

TREE MITIGATION AGREEMENT

THIS AGREEMENT FOR TREE MITIGATION (hereinafter "Agreement") is made and entered into this ____ day of _____, 20__, by and between the City of Garden City, Idaho, an Idaho municipal corporation of 6015 Glenwood Street, Garden City, Idaho 83714 (hereinafter "CITY") and **[NAME]** (hereinafter "DEVELOPER") on this ____ day of _____, 20____, pertaining to the trees located at or adjacent to **[ADDRESS]** (hereinafter "SITE"), in conjunction with a development within the corporate limits of Garden City, Idaho, file number **[FILE NUMBER]**.

WHEREAS, CITY has codified tree standards which regulate the type and caliper of trees planted in new and substantially improved developments and maintained in existing developments; and

WHEREAS, CITY requires such tree standards to be met and/or maintained by and within new and substantially improved developments; and

WHEREAS, CITY has determined that DEVELOPER has removed existing trees in violation of such standards; and

WHEREAS, CITY Code 8-4I-7 requires mitigation for removed trees;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION I: DETERMINATION OF REMOVAL. It has been determined that _____ caliper of trees has been removed from SITE and the same caliper is required to be mitigated per Garden City Code 8-4I-7. DEVELOPER has determined that the mitigation on the site is not feasible or is otherwise undesirable.

SECTION II: REMEDY. DEVELOPER will remedy the removal of such trees by performing one of the following mitigation requirements, or a combination thereof, provided that the removed caliper of trees is completely mitigated thereby:

- _____ 1. DEVELOPER has provided, or will provide, the required type and caliper of trees at another Garden City location, **[ADDRESS]** (hereinafter "ALTERNATIVE SITE") to replace entire caliper of removed trees required to be mitigated by Garden City Code.
 - i. DEVELOPER will purchase and replace the required type and caliper of trees at DEVELOPER's own expense.
 - ii. DEVELOPER will provide and pay for the necessary trees, irrigation, soil preparation, and labor.

iii. Documentation will be provided to CITY that the property owner of ALTERNATIVE SITE is willing to allow for the full replacement and inspection thereof.

_____ 2. In lieu of mitigating the trees on-site, DEVELOPER has provided, or will provide, a payment to CITY so that trees may be installed off-site to replace the entire caliper of removed trees required to be mitigated by Garden City Code.

i. DEVELOPER agrees to pay \$1,300 for every 2" caliper required to be mitigated, totaling \$_____.

ii. CITY will utilize the provided funds for trees, irrigation, soil preparation and labor for trees that will be planted within Garden City corporate limits. These areas include but are not limited to:

a. Adjacent to or within public right-of-way;

b. Along the Boise River;

c. Within a public park; or

d. On public property.

SECTION III: LANDSCAPING REQUIREMENTS. The tree mitigation requirements in this Agreement are in addition to all other landscaping requirements set forth in Garden City Code. Notwithstanding the provisions in this Agreement, DEVELOPER is still required to adhere to codified standards for landscaping and additional tree calipers.

SECTION IV:

1. Anti-Boycott Against Israel. Pursuant to Idaho Code § 67-2346, _____ certifies that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of goods or services from Israel or territories under its control.

2. Freedom from Chinese Governmental Influence. Pursuant to Idaho Code § 67-2359, _____ certifies that it is not currently owned or operated by the government of China and will not for the duration of the contract be owned or operated by the government of China.\

3. Specified Individual or Company Boycott Prohibition. Pursuant to Idaho Code § 67-2347A, _____ certifies that it is a not currently engaged in and will not for the duration of this agreement engage in, a "boycott", as defined in Idaho Code § 67-2347A, of those certain individuals or companies described in Idaho Code § 67-2347A.

SECTION V:

A. Effective Date and Duration. This Agreement shall become effective on the date first above written and shall govern the relations between the parties hereto thereafter. The duration of this Agreement will be unlimited, or until DEVELOPER satisfies the agreed-upon mitigation requirements.

B. Indemnification. The DEVELOPER agrees to indemnify, defend and hold harmless CITY, and its officers, agents and employees, from and against all claims, losses, actions, or judgments for damages or injury to persons or property to the extent caused by the DEVELOPER's negligence or intentional acts or omissions, including but not limited to any claim for libel, slander, piracy, plagiarism, invasion of privacy, false advertising, or discrimination during the performance of this Agreement by the DEVELOPER or the DEVELOPER's agents, employees, or representatives. In case any action or proceeding is brought against CITY or its officers, agents, or employees by reason of or arising out of connection with DEVELOPER's negligence or intentionally wrongful acts or omissions during the performance of this Agreement, the DEVELOPER, upon written notice from CITY, shall at the DEVELOPER's expense, resist or defend such action or proceeding. Nothing in this Agreement shall prohibit the CITY from negotiating agreements with other governmental entities regarding penalties and compensatory payment for removal, damage, or destruction of public trees.

C. Jurisdiction and Venue. It is agreed that this Agreement shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that the proper venue shall be the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

D. Modification of Agreement. This Agreement may not be enlarged, modified, or altered except upon written agreement signed by the parties hereto. DEVELOPER shall not subcontract or assign its rights (including the right to compensation) or duties arising hereunder.

E. CITY'S Representatives. CITY shall designate a representative authorized to act in behalf of CITY.

F. Non-discrimination. DEVELOPER shall not discriminate against any CITY employee or development applicant on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, or national origin.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated above.

DATED this _____ day of _____, 2022.

CITY OF GARDEN CITY, a municipality and
Political Subdivision of the State of Idaho

By _____
JENAH THORNBORROW,
Development Services Director

DEVELOPER:

By: _____
Its: _____