

## **RIGHT-OF-WAY AND CITY FACILITIES MAINTENANCE CONTRACT**

This Contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the City of Goodlettsville, Tennessee, a municipal corporation, hereinafter called the "City" and \_\_\_\_\_ hereinafter called "Contractor".

### **WITNESSETH**

In consideration of the mutual promises of the parties hereto, they do agree as follows:

#### **Article 1 – Scope of this Contract**

The work to be bid consists of furnishing all labor, materials, supplies, tools and equipment necessary to perform all work and services required for providing herbicide/pesticide application, mowing, trimming, edging, weed eating, and trash pick-up for the areas described in the bid submitted by Contractor, in strict accordance with the terms and provisions of this Contract and the specifications issued by the City.

#### **Article 2 – Changes**

A. The City may, by written order, make changes in the specifications of this Contract within the general scope thereof. If any such changes cause an increase or decrease in the Scope of this Contract or in the time required for its performance, an equitable adjustment shall be made and this Contract shall be modified in writing accordingly.

B. Should the Contractor encounter conditions materially different from those shown in the specifications, the City shall be notified immediately of such conditions before they are disturbed. The City shall thereupon promptly investigate the conditions and if it finds that they do so materially differ from those specified, this Contract shall be modified to provide for any increase or decrease of cost and difference in time resulting from the conditions so found.

C. Except as otherwise herein provided no charge for any extra work or material will be allotted unless the same has been approved in writing by the City and the price stated.

#### **Article 3 – Inspections**

All workmanship and services shall be subject to inspections, examinations and tests by the City at any and all times during the performance of this Contract. The City shall have the right to reject defective workmanship and to require correction. Rejected workmanship shall be satisfactorily corrected without charge thereof. If the Contractor fails, to the City's satisfaction, within three (3) days of notice to correct such defective workmanship, the City may proceed with such corrective work and the Contractor shall be liable for all direct costs associated in the performance thereof. Should work not be remedied to the City's satisfaction, the contract may be immediately terminated.

#### **Article 4 – Site Investigations**

The Contractor represents that it has visited the sites prior to entering into a contract with the City and determined the nature of the work and the difficulties and facilities attending execution of the work, and all other matters which can in any way affect the work under this Contract.

## **Article 5 – Delays, Damages**

If the Contractor refuses or fails to prosecute the work with such diligence as will ensure its completion in accordance with the schedule agreed upon between the City and Contractor, the City may terminate the Contractor's right to proceed. Should the City receive complaints and make continual follow-up calls to get contractor back on schedule (not due to weather-related items), the contract may be terminated. If the Contractor's right to proceed is so terminated, the City may take possession of and utilize in completion the work such materials and appliances as may be on the sites of the work and necessary thereof.

## **Article 6 – Payment**

As consideration for performing all work and services set forth in this Contract, and as full consideration thereof, the City agrees to pay the Contractor in accordance with the bid submitted by the Contractor, subject to adjustments specified in Article 3 – Inspections. The Contractor shall submit an invoice no more than twice monthly following completion of work to the satisfaction of the City (detail is obtained from bid submission data) and costs associated with such work. A separate invoice shall be submitted for work completed on state routes (Long Hollow Pike/SR 174, Exit 96 interchange, Exit 97 interchange, Exit 98 interchange, Highway 31/41 interchange, Highway 31 and Dickerson Road/Main Street/SR 11). Payment to be made by the City within 30 days of receipt of approved invoice.

## **Article 7 – Indemnification by Contractor**

The Contractor hereby agrees to protect, indemnify and hold harmless the City from and against any and all loss, expense, damage, charges and costs (including court costs and counsel fees) for injury to or death of persons and injury to or destruction of property suffered or alleged to have been suffered as a result of any act or omissions on the part of the Contractor or others whose services are engaged by the Contractor or anyone directly or indirectly employed or controlled by either of them in the course of the performance of the work provide for in the Contract, except such injury, destruction or death as may be caused by the negligence or fault of the City.

## **Article 8 – Rate of Progress**

Notwithstanding any other provisions in this Contract, the Contractor shall furnish sufficient labor, materials, supplies, tools, and equipment, and shall work such hours, including overtime, and/or holidays as may be necessary to carry out the work in accordance with the approved schedules for completion not later than the respective times allowed for completion set forth in these Contract documents. Should the Contractor refuse or fail to comply with its obligations set forth in the preceding sentence after receipt of any directive or request by the City that the Contractor furnish additional labor, materials, supplies, tools, equipment and/or additional hours, including overtime and/or holidays, the City may terminate the Contractor's right to proceed with the whole or any part of the work under this Contract immediately.

## **Article 9 – Compliance with All Laws, Ordinances, Statutes, and Regulations**

The Contractor shall comply with all Federal, State, county, and local laws, ordinances, statutes, and regulations.

## **Article 10 – Insurance**

The Contractor shall comply with the laws of the State of Tennessee regarding employment and payment of employees and shall maintain insurance satisfactory to the City to protect both the Contractor and the Owner from claims under Worker's Compensation acts and from any other demands for personal injury, including death or property damage, which may arise from operations under this Contract, whether such operations be by the Contractor or any subcontractor or anyone directly or indirectly employed by either of them. Before commencement of work hereunder, a certificate of such insurance shall be filed with the Public Works Department and shall be subject to approval for adequacy for protection.

