

DIAMOND TREE EXPERTS INC.

COMMERCIAL SERVICES AGREEMENT

This Commercial Services Agreement (this “**Agreement**”) is entered into as of Jan. 1, 2021, by and among Client, Contractor and each Unconditional Guarantor, if any, as each such term is defined below:

“**Client**” Name(s): Weber County
Address: 2380 Washington Blvd., Ogden, UT 84401
Email: swilkinson@webercountyutah.gov
Phone: (801) 399-8765

“**Commencement Date**” January 1, 2021

“**Contractor**” Diamond Tree Experts, Inc.
3645 South 500 West, South Salt Lake, UT 84115
License #: 2311491-5501
Email: elvin@diamondtreeexperts.com
Phone: 801-262-1596

“**Jobsite**” Address: Weber
Description: 567 W. WILSON LN.
Ogden, UT 84401

“**Project**” Description: GREEN WASTE GRINDING.

“**Unconditional Guarantors**” Name(s): ROBERT VANDAM
Address: 3645 S. 500 W. SLC, UT 84115
Email: trout@diamondtreeexperts.com
Phone: 801-856-8350

NOW, THEREFORE, in consideration of the mutual covenants hereafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DESCRIPTION OF THE WORK

Subject to the terms and conditions of the Contract Documents (as defined below), Contractor will perform the work described and shown on **Exhibit A** (the “**Work**”) for the completion of the Project at the Jobsite. For the avoidance of doubt, (i) commencement of the portion of the Work at the Jobsite shall be contingent upon Client obtaining all necessary permits and licenses and may be delayed as a result of a delay in obtaining such permits and licenses, and (ii) Client shall be solely responsible for the cost of the Work and any delays thereto, including pre-Jobsite Work, performed by Contractor, regardless of whether the portion of the Work at the Jobsite ever commences or this Agreement is terminated in accordance with Article 4 of otherwise. In such event, Client’s liability for such costs shall be calculated in accordance with Article 4 and shall survive any termination of this Agreement.

ARTICLE 2

CONTRACT PRICE; CHANGE ORDERS

Contract Price: In consideration for Contractor's performance of the Work and completion of the Project, through progress and final payments in accordance with the Contract Documents, and subject to additions, deductions, or other modifications made in writing and in accordance with the provisions of this Agreement and the other Contract Documents, in lawful currency of the United States, the amounts set forth **Exhibit B** attached hereto or any other signed proposal (the "Contract Price"). For the avoidance of doubt, and without limiting any other rights of remedies of Contractor, except for termination of this Agreement by Client for Cause (as defined below), Contractor shall be entitled to the full Contract Price, whether or not Client subsequently (a) contracts with one or more other contractors or services providers to provide work or services in relation to the Project, (b) otherwise attempts to limit or terminate the scope of the Work or this Agreement.

Acknowledgement: By the nature of the Project, it is intended that there will be ongoing changes and revisions in the plans, specifications and details as may be from time to time be approved by Client and Contractor as part of the Project. It is understood between Client and Contractor that the actual Contract Price shall not be fixed or in any way guaranteed by Contractor, nor is the time for completion of the Project in any way fixed or guaranteed by Contractor but is an estimate only, except as explicitly set forth on **Exhibit B** or a signed proposal.

Change Orders: Once the parties have approved any plans or specifications, Contractor shall have no obligation to make changes in the Work to be performed. The parties may nevertheless mutually agree to changes in the nature of additions, deletions, or other modifications in the Work without invalidating this Agreement. In addition, change orders may be required, in Contractor's sole discretion, where the labor or materials associated with the Work exceeds the allowance provided by Contractor. All change orders shall be fully signed and funded prior to performance of the change order. Change orders not signed by Contractor shall be considered null and void and Contractor shall have no obligation to perform the Work pursuant to such unsigned change order. All credit change orders resulting in a credit to Client shall be applied to Client's final payment(s) to Contractor.

