

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ["Agreement"], dated as of _____ day of _____, **2020** ["Effective Date"] is be and between the City of Ottawa, Kansas, [hereinafter "City"], and, [hereinafter referred to as "Contractor"].

RECITALS

WHEREAS, Contractor represents that it is a duly qualified Professional Mowing Company, experienced in Mowing, Trimming and Brush Hog Mowing and related services; and

WHEREAS, in the judgment of the City of Ottawa, it is necessary and desirable to employ the services of Contractor for 2020 Abatement of Health and Environmental Violations.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1.0 Term of Agreement.

The term of this Agreement shall be from **May 1, 2020** to **December 1, 2020**, unless a different term is specified within the Scope of Services as described on Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the services rendered under this Agreement may extend beyond any on budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of the Agreement by the governing body of the City in the establishment of its annual budget.

2.0 Termination.

2.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, the City shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days written notice to Contractor.

2.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the City may immediately terminate this Agreement by giving the Contractor written notice of such termination, stating the reason for termination.

2.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, the Contractor, within 14 days following the date of termination, shall deliver to the City all materials and work product subject to Section 11, (Ownership of Documents), and shall submit to the City an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

2.4 Payment Upon Termination. Upon termination of this Agreement by the City, the City shall pay the Contractor the reasonable value of Services rendered by Contractor prior to termination; provided, however, City Shall not in any manner be liable for lost profits that might have been made by the Contractor had the Agreement not been terminated or had the Contractor completed the Services required by this Agreement. In this regard, the Contractor shall furnish to the City such financial information as in the judgment of the City is necessary for the City to determine the reasonable value of the Services rendered by the Contractor. In determining the reasonable value of Services, appropriate consideration shall be given to the defective or deficient nature of the Services

rendered. The foregoing is cumulative and does not affect any right to remedy that the City may have in law or equity.

- 2.5 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Manager or the Community Development Department Director, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

3.0 Scope of Services.

- 3.1 Contractor's Specified Services. The Scope of Services to be performed by the Contractor under this Agreement is as described in Exhibit A to the Agreement, attached and incorporated by reference.

- 3.2 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in the Contractor's profession. City has relied upon the professional ability and training of the Contractor as a material inducement to enter into the Agreement. The Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of the Contractor's work by the City shall not operate as a waiver or release of liability. If the City determines that any of the Contractor's work is not in accordance with such level of competency and standard of care, the City, in its sole discretion, shall have the right to do any of all of the following: (a) require the Contractor to meet with the City to review the quality of work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 2; or (d) pursue any and all other remedies at law or in equity.

3.3 Assigned Personnel.

- 3.3.1 The Contractor shall only assign competent personnel to perform work hereunder. In the event that at any time the City, in its sole discretion, desires the removal of any person or persons assigned by the Contractor to perform work hereunder, the Contractor shall remove such person or persons immediately upon receiving written notice from the City.

- 3.3.2 With respect to this Agreement, the Contractor shall employ the following key personnel: Professional mowers.

- 3.3.3 In the event that any of the Contractors personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of the Contractor's control, the Contractor shall be responsible for timely provision of adequately qualified replacements.

- 3.3.4 The Contractor shall designate _____ as Principal (name/contact info) on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind the Contractor. So long as the individual named above remains actively employed or retained by the Contractor, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Contractor will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.

- 3.3.5 The City shall designate, Oscar Taylor, Codes Inspector, Community Development Department, (785-229-3620) or email at otaylor@ottawaks.gov as the Project Representative to represent the City in coordinating this project with the Contractor, with authority to transmit instructions and define policies and decisions of the City. The written consent of the Department Director, and if applicable, the City Manager and/or Governing Body, shall be required to approve any increase in Project cost as defined in Exhibit B.

4.0 Time of Performance.

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the Scope of Services.

5.0 Payment.

5.1 Payment shall be made by the City only for services rendered and upon submission of a payment request upon completion and the City's approval of the work performed as defined in Exhibit B. In consideration for full performance of the services set forth in Exhibit A, the City agrees to pay the Contractor pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.

5.2 The Contractor shall submit a bill to the City for all work performed within three (3) days after work is completed.

5.3 The bill submitted by the Contractor shall itemize the work for which payment is requested and have the follow information:

5.3.1 **Be made out to the City of Ottawa.**

5.3.2 **The date of service (when property was mowed).**

5.3.3 **Address of property mowed.**

5.4 **All invoices are to be sent to Charlotte Newkirk, Community Development Department, P.O. Box 60, Ottawa, KS 66067 or by email at cnewkirk@ottawaks.gov.**

5.5 The contractor agrees to fill out and submit the attached W-9 with the bid proposal as requested by the City's Finance department before any payments are issued as required by state or federal law.

5.6 The City will pay the Contractor for the work within two weeks after approval.

6.0 Indemnification.

To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by the Contractor or any permitted subcontractors hired by the Contractor, the Contractor agrees to indemnify the City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Contractor or its subcontractors. The Contractor shall also pay the City's reasonable attorney's fees, expert fees, and costs incurred in the defense of such a claim.

7.0 Insurance.

7.1 The Contractor shall procure and maintain, at its expense, throughout the duration of this Agreement, insurance of such types and in at least such amounts as required herein from an insurance company license to do business in the State of Kansas. The following insurance coverage's:

- (a) Workers' Compensation – Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing for the statutory limits under the Kansas Workers Compensation Act;
- (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
- (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
- (d) Professional Liability – The Contractor/Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), and shall provide the City with certification thereof.

7.2 The City shall be named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

- 7.3 All property damage shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 7.4 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstruction or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

8.0 Conflict of Interest.

The Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this Agreement, no person having any such interests shall be employed.

9.0 Nondiscrimination.

The Contractor must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. 44-1030.

