

AGREEMENT FOR CONTRACTED SERVICES

This Agreement for Contracted Services ("**Agreement**") is entered into by and between **The City of Muskegon** having a principal place of business at 933 Terrace St., Ste 201, Muskegon, MI, 49440 ("**The City of Muskegon**"), and ("**Contractor**"), having a principal place of business located at ("**Contractor**"), as of this day of June 6, 2023 (with regard to the following terms and conditions.

1. **General.** In consideration of the intent and mutual covenants contained in this Agreement, The City of Muskegon and Contractor have entered into this Agreement with respect to the performance by Contractor of the Services (as defined in Section 2(a)) related to the Project. This Agreement is intended to and shall govern all work and services provided by Contractor for the Project, whether initiated or performed prior to or subsequent to the execution of this Agreement. This Agreement shall last for a term of three (3) years, unless terminated earlier pursuant to the terms below. If Contractor is not in default under the terms herein, it may extend the term of this Agreement for a period of one (1) additional year by providing written notice to The City of Muskegon not less than sixty (60) days prior to the end of the initial term.
2. **Contractor Responsibilities.**
 - (a) **Performance of the Services.** Contractor agrees to provide all contracted services and perform all other obligations described in this Agreement, including without limitation those set forth on Exhibit A attached hereto and incorporated herein by reference, and any and all services reasonably inferable therefrom (collectively, the "**Services**"). The Services, collectively at all sites where they are performed, may be referred to as the "**Project**" in this Agreement. Contractor represents and warrants that it understands the requirements of this Agreement and that it is experienced and qualified to perform the Services required.
 - (b) **Supervision; Licensure; Standard of Care, Skill and Diligence.** Contractor shall provide all labor and supervision necessary to perform the Services. Contractor shall obtain all necessary permits and licenses necessary for Contractor to perform the Services. Contractor represents and warrants that it shall perform all Services in accordance with the standard of care, skill and diligence that equals or exceeds that which is recognized in the industry for the performance of services of the nature and/or type of the Services.
 - (c) **Safety; Responsibility for Others.** Contractor shall be solely responsible for the safety and protection of Contractor's employees and shall take all reasonable safety precautions. Additionally, Contractor shall be solely responsible for, and shall insure, its own tools, equipment, materials, supplies and any other items used by Contractor in furtherance of performing under this Agreement. Contractor shall be responsible to The City of Muskegon for the acts, errors and omissions of Contractor's employees, its Subcontractors (as hereinafter defined) and their respective agents and employees and all other persons performing any

portion of any Services under the direction or control of Contractor. Contractor shall at all times maintain good order among its employees.

- (d) **Hazardous Materials.** Contractor shall not bring any Hazardous Materials onto the Project site and shall bear all responsibility and liability for such Hazardous Materials; provided, however, that Contractor may bring onto a Project site such Hazardous Materials as are necessary to perform the Services so long as the same is done in compliance with all Laws and Contractor shall remain responsible and strictly liable for all such Hazardous Materials. As used herein, "**Hazardous Materials**" shall mean any hazardous or toxic substance or hazardous or toxic waste, contaminant, or pollutant as defined by or regulated by any applicable governmental authority.
3. **Subcontractors.** Contractor may delegate or subcontract any of its duties or obligations under this Agreement to any person or entity with the prior written consent of The City of Muskegon. In the event The City of Muskegon elects, in its sole and absolute discretion, to permit Contractor to engage a Subcontractor, such use shall be upon such terms and conditions as The City of Muskegon may determine, in its sole and absolute discretion. As used herein, "**Subcontractor**" means a person or entity of any tier (a) that has been approved by The City of Muskegon in writing prior to Contractor retaining such subcontractor, and (b) who has a contract either directly or indirectly with Contractor or perform any portion of the services.
4. **Representations and Warranties.** Contractor represents and warrants that (a) Contractor will comply with all federal, state and local laws, codes, ordinances, rules, regulations, recorded covenants, conditions and/or restrictions, and statutes applicable to the Project (collectively, "**Laws**"), (b) Contractor shall be responsible for the quality and coordination of all Services provided by or through Contractor under this Agreement, and (c) the Services performed will conform to the requirements of this Agreement. All Services not conforming to this Agreement will be considered defective and, in addition to any other rights or remedies available to The City of Muskegon, Contractor will re-perform the non-conforming portion of the Services at no additional cost or expense. All representations and warranties provided in this Section 4 or elsewhere in this Agreement shall survive any termination of this Agreement.
5. **Contract Time.** Contractor shall commence the Services upon its receipt of a written notice to proceed from The City of Muskegon, whereupon Contractor shall diligently perform such Services in accordance with this Agreement and the schedule attached hereto as Exhibit B, which Services shall be properly completed on or before the date set forth thereon (the "**Contract Time**"). Timely completion of the Services is of the essence with respect to this Agreement. Contractor agrees to perform all Services and all portions thereof promptly, diligently and in such order and sequence as is necessary to assure the efficient, expeditious and timely completion of all Services. Contractor shall proceed with the Services so as not to hinder, delay, or interfere with the work or services of others. In the event Contractor causes delay on the Project, Contractor shall