Minor Changes: It is agreed and understood that Contractor shall have the right to make minor changes in the nature of the Work which Contractor determines to be necessary and appropriate to complete the Project substantially in accordance with the Contract Documents. Such discretionary changes may include adjustments in measurements, materials, and structural changes provided they do not materially or substantially alter the completed Work.

ARTICLE 3

PAYMENT TERMS

Progress Payments: Client shall make or cause to be made payments (including, if applicable, deposit amounts to be credited against final payment) to Contractor in the manner and on or before the applicable dates set forth on **Exhibit B**. Provided Client makes timely payment to Contractor, Contractor shall use commercially reasonable efforts to keep the Project free from mechanic's liens of any person or entity working on the Project. Payments due and unpaid under the Agreement shall bear interest from the date payment is due at 18% per annum until paid in full. If Client fails to make any payment when due, Contractor shall have the right to halt and suspend all further Work until Client has made payment in full, or the payment dispute, if any, has been resolved.

Final Payment and Waiver of Claims: Client, upon and by making final payment for the Project, waives all claims against Contractor arising from or related to the Work and/or the Project except those arising out

of (a) warranty claims arising under Article 8, and (b) unsettled claims arising prior to the date of such final payment and for which written notice to Contractor was made.

Withholding Payments: Payments shall be paid by Client in accordance with the terms of this Article; provided that payments may be withheld by Client in the event that (a) the Work is reasonably determined to be defective, Contractor has been notified in writing by Client of such defect, and Contractor has not either disputed such defect or commenced remedying such defect within ten (10) days after the date of such notice (or a reasonable time thereafter depending on the then-current circumstances and the nature of such defect), or (b) Contractor does not make proper payments for labor, materials or equipment furnished to Contractor in connection with the Project. In each case, and notwithstanding anything herein to the contrary, all withheld amounts (including both progress payments and final payment) shall (i) in no event exceed, as applicable, the actual amount in controversy or otherwise specifically allocable to the matters set forth in subsections (a) and/or (b) above, and (ii) be immediately due and payable to Contractor upon resolution of the matters set forth in such subsections or Contractor obtaining bond sufficient to indemnify Client against such amounts, and any amount not so paid shall be deemed to be late and interest shall accrue in accordance with the foregoing paragraph from the original due date of the applicable progress payment.

ARTICLE 4

STARTING AND COMPLETION DATES

Commencement Date; Termination Prior to Commencement: Subject to the terms and conditions hereof, including the conditions precedent set forth below, and unless otherwise agreed to in writing, the portion of the Work to be performed at the Jobsite shall commence on the Commencement Date; provided that, in the event that (a) Client fails to obtain the proper permits or licenses, and/or (b) Contractor is ready to commence the Work but Client is unable or unwilling to proceed with the Project as of the Commencement Date, Contractor may, upon seven (7) days written notice to Client, terminate this Agreement, including all of Client's rights and interest herein or arising herefrom. Upon any such termination, Contractor shall be immediately paid for all Work already performed (as reasonably calculated by Contractor, notwithstanding Article 2) as of such termination date and reimbursed for all reasonable costs and expenses already incurred by Contractor in connection with the Work and/or the Project. For the avoidance of doubt, all such Work (including all pre-Jobsite services) shall be charged on a per-man-hour basis at market rates. In addition, Contractor shall retain all other rights and remedies provided under this Agreement, including rights to lien the subject Jobsite, and all other remedies which are available at law or equity.

Revival: In the event that the Work is not commenced as described above but Client nevertheless desires Contractor to perform the Work, then at Contractor's option the Contract Price may be revised to reflect the cost of any such delay and market changes in the cost of materials and labor required to complete the Project, which changes shall be set forth in a signed addendum hereto.

Conditions Precedent: Commencement of the Work shall be contingent upon the conditions precedent, if any, set forth on **Exhibit A**. For the avoidance of doubt, commencement of the Work may be delayed by reason of failure to satisfy the foregoing conditions.

