



**INCORPORATED COUNTY OF LOS ALAMOS  
PRICE AGREEMENT**

This **PRICE AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Julian Herrera, dba Allied Tree Service and Fencing**, a sole proprietorship ("Contractor"), to be effective for all purposes December 1, 2018.

**WHEREAS**, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 19-10 (the "RFP") on August 9, 2018, requesting proposals for On-Call Services for Electric Power Line Tree Trimming, as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated September 18, 2018 ("Contractor's Response"); and

**WHEREAS**, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

**WHEREAS**, the Board of Public Utilities approved this Agreement at a public meeting held on November 20, 2018; and

**WHEREAS**, the County Council approved this Agreement at a public meeting held on November 27, 2018; and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

**SECTION A. SERVICES:**

**Description of Work.** All work shall be assigned on an on-call basis, by Task Order, by the Project Manager, as needed. County makes no guarantee of the quantity of work to be assigned. After the Task Order is issued and approved by County, County and Contractor shall pre-schedule the work. Upon County request, Contractor shall provide the services below:

1. **CONTRACTOR'S QUALIFICATIONS:** Contractor shall comply with Code of Federal Regulations 29 CFR 1910-1926 or as may be amended for power line clearance tree trimming operations and shall provide proof of employee's certifications for power line clearance tree trimmers to County prior to commencing work.
2. Contractor shall meet the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C.A § 651, *et seq. or as may be amended*, the most current APPA Safety Manual, Section 508 (508.1 through 508.7), and employ qualified and certified power line clearance arborists at all times.

3. Contractor shall comply with all applicable local, state, or federal laws governing, including but not limited to those for the safety and the safe operation of commercial motor vehicles, the Federal Motor Carrier Safety Acts, or any applicable laws in lieu thereof.
4. SAFETY: Job site activities shall at all times be conducted in accordance with applicable federal, State and local requirements to include but not limited to the National Electric Safety Code (NESC), OSHA 29 CFR Parts 1910-1926, APPA Safety Manual Section 508 (508.1-508.7), and the New Mexico Department of Transportation Manual on Uniform Traffic Control Devices employing the most recent United States Forest Service Travel Management Motor Vehicle Use Map.
5. Contractor shall provide a copy of its most recent final Safety Plan to County prior to commencing work under this Agreement.
6. TREE CUTTING AND TRIMMING WORK: Tree cutting and trimming work shall be scheduled when mutually beneficial to County and its customers. County shall generally provide two (2) weeks' notice to Contractor for the services required under any Task Order. The Task Order shall be priced by Contractor on a regular schedule, Monday through Friday, forty (40) hours per week. However, County and Contractor may agree to a four (4) day, ten (10) hour work day schedules.
7. Unless otherwise directed by County, Contractor shall trim trees in accordance with the provisions herein, as well as that illustrated in Exhibit "B." Siberian elms or similar trees may be cut to the ground only upon owner's approval.
8. RESPONSE TO EMERGENCIES. There may be times during inclement weather and winter conditions when County shall require emergency tree cutting or tree trimming services. During these emergency events, Contractor shall carry out all work requests in a timely manner, but no later than one (1) business day or as determined by County.
9. Contractor's crew shall consist at minimum of a three (3) person crew, with the individual in the aerial bucket or climbing trees near power lines be certified to work near and around 15,000 volt energized power lines as provided herein.
10. At minimum, the three (3) person crew shall be equipped with a fifty (50) foot aerial bucket, drum chipper and all the necessary tree cutting and hand tools in order to perform the assigned tasks. Instances of trees having to be cut or trimmed while climbed shall be expected, as not all power lines are readily accessible to aerial bucket trucks.
11. Normal planning and pricing shall be as follows:
  - a. County shall provide a series of map sheets under a Task Order to Contractor;
  - b. County and Contractor shall field-review the work to be performed as illustrated in the map(s);
  - c. Contractor shall take notice of accessibility issues if any, traffic control if any, etc., and pre-plan the work;
  - d. Contractor shall develop a work plan for the Task Order and have it reviewed and approved by County's Associate Engineer;
  - e. Contractor shall price the Task Order on the hourly pricing indicated on the rate schedule set out in Exhibit "A," as a not to exceed fixed price;
  - f. County shall review, and amend as necessary with Contractor input, the pre-planned Task Order; and
  - g. After the Task Order is approved by County, County and Contractor shall pre-schedule the work.