10.0 Facilities and Equipment.

The Contractor shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, describe in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement.

11.0 Independent Contractor.

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. The Contractor shall also be responsible for maintaining worker's compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employee's compensation.

12.0 Compliance with Laws.

- 12.1 The Contractor shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.
- 12.2 Pursuant to K.S.A. 16-113, if the Contractor does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. The Contractor shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of the Contract.

13.0 Assignment.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. The subcontracting, assignment, delegation or transfer of the Services shall in no way relieve the Contractor/Consultant of its primary responsibility for the quality and performance of such Services.

14.0 Confidentiality.

All reports and documents prepared by the Contractor in connection with the performance of this Agreement are confidential until released by the City to the public. The Contractor shall not make any such documents or information available to any individual or organization not employed by the Contractor or the City without the written consent of the City before any such release.

15.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To: City of Ottawa
Attn: Charlotte Newkirk, Administrative Assistant II
Community Development Department
P.O. Box 60
Ottawa, KS 66067

To Contractor:

16.0 Amendments.

16.1 This document represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

16.2 This document may be amended only by written instrument, signed by both the City and the Contractor.

17.0 No Third Party Beneficiaries.

The City and the Contractor specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

18.0 Titles.

The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

19.0 Negotiations.

The City and the Contractor agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute the Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

20.0 Costs and Attorneys Fees.

If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

21.0 Severability.

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22.0 Authority to Enter into Agreement.

The Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

23.0 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Franklin County, Kansas.

City of Ottawa, Kansas

Contractor

Merle Taylor, Codes Officer
City of Ottawa

EXHIBIT A – SCOPE OF SERVICES

2019 Abatement of Health and Environmental Violations Mowing, Trimming, Brush Hog and Removal of Refuse **City of Ottawa Community Development Department**

Scope of Service: Mow, trim, brush hog, removal of any brush, limbs, refuse and debris on any/all property to be completed within (3) days of receiving the notification to proceed from the Codes Officer or designee by email to the Principal. A “before” and “after” picture of the property shall be emailed to the Administrative Assistant on the day the job is completed at cnewkirk@ottawaks.gov.

Mower/Blower Discharge: Special care shall be taken to blow debris away from all streets, trees, tree wells, etc. Any mower discharge in the curb line, pathway and/or street shall be dispersed, when dry, by using a power mower, broom or other method. **Any area will not be considered completed until this has been done.** Grass clippings in curb lines shall not be blown into the street.

Time Schedule: All areas are to be abated within three (3) days, unless otherwise specified or contractor is notified otherwise. The first abatement of health and environmental violations could occur after May 1, 2019, and could last through the year, as directed by the City’s representative. **Mowing to a turf height of 3 ½ inches** is the standard of care desired. The City will only be billed for the actual number of mowing completed and invoicing must show unit pricing by property.

Trimming: Trimming shall be defined as the removal or cutting of all the vegetation adjacent to signs, light poles, sidewalks, trees, curb lines, utility boxes, fences, etc., or in areas a mower cannot cut, to produce a neat, finished result. Special attention shall be taken when working around trees, planters, signs, and roadway markers so as not to cause damage with any equipment, including string trimmers. All vegetation extending over the curb shall be cut back to the inside of the curb. When using a string trimmer, care shall be taken to be sure that debris is not thrown into the street or in the tree wells. Grass will be taken to a **3 ½ inch height**, not taken down to bare ground. Where applicable, string trim the concrete ends of islands, around signs, in cracks, at street-curb line, sidewalks, etc., or anywhere along the street-curb interface where growth occurs. All trimming is to be completed in conjunction with mowing. **Any area will not be considered completed until this has been done.**

Growth retardants and/or weed killers shall not be used unless prior approval and authorization has been granted by the Codes Inspector and must be performed by a Kansas Pesticide Certified Applicator. Any damage created by the contractor within the right-of-way (turf, signs, trees, fences, etc.) will be the contractor’s responsibility to correct within the same billing cycle.

EXHIBIT B – FEES

The undersigned Contractor hereby proposes to furnish all material, supplies, transportation, tools, equipment and necessary labor to primarily abate weed or brush/limb violations and complete all work stipulated in, required by, and in conformity with the proposed Contract Documents, incorporated herein (including all documents referred to therein) and any and all written addenda thereto, for and in consideration of the unit prices as follows: **Example, “\$25.00 per hour, per machine”, this is the information needed below.**

Types of Properties in Violation	Cost Per Hour For Regular Mower & Trimming	Cost Per Hour For Brush Hog Mower & Trimming
Occupied Residential Lot	\$ Per machine	\$ Per machine
Empty Residential Lot (next to occupied residences)	\$ Per machine	\$ Per machine
Undeveloped agricultural land (30’ swath from street & 20” swath from property lines)	\$ Per machine	\$ Per machine
Commercial lot with building	\$ Per machine	\$ Per machine
Commercial lot with no building	\$ Per machine	\$ Per machine

Type of Debris	Clean Up and Removal of Debris Per Hour – Plus Land Fill/Construction Land Fill Fees
Wood and plant materials (including tree/shrub limbs) the City has an area located at 801 E. Enterprise that has a small shed on it, that you can take your brush and tree limbs and place them behind the shed free of charge. Please no grass clippings or shrubbery.	\$ your cost of the groundwork only, plus cost of disposal fee
Trash	\$ your cost of the removal of trash, plus cost of disposal fee

Tree and shrubbery trimming rate: \$_____ per hour, groundwork only, climbing or equipment rental extra.

Contact Information

Company Name: _____

Address: _____

Phone #: _____ Email: _____

Contractor Name: _____

Contractor Cell #: _____

Principal Name: _____

Principal Phone/Cell #: _____

Principal Email: _____