be responsible for costs and expenses associated with such delay. Contractor shall, upon written request from The City of Muskegon, reimburse The City of Muskegon for such delay damages.

6. **Additional Services.** The City of Muskegon, without invalidating this Agreement, may require the Contractor to make changes in the Services within the general scope of the Services, consisting of additions or other revisions ("**Additional Services**"), and may order deletions in the scope of Services to be performed by Contractor by issuing a written order to the Contractor pursuant to the provisions of this Agreement (a "**Change Order**"). The Change Order will describe any adjustments to the Contract Price and/or Contract Time. In order to be effective, such Change Order must be executed by The City of Muskegon and Contractor.

7. **Payment.**

(a) **Compensation.** Except as may be adjusted pursuant to the terms of this Agreement, The City of Muskegon shall pay Contractor, as full and complete compensation for the proper performance of all Services in accordance with and consistent with this Agreement, as described on Exhibit C attached hereto (the ("**Contract Price**"). If the City of Muskegon corrects any breach of this Agreement by Contractor and/or corrects any deficient, defective or nonconforming Services performed by the Contractor or anyone for whom Contractor is responsible, then the Contract Price shall be reduced in the amount reasonably determined by The City of Muskegon to compensate for such breach. If the unpaid balance of the Contract Price is less than the total amount by which the Contract Price is reduced pursuant to this Section, the difference shall be paid by Contractor to the City of Muskegon. The City of Muskegon shall pay Contractor with the frequency described on Exhibit C.

(b) **Related Information.** Contractor acknowledges and agrees that as a condition to payment, Contractor shall deliver such documentation as The City of Muskegon requests, to ensure the Services have been properly completed.

8. **Insurance and Indemnity.**

(a) **Contractor's Insurance.** Contractor shall purchase and maintain, from a company or companies authorized to do business in the state in which the Project is located, insurance in such amounts and coverage as required by The City of Muskegon. All such insurance shall be on an occurrence basis and shall be procured from carriers maintaining an A.M. Best Rating of A-VII or higher. Such insurance shall include, but not be limited to: general liability coverage with limits not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, and with commercial vehicle coverage; and Worker's' Compensation insurance with coverage as required by law. Contractor shall submit to The City of Muskegon certificates of the insurance procured by Contractor with respect to the performance of Services. With the exception of Workers' Compensation, the insurance coverage required by this Section shall name The City of Muskegon as

an additional insured and shall not be canceled or allowed to expire without thirty (30) days prior written notice to The City of Muskegon. The coverage on all such policies required from Contractor pursuant to this Section shall be primary to any valid and collectible insurance carried by The City of Muskegon.

- (b) **Indemnity.** Contractor shall, to the maximum extent permitted by Law, defend, indemnify and hold harmless The City of Muskegon and any owner of real property where Services are performed, and their respective owners, affiliates, subsidiaries, successors, assigns, officers, directors, employees, agents and any other party to whom The City of Muskegon may be liable (collectively, the "**Indemnitees**") from and against any and all claims, liabilities, losses, demands, damages, losses, causes of action, costs and expenses, including by way of example and not of limitation, attorneys' fees, The City of Muskegon expenses, litigation expenses and punitive damages (collectively, "**Losses**") arising out of, resulting from or in connection with, this Agreement, including by way of example, but not of limitation, performance of any and all Services. This indemnity obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 8. Contractor shall not be obligated to indemnify an Indemnitee for claims arising from the sole negligence of such Indemnitee. The indemnification obligation shall not be limited in any way by any limitation on the amounts or type of damages, compensation, termination of this Agreement, or benefits payable by or for The City of Muskegon under worker's compensation acts, disability benefit acts, other employee benefit acts or applicable insurance policies. Without limiting the foregoing, Contractor's indemnity obligations under this Agreement shall survive termination of this Agreement.