Possession upon Completion: To the extent applicable, Client shall not take possession of the Project and Work to be performed under this Agreement until Client has made full and final payment to Contractor of the Contract Price, and Contractor has approved Client's occupancy thereof. Client stipulates and agrees that should Client endeavor to take possession of the Project prior to full payment to Contractor of the Contract Price, Contractor is without adequate remedy at law and that Contractor shall, in addition to all other remedies, be entitled to an injunction to preclude Client from taking possession of the Project and the Work performed under this Agreement.

ARTICLE 5

CONTRACT DOCUMENTS

This Agreement includes, without limitation, the general, supplementary, special, and other terms and conditions and the addenda, plans, drawings, maps, and other documents included as a part of or referenced herein or in any exhibit attached hereto or otherwise delivered to Contractor in connection with the Project (collectively, the “**Contract Documents**”). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work under this Agreement. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all with respect to the Work performed under a Contract. Work not explicitly covered in the Contract Documents shall be performed by Contractor so long as it is consistent with and is reasonably inferable from the Contract Documents and shall be considered included in the Contract Price, subject to Article 2. Each Contract Document shall be respectively interpreted together and in harmony with one another. In the event of conflict between this Agreement and any other Contract Document, this Agreement shall control.

No agent of either party hereto has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise, or agreement not set forth in the Contract Documents.

ARTICLE 6

RESPONSIBILITIES OF CLIENT

In addition to the other obligations of Client set forth herein, the parties agree as follows:

Communication with Contractor: Client will issue all communications and direct all matters concerning the Work directly to Contractor. Client shall not impede, interfere with, or endeavor to supervise the Work except as explicitly set forth on Exhibit A. All changes to the Work desired by Client shall be made by agreement with Contractor and Client shall not attempt to directly effect any changes in the work performed by any of Contractor’s agents, employees, or subcontractors.

Effects of Interference: Should Client take any action contrary to the provisions or intent of this Agreement, Client shall be liable and responsible for any and all damages, costs, expenses, or delays resulting therefrom of every nature arising directly or indirectly therefrom. In the event that Client interferes, or attempts to interfere, with the Work in any manner, Contractor may give Client written or verbal notice of Client’s interference. If Client continues to interfere with the Work thereafter, Contractor may terminate this Agreement upon seven (7) days written notice to Client without liability therefor.

Work Performed by Client: No work performed by Client or third parties other than Contractor and its subcontractors or other agents (“**Client Parties**”) shall be included in Contractor’s warranty for the Work or the Project. Any damages to the Work caused by Client or any Client Party in connection with Client’s or such Client Party’s work on the Project in any capacity shall be the sole responsibility of Client. For avoidance of doubt, Client shall be solely responsible for its and any Client Party’s use of equipment and employees to prepare green waste and move it to the Jobsite, except to the extent that Contractor is explicitly responsible for damages under the other provisions of this Agreement.

Jobsite: Client shall furnish the Jobsite and all other real property required for the Project.

Easements: Client shall secure and pay for all easements necessary for the proper construction and completion of the Project.

Cooperation: Client shall cooperate with Contractor and all reasonable requests made by Contractor in connection with the Project and shall promptly furnish all information and data reasonably or actually required under the Contract Documents related to the Project.

Insurance and Security Protection: It is Client's responsibility to provide any security fencing or alarm systems Client desires or deems necessary during the Work.

Unconditional Guarantor(s): The parties to this Agreement agree and acknowledge that all obligations of Client under this Agreement are joint and several obligations of Client and each Unconditional Guarantor.

ARTICLE 7

CONTRACTOR'S RESPONSIBILITIES

In addition to the other obligations of Contractor set forth herein, the parties agree as follows:

Supervision: Contractor shall be solely responsible for the Work and all other construction and/or demolition activities related to the Project, including the techniques, sequences, procedures, method and means, and coordination of all Work. Contractor shall supervise and direct the Work in a commercially reasonable manner using Contractor's best skill and expertise.

