whether or not within Customer’s control), such delays may significantly and disproportionately affect both the Price and Work Schedule, which shall then be subject to a reasonable adjustment. The impact of Customer caused delays on the Work Schedule may, in some cases, be more significant or of a longer duration than the actual period of Customer’s delay. In the event of Customer’s delay for any reason, Splintered Forest shall be entitled to invoice Customer, and Customer agrees to pay timely, for Work completed and materials supplied to date along with a reasonable adjustment to the Price for the remainder of the Work as may be advised by Splintered Forest to Customer.

11. BREACH BY CUSTOMER: Without limitation, Customer’s breach of any terms of this Contract may result in: (a) Splintered forest’s suspension of the Work; (b) Splintered forest’s termination of the Contract due to Customer’s default; (c) Customer’s liability for Splintered Forest’s mobilization and demobilization costs in addition to other damages; (d) Splintered Forest’s demand for further assurances of performance by Customer which may include, without limitation: (i) alteration of payment terms; (ii) full payment prior to completion of the Work; or (iii) payment security from Customer; or (e) all other claims and relief to which Splintered Forest may be entitled by applicable law.

12. LIMITED WARRANTY: Splintered Forest warrants the Work will conform to the terms of the Bid and will be performed in a workmanlike manner by qualified personnel in accordance with generally accepted industry standards and practices. Splintered Forest will comply with all statutes, ordinances, regulations and laws of all federal, state, county, municipal or local governments applicable to the Work. If, within the time period of thirty (30) days following completion of the Work (the, “Warranty Term”), the Work is found not to be in conformance with the Bid, or the terms of this Limited Warranty, then Splintered Forest will correct such deficiencies through reperformance of the Work. In order for any warranty claim to be evaluated and accepted by Splintered Forest, such claim must be made within the Warranty Term and immediately upon discovery of the defect by Customer. Notice of such warranty claim to Splintered Forest must be accompanied by reasonable details of the defects in the Work such that Splintered Forest may reasonably evaluate the claim. THE OBLIGATIONS CREATED BY THIS LIMITED WARRANTY TO REPERFORM DEFECTIVE WORK SHALL BE THE SOLE REMEDY OF CUSTOMER IN THE EVENT OF A WARRANTY CLAIM. THE WARRANTY SET FORTH IN THIS SECTION 11 IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE WORK UNDER THIS CONTRACT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM. SPLINTERED FOREST DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, BUT NOT



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LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PURPOSE, OR AGAINST INFRINGEMENT. SPLINTERED FOREST SHALL NOT BE LIABLE FOR ANY SERVICES OR WORK PRODUCT OR DELIVERABLES PROVIDED BY THIRD PARTY VENDORS IDENTIFIED OR REFERRED TO THE CUSTOMER BY SPLINTERED FOREST. CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS REPERFORMANCE OF THE WORK, OR IF REPERFORMANCE IS NOT POSSIBLE OR CONFORMING, REFUND OF AMOUNTS PAID UNDER THIS CONTRACT FOR SUCH NON-CONFORMING WORK.

13. FIRE, WIND & STORM MITIGATION: Customer acknowledges and agrees it is impossible to anticipate or prevent personal injury or death, or damage or destruction of real or personal property, to the extent the Work is intended to mitigate damage that may be caused by fires, floods, wind, hail, storms, or other natural or human-caused events, including impacts resulting from climate change. Nothing in this Contract shall be construed as a warranty or guarantee that the Work will prevent such personal injury or death, or damage or destruction of personal property, real property, or improvements to real property. THEREFORE, CUSTOMER AGREES TO FULLY AND FOREVER DISCHARGE AND RELEASE SPLINTERED FOREST AND ITS AFFILIATES, AND THEIR RESPECTIVE PARTNERS, AGENTS, OPERATORS, MANAGERS, EMPLOYEES, AND REPRESENTATIVES ("RELEASED PARTIES") FROM ANY AND ALL CLAIMS, DAMAGES OR CAUSES OF ACTION CUSTOMER MAY HERINAFTER HAVE FOR ANY PERSONAL INJURY, TEMPORARY OR PERMANENT DISABILITY OR DEATH, OR DAMAGE OR DESTRUCTION OF REAL OR PERSONAL PROPERTY, OR IMPROVEMENTS TO REAL PROPERTY, AS WELL AS ALL OTHER DAMAGES, LIABILITIES, EXPENSES AND/OR CAUSES OF ACTION (COLLECTIVELY, "CLAIMS") ATTRIBUTABLE OR RELATING IN ANY MANNER TO THE WORK TO THE EXTENT SUCH CLAIMS INCLUDE ALLEGATIONS THE WORK DID NOT MITIGATE OR PREVENT DAMAGE OR INJURY FROM FIRES, FLOODS, WIND, HAIL, STORMS, OR OTHER NATURAL OR HUMAN-CAUSED EVENTS, INCLUDING IMPACTS RESULTING FROM CLIMATE CHANGE. CUSTOMER FURTHER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST ANY SUCH CLAIMS BY CUSTOMER OR ANY THIRD-PARTY. CUSTOMER AGREES NOT TO SUE THE RELEASED PARTIES OR INITIATE OR ASSIST IN THE PROSECUTION OF ANY CLAIM FOR DAMAGES OR CAUSE OF ACTION AGAINST THE RELEASED PARTIES CONCERNING THE CLAIMS.

