

MOWING AGREEMENT

This Mowing Agreement ("**Agreement**") is made by and between The Town of Ashland City, Tennessee (hereafter referred to as "**City**"), a municipal corporation, and political subdivision of the State of Tennessee, with an office address at 101 Court St., Ashland City, TN 37015, and Leslie Stewart DBA LCJW Lawn Services (hereafter referred to as "**Contractor**"), (a corporation) / (a partnership) / (a sole proprietorship) organized and formed under the law of the State of Tennessee, and licensed to do business in the State of Tennessee, with an office address at 3629 Sweethome RD Ashland City TN, 37015.

WITNESSETH

WHEREAS, **Contractor** has substantial skill, equipment and experience in conducting the type services required by the Town of Ashland City Parks and Recreation Department on City Property within the Town of Ashland City service area (all hereafter referred to as "**Ashland City**"); and

WHEREAS, the **City** desires to hire a **Contractor** to mow city property, and

WHEREAS, **Contractor** desires to provide such mowing services to the **City** on the terms and under the conditions contained in this **Agreement**;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the terms and conditions set forth herein.

ARTICLE 1. TERM

Unless earlier terminated pursuant to the provisions herein, **this Agreement shall be in effect from April 2018 to December 2019 (the "Term"), and may be extended for two (2) additional one-year periods (the "Renewal Terms")** thereafter by mutual written consent of the parties hereto.

ARTICLE 2. STATEMENT OF WORK

Contractor shall provide mowing serves as outlined in **Exhibit A, Bid Documents, Technical Specifications, Special Conditions and Pricing** attached hereto and incorporated herein.

ARTICLE 3. COMPENSATION

In consideration of the Pavement Repair Services provided by **Contractor** hereunder, the **City** will pay to **Contractor** for work performed / services rendered a sum of money as provided in **Exhibit A, Bid Documents, Technical Specifications, Special Conditions and Pricing** attached hereto and incorporated herein. **City** shall not be liable for any payment to any sub-contractor(s) for any services rendered in connection with this agreement whatsoever, any said payments to any such sub-contractor(s) being the sole liability and responsibility of **Contractor**.

ARTICLE 4. RESERVED

ARTICLE 5. INDEPENDENT CONTRACTOR STATUS

It is understood and agreed that **Contractor** will provide the mowing under this **Agreement** as an independent contractor and that during the performance of the services under this **Agreement**, neither **Contractor** nor any of **Contractor's** employees, agents, representatives or sub-contractors will be considered an employee of the **City** within the meaning or application of any federal, state or local laws or regulations, including, but not limited to, laws or regulations covering unemployment insurance, old age or social security or retirement or pension benefits, health insurance of any kind or nature whatsoever, worker's compensation, labor or tax laws of any kind. Neither **Contractor** nor any of **Contractor's** employees, agents, representatives or sub-contractors shall be entitled to any benefits that may be afforded from time to time to the **City's** employees, including without limitation, vacation, holidays, sick leave, pension or retirement benefits, health insurance of any kind or nature whatsoever, or worker's compensation or unemployment insurance. Further, the **City** shall not be responsible for withholding or paying any taxes, to include social security or federal, state or local income taxes, for or on behalf of **Contractor** or any of **Contractor's** employees, agents, representatives or sub-contractors. **Contractor** shall be fully responsible for any such withholding or payment of taxes or social security for **Contractor** and any of **Contractor's** employees, agents, representatives or sub-contractors. Nothing in this **Agreement** shall create, or be deemed to create, a partnership, joint

ARTICLE 9. RESERVED

ARTICLE 10. TERMINATION AND BREACH

(A) This Agreement shall continue in full force and effect during the Term or Renewal Term hereof unless and until terminated in accordance with the provisions of this Agreement. Nothing in this Agreement or otherwise shall be construed as a requirement that the City will request any amount of work or services to be performed by Contractor, and any amount of work or services requested or to be performed will be at the sole discretion of the City.

(B) In the event of any material breach of this Agreement by either party, the other party may terminate this Agreement immediately by giving written notice thereof to the other party.