Subcontractors: Upon reasonable request, Contractor shall furnish a list of names and addresses of subcontractors who performed principle portions of the Work to be subcontracted by Contractor. A subcontractor, for the purposes of this Agreement, shall include any person or entity with whom Contractor has a contract for work on the Jobsite. All contracts between Contractor and subcontractors shall conform to the provisions of the Contract Documents, and shall incorporate all relevant provisions of this Agreement.

Discipline and Employment: Contractor shall use commercially reasonable efforts to maintain at all times discipline among employees, subcontractors, and subcontractors' employees. Contractor further agrees not, to the best of Contractor's knowledge, to employ for the Project any person unfit or without sufficient skill to perform the job for which such person was employed.

Furnishing of Labor, Materials, etc.: Except as otherwise agreed and specified in writing, Contractor shall provide all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, water, transportation, and all other facilities and services necessary for the proper completion of the Work in accordance with the Contract Documents; provided that any such items which Client agrees to provide in writing shall be supplied at no cost to Contractor and delivered to the Jobsite in accordance with Contractor's instructions at Client's sole cost. In the event Client does not provide such agreed-upon items in a timely manner and in appropriate condition so as to cause a delay in the Work or additional costs to Contractor or subcontractors of whatever nature, Client shall be responsible and shall immediately pay to Contractor such additional costs and the completion date of Project shall be extended by the length of such delay. Notwithstanding anything herein to the contrary, if Client causes or permits any materials, equipment or other personal property to be delivered to Contractor (e.g., Client's online orders shipped directly to Contractor) for transportation to the Jobsite or for temporary storage, Contractor (a) shall bill Client for the cost of such transportation, delivery and/or storage as reasonably determined by Contractor and/or (b) may refuse to accept, and require Client to retrieve and store at Client's expense, such materials, equipment or other personal property that are not approved for direct delivery to Contractor in advance. Contractor shall not be responsible for loss or damage to any Client-provided materials, equipment or other personal property as a result of Client's noncompliance with this section.

Payment of Taxes: Contractor shall ensure that sales and use taxes required by law in connection with the Work are paid on materials incorporated into the Project.

Compliance with Laws and Regulations: Contractor shall comply in all material respects with the laws and ordinances, rules, regulations, or orders of all public authorities relating to the performance of the Work. If any of the Contract Documents fail to comply with applicable law, Contractor shall notify Client promptly on discovery of such noncompliance and the parties shall agree to enter into such change orders as may be necessary to comply with such applicable law.

Equipment and Materials: The materials and equipment furnished and the Work performed will comply with the applicable Contract Documents.

Cleanup: Contractor agrees to use commercially reasonable efforts to keep the Jobsite free of waste, debris, and rubbish caused by the Work. All such waste, debris, and rubbish shall be removed from the Jobsite prior to completion of the Project, together with Contractor's tools and equipment, machinery and surplus materials.

Safety Precautions and Programs: Unless otherwise set forth on Exhibit A, Contractor shall provide for and oversee all safety orders, precautions, and programs necessary to the reasonable safety of persons and property during the performance of the Work. Without limiting the foregoing, Contractor shall take reasonable precautions for the safety of all (a) employees, subcontractors, and subcontractors' employees performing work on the Project, (b) other persons affected by the Work or permitted by Contractor to be on the Jobsite, (c) materials incorporated into the Project, and (d) property and improvements on the Jobsite and adjacent thereto, all in compliance with applicable law.

Workmanship: Contractor shall use commercially reasonable efforts to perform the Work in a neat, skillful, good, and workmanlike manner, and in accordance with industry standards. Any work performed by Client or its agents shall also meet such quality standards.