9. **Termination.**

- (a) **Termination for Cause.** If Contractor fails to perform any Services properly and diligently or fails to perform any provisions of this Agreement, the same shall be considered a breach of this Agreement. Such breach by Contractor shall entitle The City of Muskegon to, without limitation, (1) terminate this Agreement upon delivery of written notice to Contractor and/or (2) cause the Services to be completed by others selected by The City of Muskegon for Contractor's account. Contractor agrees to immediately pay all costs and damages sustained by The City of Muskegon because of such breach, which amounts may be deducted from amounts otherwise owed Contractor hereunder.
- (b) **Termination for Convenience.** The City of Muskegon, at its sole option, may terminate this Agreement at any time and for any reason or no reason, by giving Contractor at least fifteen (15) days prior written notice, and should such termination be made other than for cause, as provided in Section 9(a) hereof, The City of Muskegon shall pay Contractor the cost of the Services actually

completed by Contractor, less all sums previously paid by The City of Muskegon to Contractor, and any deductions made by The City of Muskegon in accordance herewith, provided, however, the total amount to be received by Contractor shall not in the aggregate exceed the Contract Price.

- (c) **Termination by Contractor.** Contractor may only terminate its performance hereunder in the event The City of Muskegon fails to timely pay Contractor in accordance with the payment provisions of this Agreement. In such event, Contractor shall first provide The City of Muskegon with fifteen (15) days prior written notice of Contractor's intent to terminate pursuant to this Section 9 and provide The City of Muskegon with fifteen (15) days to cure such non-payment.
- (d) **Survival of Termination.** In the event this Agreement is terminated for any reason, Contractor's duties, indemnities and all other obligations which by their nature survive termination hereof, with respect to its Services provided through the date of termination, shall survive such termination and be in full force and effect for the period of time prescribed by this Agreement, or applicable Law, whichever is longer.

10. **Dispute Resolution.**

- (a) **THE PARTIES AGREE THAT ANY DISPUTE UNDER THIS AGREEMENT SHALL, (a) BE RESOLVED BY THE MUSKEGON COUNTY COURT SYSTEM, and (b) CONTRACTOR AND THE CITY OF MUSKEGON KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT THEY HAVE UNDER APPLICABLE LAW TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE ISSUES RAISED BY THAT DISPUTE.** The party which substantially prevails on the issues in dispute shall be entitled to an award of its reasonable attorney fees incurred, plus all costs and expenses reasonably incurred in prosecuting or defending such claims including, but not limited to, costs of The City of Muskegon.
- (b) **Duty to Continue Performance.** The existence of any claim, dispute or legal proceeding shall not relieve Contractor from its obligation to continue to properly perform its Services as set forth herein. In the event of a dispute with respect to amounts payable to Contractor hereunder, The City of Muskegon shall pay all undisputed amounts and Contractor shall continue performing any remaining Services hereunder. Continued performance by either party shall not waive any claims, rights or remedies Contractor or The City of Muskegon may have concerning the dispute.

11. **Miscellaneous.**

- (a) **Entire Agreement; Severability; Governing Law.** The parties have entered into this Agreement in good faith, and it constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. Except as contemplated by Section 6 hereof, this Agreement shall not be modified, amended, extended or changed in any manner

except in writing, signed by persons duly authorized to represent, respectively, The City of Muskegon and Contractor. The parties intend that all terms and provisions of this Agreement be legal and enforceable under applicable Law as written. In the event any of these provisions should be found to be unenforceable, it shall be stricken, and the remaining provisions shall be enforceable. This Agreement, including its interpretation, validity and enforcement, shall be governed by and construed in accordance with the Laws of the State where the Project is located without regard to its choice of law provisions.

- (b) **Assignment.** Contractor may not assign this Agreement, in whole or in part, without the prior written consent of The City of Muskegon, any such permitted assignment shall be upon such terms and conditions as specified by The City of Muskegon. The City of Muskegon shall have the right to freely assign its rights and obligations under this Agreement.
- (c) **Independent Contractor; Headings and Interpretation.** Pursuant to the terms of this Agreement, Contractor shall be an independent contractor to The City of Muskegon and shall have no other relationship to The City of Muskegon or the projects and activities of The City of Muskegon other than as defined in this Agreement. The headings of the Sections in this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms and conditions of this Agreement in any manner. Contractor agrees and represents that Contractor has carefully considered this Agreement, including all exhibits and schedules hereto, and that ambiguities, if any, shall not be construed or enforced against the drafter.
- (d) **Notices.** Any notice or communication provided for hereunder will be in writing and will be deemed given and received (1) upon delivery, if delivered personally or by facsimile transmission with receipt acknowledged, (2) one business day after having been deposited for overnight delivery with Federal Express or a comparable overnight courier, or (3) three business days after deposit in U.S. mail when sent by registered or certified mail, postage prepaid, with proof of delivery to the address of the party shown on the signature page hereof or such other address as a party may specify in a written notice to the other. As used herein, "**business day**" means any day in which banking institutions are open for business in the State where the Project is located.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

THIS AGREEMENT CONTAINS BINDING ARBITRATION AND JURY WAIVER PROVISIONS.