The amounts of such insurance shall be as follows:

- General Liability in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
- Workman's Compensation insurance minimums as required by law.

The Contractor may purchase, at its own expense, such additional or other insurance protection, as deemed necessary. Maintenance of the required minimum insurance protection does not relieve the Contractor of responsibility for any losses not covered by the above-listed policies.

## **Article 11 – Permits and Licenses**

The Contractor shall obtain, at their own expense, all permits and licenses required by law and/or ordinance and maintain the same in full force and effect. Requirements specified in bid documents are in effect.

## **Article 12 – Subcontracting and Assignment**

A. The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractor.

B. The Contractor shall not award, assign, transfer or pledge any work to any subcontractor without prior written approval of the City, which approval will not be considered until the Contractor submits to the City a written statement regarding the proposed award to the subcontractor, which statement shall contain such information as the City may require.

C. The Contractor shall be as fully responsible to the City for the acts of omissions of Subcontractors, and of persons either directly or indirectly employed by said Subcontractors, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.

D. The Contractor shall make a condition of all subcontracts and/or cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of this Contract and the bid documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of this Contract.

E. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the City.

F. Herbicide/Pesticide application cannot be subcontracted.

### **Article 13 – Superintendence by the Contractor**

The Contractor shall give its personal superintendence to the work by having a competent foreman or superintendent satisfactory to the City on the site at all times during the progress of the work with authority to act for it.

### **Article 14 – Termination**

Notwithstanding any other provisions in this Contract, the City may terminate this Contract upon ten (10) days written notice to the Contractor. Upon such termination, Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed in accordance with this Contract.

### **Article 15 – Termination of Contract for Cause**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damage sustained by the City by virtue of any breach of the Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

### **Article 16 – Anti-discrimination**

The Contractor, in performing the work or furnishing the services covered by this Contract, shall not discriminate against any person seeking employment with or by the Contractor because of race, creed, color, or national origin.

### **Article 17 – Personnel**

A. The Contractor represents that it has, or will, secure, at the Contractor's expense, all personnel required to perform the work and services outlined in this Contract. Such personnel shall not be employees or have any contractual relationship with the City.

B. All of the services required hereunder will be performed by the Contractor or under the Contractor's supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local laws to perform such services.

C. A supervisor assigned by the Contractor must be on site at each mowing area and will be responsible for the actions and workmanship of each employee.

D. Should any employee of the Contractor, while on any job site for the City, be under the influence of any controlled substance without proper documentation, this contract may be terminated immediately.

E. Contractor to ensure compliance with all TOSHA, OSHA, and MUTCD safety and traffic control regulations.

F. Contractor is responsible to provide the proper equipment to comply with the mowing schedule throughout the duration of the contract. Crews are to be trained on proper operation and safety of equipment.

#### **Article 18 – Reports and Information**

At such times and in such forms as the City requires, the Contractor shall furnish to the City such periodic reports as are requested by the City pertaining to the work and services covered by this Contract, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Contract. Contractor will submit each Friday, the upcoming week's schedule. Should Contractor not submit this schedule as requested, contract may be terminated.

#### **Article 19 – Term/Option to Extend**

This Contract shall remain in force during the 2016 mowing season, subject to the City's termination rights. This Contract may be extended by mutual consent under the same terms and conditions for additional periods of time, which shall not exceed a cumulative total of four (4) additional years extending through to the end of the mowing cycle in the year 2020. Election of this option by the City shall be at the discretion of the City Manager, or a designee, without further approval by the Board of Commissioners. In the event the City elects to exercise this right, it shall notify the Contractor of its intent to extend.

#### **Article 20 – Liquidated Damages**

Liquidated damages of fifty (\$50.00) per bid unit per day after the third day missed past the scheduled cycle will be assessed. Weather complications may be taken into consideration prior to assessing liquidated damages.

Damages are removed from invoices received which will require invoices to be short-paid. Should liquidated damages reach or exceed invoiced amount for the monthly period, the contract continuance will be taken into consideration.

#### **Article 21 – Miscellaneous Specifications**

- A. Mowing tractors and riding mowers must be equipped with turf tires.
- B. Tractor's and mower's blades shall be checked for straightness and sharpened before beginning to mow. Bent blades or unlevelled mowing decks will not be accepted. The operator shall check after mowing starts and recheck after a couple of passes to be sure that an even and uniform cut is being produced.
- C. Do not mow up to or within eight (8) inches of any trees, shrubs, designed plantings within flower beds unless directed by the City's Horticulturist or Public Works Department. These areas shall be trimmed with a push mower, string trimmer, or sprayed with a herbicide (herbicide application areas are approved by the City prior to application).

- D. Grass clippings shall never be expelled onto the roadway, sidewalks, storm drains, fence lines, posts, signs, shrub plantings, trees, flower beds, or other permanent fixtures.
- E. With the mowing chute on the side of the mowing deck, the operator shall mow counter-clockwise except for initial passes along roadways, sidewalks, etc.
- F. Mowing during periods of heavy rain, lightning storms, or immediately after heavy rainfall is not permitted.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of this day and year first above written, the City of Goodlettsville, Tennessee, by its Mayor, by authority duly given.

Approved as to form and legality:

\_\_\_\_\_  
City Attorney

For the City of Goodlettsville, Tennessee:

For the Contractor:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Print Company Name

Attest:

\_\_\_\_\_  
Authorized Officer (print and sign name)

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Title (print)