ARTICLE 8


WARRANTY

Limited Warranty: CONTRACTOR AGREES TO PROVIDE CLIENT WITH A SEPARATE WRITTEN LIMITED WARRANTY TO THE EXTENT ATTACHED HERETO AS EXHIBIT C, IF ANY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR AS REQUIRED BY LAW, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS PROVIDED HEREIN, DELIVERABLES AND SERVICES ARE PROVIDED AS-IS AND AS-AVAILABLE.

Limitation: Notwithstanding the foregoing, Contractor does not warrant any (a) item provided or purchased by Client or any third party, whether or not used in connection with the Project, (b) item that carries a manufacturer-specific warranty (such item to be covered by the applicable manufacturer only), and (c) defect in a system that is caused by the failure of any items described in subsections (a) or (b). The above limited warranty does not in any way affect or limit in any way any manufacturer's warranty.

Correcting Work: Prior to substantial completion of the Work, Contractor shall use commercially reasonable efforts to correct any Work that does not substantially conform to the terms of the Contract Documents. Following the date of substantial completion of the Work, defects covered by the foregoing limited warranty, or within such longer period as may be prescribed by law, will be corrected by Contractor within sixty (60) days of written notification from Client. However, if Contractor is unable to correct such deficiencies within such sixty (60) day period due to inclement weather, the unavailability of materials, or any other matter outside of Contractor's reasonable control, Contractor shall notify Client, outlining the reasons for delay and providing an estimated timeline for correcting the applicable defects.

Limitations on Liability: EACH PARTY WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THIS LIMITATION WILL APPLY EVEN IF THE REMEDIES AVAILABLE IN THIS AGREEMENT HAVE FAILED THEIR ESSENTIAL PURPOSE. EXCLUDING ITS INDEMNITY OBLIGATIONS AND PAYMENT OF THE CONTRACT PRICE IN FULL BY CLIENT, A PARTY'S SOLE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ANY MATTER OR EVENT RELATED THERETO SHALL IN NO EVENT EXCEED ONE MILLION DOLLARS (\$1,000,000.00).

ARTICLE 9 → See changes on 
INSURANCE Addendum I, attached,

Contractor's Insurance: Upon execution of this Agreement and, in any event, before the Commencement Date, Contractor shall procure, and maintain in full force and effect at Contractor's expense, so long as may be necessary to fully protect Contractor and, in any event, at least until the completion and acceptance of the Project as a whole, in each case to the extent applicable, liability insurance, builders risk insurance, and such other coverage as may be required under applicable law. Contractor shall provide proof of such insurance to Client upon request by Client and such insurance shall not be cancelled, terminated, or materially changed until at least 30 days' prior written notice has been given to Client. Contractor's insurance coverages shall include the following:

- (a) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the Work under this Agreement.
- (b) Commercial General Liability insurance with contractual liability coverage to cover Contractor's obligations under the Indemnification section of this Agreement, with minimum combined single limits of \$1,000,000 for each occurrence and \$2,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosions. The policy shall be primary and noncontributory to any other policy or coverage available to Client, whether such coverage be primary, contributing, or excess.
- (c) Commercial Automobile Liability insurance that provides coverage for owned and hired automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, and, for property damage, \$500,000 per occurrence, or a combined single limit of \$5,000,000.

Client's Insurance: Upon execution of this Agreement and, in any event, before the Commencement Date, Client shall procure, and maintain in full force and effect at Client's expense, so long as may be necessary to fully protect Client and, in any event, at least until the completion and acceptance of the Project as a whole, (a) liability insurance, (b) property damage insurance (on the work at the Jobsite for the full insurable value thereof, including the interests of Client, Contractor, and subcontractors, against fire, vandalism and other perils ordinarily included in extended coverage), and (c) such other insurance coverage that, in Client's opinion, is necessary to protect Client against claims arising out of the Work, without diminishing

Contractor's obligation to carry the insurance specified herein. Client shall provide a copy of all such policies to Contractor prior to the Commencement Date.