14. PLANT HEALTH CARE (PHC) SERVICES: Splintered Forest offers Plant Health Care (PHC) services covering injections or spraying of trees to mitigate the impacts of certain pests such as the Emerald Ash Borer (EAB), the Mountain Pine Beetle (MPB), Spruce Beetles, and others. If the Work includes PHC, then Splintered Forest will perform PHC in compliance with the Limited Warranty contained in Section 12. However, effective performance of PHC is highly dependent upon many factors such as the time of year that certain pests become active, the existence of favorable weather conditions, or other conditions or factors that may impact the efficacy of PHC. While Splintered Forest will use all commercially reasonable efforts to perform PHC work, the successful outcome cannot be guaranteed. PHC is an effective measure to protect plant and tree health, but Splintered Forest cannot guarantee that impacted plants and trees will survive even using the best treatments available. In this regard, the Customer agrees that Splintered Forest will not be liable for plant or tree death as a result of PHC.

15. UNDERGROUND UTILITIES: Splintered Forest will utilize industry-standard practices for locating and marking underground utilities; however, Customer agrees Splintered Forest will not be liable for damage or destruction of underground improvements such as, without limitation, irrigation systems (including valves, piping, wiring, and heads), non-utility related underground electrical wiring, drainage systems, plumbing, electric dog fences, or any other similar underground improvement.

16. DAMAGE TO DRIVEWAYS, SIDEWALKS, LAWNS, AND BEDS: Splintered Forest will utilize commercially reasonable efforts to protect Customer's driveways, sidewalks, lawns, beds, and other landscaping from damage or destruction due to the Work. However, Customer understands and agrees that equipment used to perform the Work

may leave drag paths, impressions, or other minor damage that Customer agrees will be normal and expected for the Work performed.

17. AUTHORITY TO AUTHORIZE WORK: Customer represents and warrants to Splintered Forest that it has the requisite capacity to enter into this Contract and authorize the Work to be performed. Customer understands and agrees that Splintered Forest has no obligation to survey or mark the boundary lines of the site where the Work will be performed or otherwise verify that ownership of such site lies with Customer. THEREFORE, CUSTOMER FURTHER REPRESENTS AND WARRANTS TO SPLINTERED FOREST THAT CUSTOMER HAS ACTUAL KNOWLEDGE OF THE PROPERTY LINES FOR THE SITE WHERE THE WORK WILL BE PERFORMED, THAT THE WORK LIES WITHIN SUCH SITE AND PROPERTY LINES, THAT CUSTOMER HAS AUTHORITY TO AUTHORIZE THE WORK PERFORMED ON SUCH SITE, AND THAT CUSTOMER OWNS OR OTHERWISE HAS ACTUAL AUTHORITY TO AUTHORIZE SPLINTERED FOREST TO TRIM OR REMOVE TREES THAT ARE PART OF THE WORK. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST ANY CLAIMS, DAMAGES OR CAUSES OF ACTION BY CUSTOMER OR ANY THIRD-PARTY CLAIMING SPLINTERED FOREST WAS NOT AUTHORIZED TO PERFORM THE WORK, OR TRIM OR REMOVE ANY TREE THAT IS PART OF THE WORK.

18. GOVERNING LAW: To the maximum extent permissible, this Contract shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of any principles of conflicts of laws that would require application of the substantive laws of another jurisdiction.