12. Prior to commencing work Contractor shall:
  - a. When required, obtain a traffic control permit from County's Traffic Control Division;
  - b. Ensure that tail-gate forms are available and personal protective equipment (PPE) is in good working condition;
  - c. Ensure that Contractor's crew has cellular communication available while performing work for County; and
  - d. Coordinate the daily work activities with County's Associate Engineer.
13. Prior to commencing tree-trimming work in any private area, Contractor shall give a minimum of forty-eight (48) hours' notice to each residence.
  - a. County shall provide the door hangers for Contractor to place at each residence door or speak to an adult-owner(s) of the residence as to when the tree trimming work will be performed;
  - b. If a family member other than an adult owner answers the door, Contractor shall provide a door hanger to that family member; and
  - c. If an owner of the residence wishes to be present when performing the tree-trimming work, Contractor shall ask County to coordinate the work.
14. Each day where work shall be performed under this Agreement, Contractor shall:
  - a. Notify County's Associate Engineer where the daily work activities will take place;
  - b. Prior to commencing any work, Contractor shall tail-gate with its crew and ensure that all PPE is in good condition, functional, and worn by all of Contractor's employees;
  - c. When required, County shall place the power line over-current protection on "one-shot" and before any aerial tree trimming takes place. At the end of each work day, Contractor shall coordinate with County to return the power line over-current protection to normal;
  - d. Contractor shall not deviate from the Task Order or work plan maps, unless explicitly authorized by County;
  - e. Contractor shall remove and dispose of trees, limbs, etc. at Contractor's expense. Upon County approval, the trees may be cut and left at the job site, provided the trees are cut small enough to be handled and moved by the general public or property owners;
  - f. In open space areas and upon approval by County, tree limbs may be chipped and spread within the job site area by Contractor. Otherwise, Contractor shall dispose of wood chips and tree limbs;
  - g. Contractor shall be courteous and respectful to County customers at all times;
  - h. Contractor shall notify County's Associate Engineer immediately if a customer complaint arises; and
  - i. Contractor shall provide daily communication with County's Associate Engineer of the previous day's work and of any anticipated changes in scheduling, review of Customer Complaint Log, and other matters related to the tree trimming services.

**SECTION B. TERM:** The term of this Agreement shall commence December 1, 2018 and shall continue through November 30, 2022, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for up to two (2) consecutive one-year periods, unless sooner terminated, as provided therein.

**SECTION C. COMPENSATION:**

1. **Amount of Compensation.** County shall pay compensation for performance of the above Services in accordance with the Rate Schedule set out as Exhibit "A." "Contract Year" as used in Exhibit "A", shall be 365 days from the Effective Date of this Agreement, i.e. date final Agreement is last date signed and approved by both parties. Year 1 Unit Rates shall be from Effective Date plus 365 days. Compensation for any one Task Order shall not exceed the approved Task Order amount, but not including New Mexico gross receipts taxes (NMGRT). Total compensation for the Term of this Agreement and any renewals **SHALL NOT EXCEED ONE MILLION DOLLARS (\$1,000,000.00)** exclusive of NMGRT. There are no reimbursable expenses associated with this Agreement.
2. **Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. APPLICABLE LAW:** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY:** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including

without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

**SECTION N. FORCE MAJEURE:** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION O. NON-ASSIGNMENT:** Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

**SECTION P. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION Q. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION R. TERMINATION:**

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION S. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Deputy Utilities Manager  
Electric Distribution  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 130  
Los Alamos, New Mexico 87544

Contractor:

Julian Herrera  
Allied Tree Service and Fencing  
Post Office Box 351  
Española, New Mexico 87532

**SECTION T. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

**SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

BY: \_\_\_\_\_  
**TIMOTHY A. GLASCO, P.E.** **DATE**  
**UTILITIES MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**ALLIED TREE SERVICE AND FENCING, A SOLE  
PROPRIETORSHIP**

BY: \_\_\_\_\_  
**JULIAN HERRERA** **DATE**

**Exhibit "A"**  
**Compensation Rate Schedule**  
**AGR19-10**

Classification	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate	Year 4 Hourly Rate	Year 5 Hourly Rate	Year 6 Hourly Rate
Foreman	\$ 44.00	\$44.00	\$44.00	\$46.20	\$48.51	\$50.94
Trimmer	\$40.00	\$40.00	\$40.00	\$42.00	\$44.10	\$46.31
Groundman	\$36.00	\$36.00	\$36.00	\$37.80	\$39.69	\$41.67
Primary Work (15,000 Volts)						
Crew Rate 1	\$188.00	\$188.00	\$188.00	\$197.40	\$207.27	\$217.63
Crew Rate 2	\$165.00	\$165.00	\$165.00	\$173.25	\$181.91	\$191.01
Crew Rate 3	\$143.00	\$143.00	\$143.00	\$150.15	\$157.66	\$165.54
Secondary Work (240 Volts)						
Crew Rate 4	\$143.00	\$143.00	\$143.00	\$150.15	\$157.66	\$165.54
Traffic Control	\$45.00	\$45.00	\$45.00	\$47.25	\$49.61	\$52.09
Bucket Truck   **	\$45.00	\$45.00	\$45.00	\$47.25	\$49.61	\$52.09
Chipper           **	\$23.00	\$23.00	\$23.00	\$24.15	\$25.36	\$26.63
<p>NOTE: Crew Rates shall include all necessary tools to trim or cut trees, and complete the assigned Task Order under the terms of this Agreement.</p> <p>** Price is for evaluation purposes only</p>						

**CREW RATES DESCRIPTION:**

**For Primary work near and around 15,000 volt power lines:**

**Crew Rate 1:** Work entails standard 8 hour labor rate for a 3 person crew, with full day Bucket Truck use and Chipper use, as necessary.