THE CITY OF MUSKEGON

The City of Muskegon

Signature:

Printed Name: Timothy E. Kozal

Title: Director of Public Safety

933 Terrace St.

Muskegon, MI 49440

213-724-6903

Contractor

Name of Company

Signature of Contractor

Printed Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF CONTRACTED SERVICES

1. **Services.** Contractor shall provide the following services, under the direction and supervision of The City of Muskegon Building Safety Dept., relating to yard maintenance and trash clean-up of the properties in The City of Muskegon. Contractor shall perform the services set forth in this contract in a timely, workman-like manner.
 - (a) **Mowing.** Contractor shall mow all grass, weeds and brush including moving around all obstacles, up to three inches (3") in diameter, leaving no ridges of high or uncut grass.
 - (b) **Trimming/Cutting/Raking.** Contractor shall trim all bushes and unsightly branches, cut large tree limbs that have fallen or logs, rake and remove heavy concentrations of yard clippings, small debris and fallen leaves and/or branches. Contractor shall clear sidewalk of debris and clippings as needed.
 - (c) **Garbage, debris and waste removal.** Contractor shall pick up and remove all garbage, rubbish, debris, trash and waste materials, including but not limited to cans, bottles, loose papers, dead tree limbs, grass and brush clippings, abandoned/broken/unused household appliances, furniture, and other like items.
 - (d) **Disposal.**
 - i. Contractor shall handle and dispose of Freon according to the applicable State and Federal mandates.
 - ii. Contractor shall ensure the separation and individual disposal of garbage and lawn debris.
 - iii. All garbage, debris, trash, waste materials, grass, weeds, brush, appliances, furniture and other items removed from each site shall be transported by the Contractor for disposal to a location predetermined by The City of Muskegon.
 - (e) **Photographs.** Contractor shall photograph each job site prior to and after completion. The photographs will indicate each job site address and/or location to ensure proper identification of the location and/or property. The photographs shall also indicate the time and date the picture was taken. All processing cost associated with this service shall be the sole responsibility of the Contractor. Photographs are to be marked with the enforcement number that corresponds with the work order they represent.

- (f) **Record Keeping.** Contractor agrees to keep proper records of all work performed on behalf of The City of Muskegon. This includes electronic daily data entry of work orders completed on a shared source.
 - (g) **Other.** Contractor may be required to perform other related work as deemed necessary by The City of Muskegon.
2. **Expenses.** Contractor shall be responsible to pay for all expenses incurred by Contractor related to the performance of its duties under this Agreement and for all compensation owed to its workers and/or subcontractors.
 3. **Contract Price.** The City of Muskegon agrees to pay Contractor, in full consideration for the complete performance of Contractor's obligations under this Agreement, the amount set forth in the Contractor's bid proposal and documents described in paragraph 1.
 4. **Assignments.** Work assignments are determined on an as needed basis.
 5. **Contractor Work Crew.**
 - (a) The City of Muskegon reserves the right to limit the size of work crews at any time.
 - (b) The City of Muskegon Representatives. The City of Muskegon may assign one or more persons to the job site as its Representative(s). The City of Muskegon Representative(s) may supervise work crew in their performance at the job site and may instruct the work crews as to what tasks must be performed.
 6. **Specific Reservations.**
 - (a) The City of Muskegon reserves the right to have Contractor bag or remove debris and/or trash from the property and place the same on the terrace at the property for removal by the City refuse contractor.
 - (b) The City of Muskegon reserves the right to have the City refuse contractor clean up the debris and/or trash left on the terrace at a work site property on an as needed basis.
 - (c) The City of Muskegon reserves the right to use volunteers, court ordered public service workers and/or prisoners in lieu of Contractor's services for any work indicated throughout this Agreement.