Waiver of Subrogation: Each party and its insured waives any right or claim to be subrogated on payment of loss or otherwise to any claim against the other party that is covered by insurance then carried by such party and further waives any right against such party for damages caused by fire or other perils to the extent covered by property insurance being maintained by the other party pursuant to the applicable Contract Documents. Coverage provided by insurance maintained by each party shall not be limited, reduced or diminished by virtue of the subrogation waiver herein contained.

ARTICLE 10

TERMINATION

Mutual Termination: Client and Contractor may agree to terminate of this Agreement at any time upon the terms and conditions agreement upon by the parties in writing.

Termination: A party may terminate this Agreement for Cause at any time upon written notice to the other party, provided that the terminating party has notified the other party in writing via certified mail or FedEx of such breach and the receiving party is given fifteen (15) days from date of receipt of such notification to correct such breach. "Cause" means any of the following with respect to the party that is not exercising the termination right under this section: (a) a party is in material breach of its obligations under this Agreement; (b) a party becomes insolvent; or such party makes an assignment for the benefit of its creditors; or a receiver, liquidator, custodian, trustee or the like is appointed for the party or its property; or such party commences a voluntary case under any applicable bankruptcy or insolvency law or consents to the entry of an order for relief in any involuntary case, or a court with jurisdiction enters a decree for relief in any involuntary case involving such party; or (c) a party engages in any fraud or material dishonesty in the course of business that adversely and materially affects the other party to this Agreement. In addition to the foregoing, Contractor may on seven (7) days written notice to Client, terminate this Agreement before the completion date hereof, when for a period of ten (10) days after a payment is due, through no fault of Contractor, Client fails to make the payment by the due date thereof.

Effect of Termination: On any such termination by Client, Contractor may recover from Client payment for all Work completed and for any loss sustained for materials, equipment, tools, or machinery to the extent of actual loss thereon, plus loss of a reasonable profit which Contractor anticipated under this Agreement and for all costs caused by or resulting from the termination of the Work.

Additional Remedies: On any such termination, the terminating party shall pursue any additional claims or remedies in accordance with the mediation and arbitration provisions of this Agreement.

ARTICLE 11

DIFFERING SITE/ENVIRONMENTAL CONDITIONS

Jobsite Conditions: Client expressly acknowledges and agrees that the Project and the Jobsite upon which the Project is to be constructed may contain unique and difficult conditions which are outside the control of Contractor and which may delay completion of the Project. These conditions may include, but are not limited to, the following (to the extent applicable):

1. Extreme or otherwise unforeseen weather conditions making access to the Jobsite difficult or inaccessible.

2. Soil and ground composition, whether or not soil studies have been completed or delivered to Contractor.
3. Extent of rock removal required.
4. Road closures or other barriers to Jobsite accessibility.
5. Subsurface objects, such as irrigation pipes, buried debris, electrical wiring, or any other unmarked and unknown utility.

Additional Costs: In the event that Contractor encounters subsurface conditions such as rock, water, soils different than those anticipated to be present at the Jobsite, Client agrees to pay the additional costs of excavation and soil preparation to excavate or prepare soils for construction of the Project.

Hazardous Waste: Client represents and warrants that the Jobsite is free and clear of any and all waste or materials deemed hazardous or otherwise regulated by applicable environmental laws (“Waste”). Client, to the fullest extent permitted by law, agrees to hold harmless Contractor (including its affiliates and subsidiaries and other contractors and subcontractors and their agents and employees) from any and all claims, damages, loss and expenses, including but not limited to attorneys’ fees, relating to any Waste located on or around the Jobsite. In the event of such discovery, Contractor may, at its option, immediately terminate this Agreement upon notice to Client. Notwithstanding the foregoing, if Waste is discovered on the Jobsite the Work shall cease immediately to determine what corrective action is required with respect to such Waste. Client shall be solely responsible for the costs of removal and corrective action with respect to any Waste.