**Crew Rate 2:** Work entails standard 8 hour labor rate for a 3 person crew, with 4 hours Bucket Truck use and Chipper use, as necessary.

**Crew Rate 3:** Work entails standard 8 hour labor rate for a 3 person crew, without bucket truck use and Chipper use, as necessary.

**For Secondary work near and around 240 volt power lines:**

**Crew Rate 4:** Work entails standard 8 hour labor rate for a 3 person crew, without bucket truck use and Chipper use as necessary.

**CREW RATES DESCRIPTION NOTE:**

Where a bucket truck is not accessible, yet the climbing of a tree is required in order to perform the tree trim or tree cut work, the applicable rate shall be as though a bucket truck is used, i.e., for either 4 hours or full day.



**Exhibit "B"**  
**AGR19-10**

Unless otherwise directed by the County Project Manager, the power line rights-of-way shall be trimmed in accordance to Figures 1 and 2. Figure 1 shall generally be followed in County open-space areas and the Los Alamos Ski Hill area. Otherwise, Figure 2 shall generally be followed in the Los Alamos and White Rock areas.

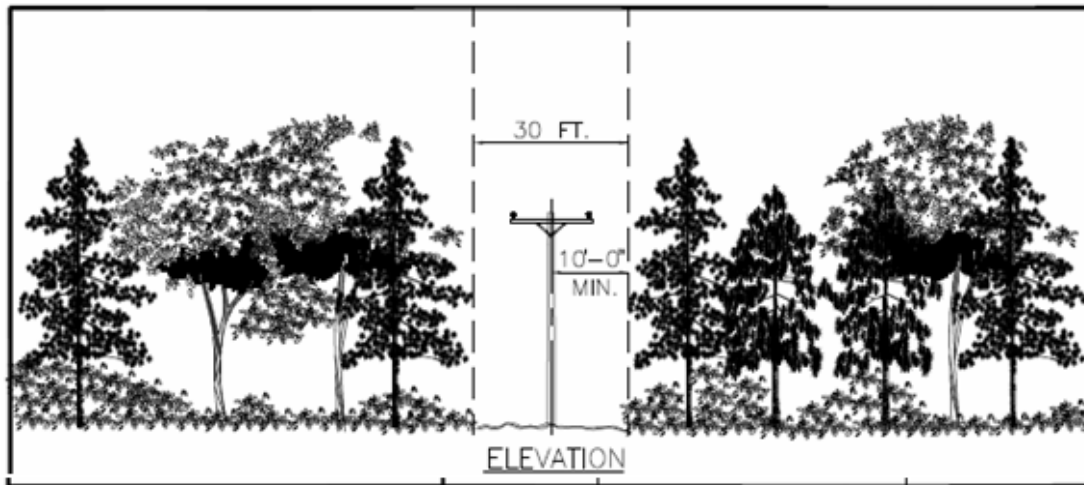


Figure 1: For Ski Hill area or where large Ponderosa Pines exist.

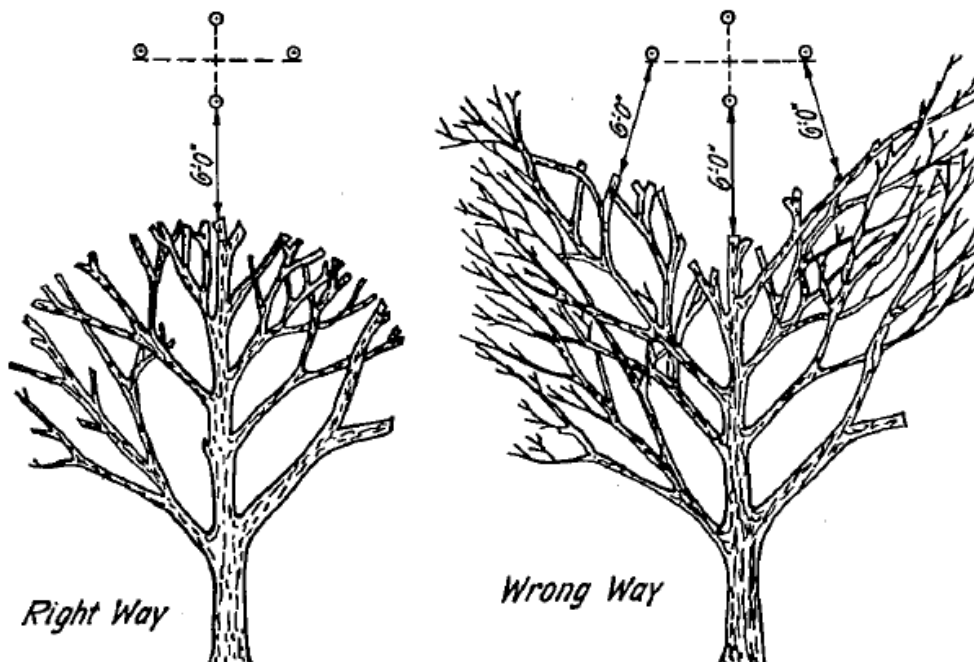


Figure 2. For all other areas, for all other trees.