19. ARBITRATION: ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE BREACH THEREOF, OTHER THAN CLAIMS BY SPLINTERED FOREST AGAINST CUSTOMER FOR COLLECTION OF UNPAID INVOICES UNDER SECTION 20 BELOW, SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE ARBITRATION SHALL BE BEFORE A SINGLE ARBITRATOR. THE VENUE OF SUCH ARBITRATION SHALL BE DENVER, COLORADO. THE ARBITRATION SHALL BE CONFIDENTIAL. THE ARBITRATOR SHALL NOT AWARD PUNITIVE DAMAGES TO ANY PARTY. THE AWARD AND JUDGMENT OF THE ARBITRATOR SHALL BE FINAL AND NON-APPEALABLE EXCEPT AS MAY BE PERMITTED BY APPLICABLE LAW. ADMINISTRATIVE FEES OF THE AAA, FEES CHARGED BY THE ARBITRATOR, AND ALL OTHER SIMILAR FEES CHARGED BY THE AAA OR THE ARBITRATOR, SHALL BE SPLIT EQUALLY BY THE PARTIES.

20. VENUE FOR COLLECTION PROCEEDINGS: The exclusive venue for all legal actions by Splintered Forest against Customer for the collection of unpaid invoices under this Contract shall be the District Court of Jefferson County, State of Colorado, or the U.S. District Court for the District of Colorado, as applicable, and the parties submit to the personal jurisdiction thereof and waive any other venue that may be applicable to such action.

21. FORCE MAJEURE: Neither Customer nor Splintered Forest, shall be liable for any failure or delay in the performance of its obligations under this Contract, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement or adverse weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, pandemics, epidemics, local disease outbreaks, public health emergencies, acts of God, or other similar or different occurrences beyond the reasonable control of the party so defaulting or delaying in the performance of this Contract, for so long as such force majeure event is in effect. Each party shall use reasonable efforts to notify the other party of the occurrence of such an event.



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22. ASSIGNMENT: Customer shall not assign the Contract without the prior written consent of Splintered Forest, and such consent shall not be unreasonably withheld; however, any assignment shall not relieve Customer of its payment and indemnity obligations to Splintered forest.

23. ENFORCEABILITY: Should a court of competent jurisdiction rule that any provision herein is invalid or unenforceable, such ruling shall not affect the validity or enforceability of any other provision.

24. WAIVER: Splintered Forest's failure to enforce any provisions herein shall not constitute a waiver of such rights, or preclude their later enforcement.

25. LIMITATION OF LIABILITY; ACTIONS: IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS CONTRACT TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. SUBJECT TO THE CUSTOMER'S OBLIGATION TO PAY SPLINTERED FOREST FOR THE WORK, EACH PARTY'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THE WORK OR THIS CONTRACT SHALL NOT EXCEED THE SUMS PAID OR PAYABLE BY THE CUSTOMER TO SPLINTERED FOREST UNDER THIS CONTRACT. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED IN THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, THEN THE CUSTOMER AGREES THAT SPLINTERED FOREST'S PAYMENT TO THE CUSTOMER OF NO GREATER THAN ONE HUNDRED PERCENT (100%) OF THE MONIES PAID OR PAYABLE BY CUSTOMER UNDER THIS CONTRACT SHALL PREVENT THE REMEDIES FROM FAILING THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY CUSTOMER AS A FAIR AND ADEQUATE REMEDY. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT.

26. INSURANCE: During the term of this Contract, Splintered Forest shall maintain, commercial general liability coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, automobile liability coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and statutory workers' compensation insurance. If requested by Customer, Splintered Forest will provide evidence of such coverages.

27. ATTORNEY FEES: If Splintered Forest incurs any legal fees associated with the enforcement of this Contract, or any rights under this Contract, then Splintered Forest shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the Customer.

28. COLLECTION EXPENSES: If Splintered Forest incurs any costs, expenses, or fees, including reasonable attorney's fees and professional collection services fees, in connection with the collection or payment of any amounts due it under this Contract, Customer agrees to reimburse Splintered Forest for all such costs, expenses and fees.

29. ENTIRE AGREEMENT: This Contract contains the entire agreement of the parties and supersedes any and all prior course of dealing, agreements, understandings and communications between Customer and Splintered Forest related to the subject matter of this Contract. No amendment or modification of this Contract shall be binding unless it is in writing and is signed by an authorized representative of Customer and Splintered Forest.