EXHIBIT B

Schedule

1. Schedule.

- (a) Work schedules shall be completed by The City of Muskegon on a daily or as needed basis.
- (b) Provisions shall be made, at Contractor's expense, for contacting the Contractor on short notice or in an emergency situation by any of the following methods:
 - i. Telephone
 - ii. Cellular Telephone

2. Work Orders.

- (a) **Distribution.** Work orders will be distributed to the Contractor electronically at the end of each day.
- (b) **Completion.** All jobs listed must be completed within five (5) working days following receipt of the work order by Contractor and on a first-come, first-serve basis.
 - i. Rush or special requests may be made on occasion, as determined by The City of Muskegon.
 - ii. Time extensions may be permitted for inclement weather and similar restricting circumstances, as determined by The City of Muskegon.
 - iii. All completed work orders and billing shall be presented to The City of Muskegon every Friday.
- (c) **Travel Time.** Travel time shall be charged by Contractor as follows:
 - i. Time may be charged for travel from a completed job site to another job site. Travel time shall be shown on a voucher completed for the destination site.
 - ii. Time may be charged for travel to and from a disposal site with a full load of garbage, trash, waste and other items. Travel time shall be indicated on a dump voucher or slip.
 - iii. Travel time shall only be compensated for direct and logical routes.
 - iv. All vouchers, bills, slips and pictures pertaining to a work order or a job site shall be submitted to The City of Muskegon at the same time.
 - v. Requests for payment that are submitted without the proper documentation, including but not limited to vouchers, bills, slips

and pictures will not be accepted until such time all such items are submitted.

EXHIBIT C

Contract Price

Contractor shall be paid based on the hourly rate schedule set forth below. Services performed on an hourly rate basis will be performed at the rates set forth below (the "Hourly Rates") are as follows:

<u>Position Description</u>	<u>Hourly Rate</u>			
	<u>1 Year Bid</u>	<u>2 Year Bid</u>	<u>3 Year Bid</u>	<u>4 Year Bid</u>
Trash Pickup				
Tractor Mowing				
Zero Turn Mowing				
Hand Mowing				
Terrace/24 Hr. Pickup				
Leaf/Brush				

Contractor shall send The City of Muskegon any invoice setting forth the aggregate Hourly Rates for the immediately preceding month as required by Section 7 of this Agreement

1. **Payment.**

1. **Form**

- i. Requests shall include a list of job numbers, addresses and with the corresponding cost of each job.
- ii. Requests shall be on a per-quarter hour basis; total time per job to be agreed to by the Contractor and The City of Muskegon Representative.
- iii. Requests for work completed that were not performed in compliance with subsection 9(b) may not be compensated. This includes but is not limited to work that was not completed due to being asked to leave the property, inability to perform work on the property, work orders that The City of Muskegon or The City of Muskegon have asked to be removed, work that was completed in the time between the work order being issued and contractors arriving to the site.
- iv. Inadvertent payment made to the Contractor for work not performed in compliance with the terms of this

contract, or for any other reason, will be deducted by
The City of Muskegon from subsequent payments.

2. **Frequency.** Request for payment shall be made every Friday and payment will be made twice per month pursuant to the City of Muskegon's standard payment practices.

ADDENDUM

Contractor shall furnish or supply all the equipment and labor necessary to carry out its obligations under this Agreement. The equipment and labor include but is not limited to: general labor, daily office manager, technical personnel, machinery, tools, transportation, fuel, and all other such materials. All equipment must meet the safety standards as required by MIOSHA.

1. **Inspection.** The City of Muskegon or its designated agents shall be able to inspect for safety, appearance and sanitation, all equipment used by Contractor to carry out its obligations under this Agreement. The City of Muskegon may refuse Contractor the right to utilize any equipment that is deemed unsafe, unsanitary or of an unsightly appearance based on that inspection. In that event, Contractor shall repair, replace or restore the equipment to a suitable condition as soon as reasonably possible.
2. **Required Equipment**
 - (a) Four (4) trucks for 2-man hand mow crews
 - (b) Eight (8) Push mowers
 - (c) Eight (8) Weed trimmers
 - (d) Four (4) tractors with a 60" brush hog mower with a mower deck of a minimum five feet (5') diameter for each.
 - (e) Two (2) dump trucks or two (2) heavy duty trucks with trailers. Minimum size: 10 yards with a 4,000 lb. capacity.
 - (f) Two (2) Zero turn riding mowers
 - (g) Chain saws
 - (h) Hand tools, including rakes, brooms, wheel barrels, shovels, pitch forks, and other tools as deemed appropriate for the job site.
 - (i) Twelve (12) Digital cameras, minimum 3-megapixel resolution with automatic time and dating capacity.
 - (j) Twelve (12) whiteboard signs with ability to measure 6" to show proof of work and grass height.
 - (k) Online database for required pictures, job status updating and receiving work orders.
 - (l) Alternative equipment may be proposed for use but requires The City of Muskegon approval prior to use.
3. **Method of Transportation.** Contractor agrees to haul tractors, mowers and other equipment to the job location, unless otherwise approved by The City of Muskegon.