ARTICLE 12

GENERAL PROVISIONS

Force Majeure: Neither party will be liable to the other party for the failure or inability to perform any part of this Agreement or for any delay in the performance of any part of this Agreement (except any payment obligation hereunder) to the extent such failure or inability is due to a force majeure event. In the event of the occurrence of an event of force majeure, the party affected will give prompt written notice to the other party and will use commercially reasonable efforts to alleviate or minimize such event and resume full performance at the earliest possible date.

Indemnification: Except as otherwise stated in this Agreement, each party shall indemnify and hold harmless the other party and its agents and employees from and against any and all claims, damages, losses, and costs arising out of or resulting from the indemnifying party’s negligent acts or omissions related to this Agreement. Contractor’s negligent acts or omissions shall also include negligent acts or omissions by any subcontractor, or any person or organization employed by Contractor or any subcontractor to perform or furnish any of the Work. Contractor’s obligation to indemnify Client is not limited or waived in any way by compliance or noncompliance with the insurance requirements of this Agreement.

Mediation and Arbitration: Contractor, at its option and in its sole discretion, may demand that any or all claims or disputes between Contractor and Client arising from or in connection with this Agreement and not resolved between the parties within five (5) business days, be submitted to mediation. If Contractor does not demand mediation, or if the claim or dispute is not resolved between the parties by mediation, Contractor, at its option, may choose to have the dispute arbitrated, in which event the parties agree to arbitrate the dispute in accordance with the Construction Industry Rules of Arbitration of the American Arbitration Association. For the avoidance of doubt, Contractor shall have the sole right to determine whether any dispute arising under this Agreement shall be mediated and/or arbitrated.

Governing Law; Venue. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Utah without reference to its choice of law rules. The parties agree that any mediation, arbitration, or legal action arising out of or in connection with this Agreement will occur exclusively in Salt Lake County, Utah and, with respect to any legal action, in the state or federal courts located in Salt Lake County, Utah, and each party hereby irrevocably consents to the exclusive jurisdiction and venue of this court, subject to the foregoing mediation and arbitration requirements.

Assignment: This Agreement and the rights related thereto may be not be assigned or otherwise transferred by any party except with the prior written consent of the other party, which shall not be unreasonably delayed or denied. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

Notices: Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by first class registered mail or certified mail; or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address as set forth above. Either party may change its address for notices by notice to the other party given in accordance with this paragraph. Notices will be deemed given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

Waiver: Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the party of any other right or remedy under this Agreement or that the party is entitled by law to enforce.


Severability: If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

Waiver of Jury Trial: EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY FOR ANY COURT PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY FOR WHICH A PARTY MAY BRING SUCH A COURT PROCEEDING.

Counterparts: This Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be delivered by facsimile or e-mail and such delivery will have the same force and effect of an original document with original signatures.

Entire Agreement: This Agreement, together with the other Contract Documents, and all exhibits contain herein and therein, contain the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be amended, except by a writing signed by both parties.

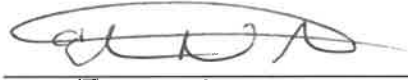
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as amended by Addendum I

IN WITNESS THEREOF, the parties have executed this Agreement to be effective as of the first day and year written above.

CONTRACTOR:

DIAMOND TREE EXPERTS INC.

By: 
Name: ELVIN K. SELLAND
Title: CEO
Date: 5/2/2024

CLIENT(S):

NAME: Weber County

NAME: _____

By: _____
Name: James H. "Jim" Harvey
Title: County Commission Chair
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

UNCONDITIONAL GUARANTOR(S) (IF ANY):

NAME: _____

NAME: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

DESCRIPTION OF THE WORK AND CONDITIONS PRECEDENT

SCOPE OF WORK:

CONTRACTING TERMS: 5 Years

1. The Grinder must be a horizontal type of grinder and needs to be able to grind a minimum of 450 yards of Green Waste Material an Hour with a clean tree pile using 4" screens. Material being feed into grinder will determine hourly production. Larger material and wet/green material will significantly slow hourly production. The grinder and operator will maximize production based on material, screen size and safety of equipment and personnel.
2. If the green waste pile has any foreign debris (i.e. engine parts, car parts, large metal parts from tools) that go through the grinder and damage hammers or mill, Weber County Transfer will be billed for the needed repairs and foreign debris damage.
3. The Bidder will need to have equipment necessary to load the grinder and move it as needed.
4. The Bidder must be able to change the screens in the grinder to produce different sizes of ground material. Screen changes, at the request of approved Weber County Transfer Station Staff, will be changed at the same rate of operation. This will not be a down time or deduction in Diamond Tree hourly services.
5. The grinder shall be able to load and grind Tree's 40" in diameter and 14' long.
6. Weber county compost seeks to have our Green Waste pile ground 2 times a year under normal weather conditions with the option of a 3rd grinding during high wind damage events. On or about 1st of March through the end of May dependent on the need and the end of September.
7. The bidder must supply all Equipment, Maintenance, Labor and Transportation to and from site.
8. Bidders must be prepared to comply with all state, federal and local requirements for grinding green waste.
9. Successful bidder will identify Type and Manufacture of the Equipment being used for this project and to provide minimum and maximum yards per hour using 4" screens.
10. Weber county compost will provide a loader and operator to move the ground material as needed.
11. Bidder will need to supply a list of backup equipment to insure the job is completed by the required date, normally within 4 to 7 working days.
12. Bidder will need to charge by the hour the grinder is in operation. Weber county compost will not pay for non preventative maintenance or down time. Dally and manufacture required Preventative Maintenance (PM) performed at the beginning, throughout and at the end of each day will be counted in the hourly rate. PM is required for safety and efficient operation of the equipment. PM is defined as blowing out filters, required grease applications, filter changes, hammer changes or tightening, fueling.
13. Successful bidder shall grind in a safe and responsible manner as to not damage or injure the public or Weber county property.
14. Successful bidder shall have as a minimum liability insurance umbrella policy of \$1,000,000.00. Certificate of liability must be current, and provided prior to each grinding.

EXHIBIT C

LIMITED WARRANTY

NOT APPLICABLE

Addendum I

Weber County's requested changes to the attached contract draft

1. Delete the "Waiver of Subrogation" paragraph from Article 9.
2. Change the "Client's Insurance" paragraph in Article 9 to say the following:

Upon execution of this Agreement and, in any event, before the Commencement Date, Client shall procure, and maintain in full force and effect at Client's expense, so long as may be necessary to fully protect Client and, in any event, at least until the completion and acceptance of the Project as a whole, its self-insurance coverage for (a) liability insurance, (b) property damage insurance ~~(on the work at the Jobsite for the full insurable value thereof, including the interests of Client, Contractor, and subcontractors, against fire, vandalism and other perils ordinarily included in extended coverage)~~, and (c) such other insurance coverage that, in Client's opinion, is necessary to protect Client against claims arising out of the Work, without diminishing Contractor's obligation to carry the insurance specified herein. Client shall provide a copy of all such policies to Contractor ~~prior to the Commencement Date~~ upon request.

Here is the final requested version of this paragraph:

Upon execution of this Agreement and, in any event, before the Commencement Date, Client shall procure, and maintain in full force and effect at Client's expense, so long as may be necessary to fully protect Client and, in any event, at least until the completion and acceptance of the Project as a whole, its self-insurance coverage for (a) liability insurance, (b) property damage insurance, and (c) such other insurance coverage that, in Client's opinion, is necessary to protect Client against claims arising out of the Work, without diminishing Contractor's obligation to carry the insurance specified herein. Client shall provide a copy of all such policies to Contractor upon request.