(C) In the absence of a material breach of this Agreement by Contractor, the City may terminate this Agreement with or without cause by giving Contractor written notice of its election to terminate said Agreement. In such case, the City agrees to pay Contractor on a pro rata basis for all work or services performed by the Contractor with the City's approval up to the date of notice of termination.

ARTICLE 11. WAIVER OF BREACH

Waiver by the City or Contractor of a breach of any provision of this Agreement by the other party shall not operate as or be construed as a waiver of any subsequent breach by the other party, and shall not be deemed a waiver of any other right, condition or promise hereunder.

ARTICLE 12. REMEDIES

The exercise of the City's or the Contractor's right to terminate this Agreement for a material breach shall not abrogate any of the available rights and remedies of the terminating party with respect to the breach giving rise to such termination. Each and all of the rights and remedies of the parties provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others, or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other rights or remedies available at law.

venture, or the relationship of principal and agent between the **City** and **Contractor**, and nothing contained in this **Agreement** shall permit either party to incur any debts or liabilities or obligations on behalf of the other party, except as specifically provided herein.

ARTICLE 6. ASSIGNMENT AND DELEGATION

Neither party shall assign or delegate this **Agreement** or any rights, duties or obligations hereunder without the express written consent of the other party. Any such purported or attempted assignment shall be void. This **Agreement** shall be binding upon the parties' respective successors and permitted assigns.

ARTICLE 7. NO THIRD PARTY BENEFIT

Nothing contained in this **Agreement** shall be deemed to confer any right or benefit on any person, organization or entity who is not a party to this **Agreement**.

ARTICLE 8. INDEMNITY

(A) **Contractor** agrees to indemnify, defend, and hold harmless the **City**, its' elected or appointed officials and employees or agents, individually, or in their official capacity, or as a body politic, against any and all legal or administrative claims, actions, demands, suits, judgments, or proceedings of any kind, including, but not limited to, any claims for damages, penalties, fines, interest, costs, attorney fees, or expenses of whatever kind or nature, or seeking declaratory or injunctive relief, or specific performance, which may be imposed on or incurred by the **City** arising out of or related to the following:

(1) any default or material breach of any term, provision, covenant, warranty or representation of **Contractor** contained in this **Agreement**; or

(2) the negligent, reckless or intentional act(s) or omission(s), or illegal conduct, whether of action or inaction, of **Contractor** or its' employees, agents, representatives or sub-contractors which result in death or bodily injury to any person or entity (including third parties) or any damage to any real or personal property (including the real or personal property of third parties).

ARTICLE 13. WARRANTIES AND REPRESENTATIONS

(A) **Contractor** warrants and represents to the **City** as follows: (i) that neither the execution, delivery, nor performance of this **Agreement** constitutes a breach or violation of any contract or agreement to which it is a party or by which it is in any manner bound, and (ii) that it will perform any and all work or services hereunder in a professional and workmanlike manner in accordance with generally accepted industry standards. **Contractor** shall correct or cause to be corrected any errors or defects in the work or services performed hereunder at no additional cost to the **City**.

(B) **City** warrants and represents to the **Contractor** as follows: (i) that funds are available to compensate **Contractor** for any work or services performed hereunder, and that these funds are neither encumbered nor contingent upon the granting of approvals, permits, or financial commitments by lending institutions or third parties.

ARTICLE 14. DUE DILIGENCE

Contractor agrees to proceed with performance of the work or services requested hereunder with due diligence. The parties agree that time is of the essence to this **Agreement**.

ARTICLE 15. CONTRACTOR WORKER(S); REMOVAL

Contractor shall utilize safe, efficient, and competent employees in performing the work hereunder. Should the **City** reasonably object to an individual employee utilized by **Contractor** due to such employee's incompetence, dishonesty, abusive or disorderly actions or nature, **Contractor** agrees to promptly replace the individual with someone reasonably acceptable to the **City**.

ARTICLE 16. APPLICABLE LAW

This **Agreement** shall be governed by, and construed in accordance with the laws of the State of Tennessee.

ARTICLE 17. JURISDICTION AND VENUE

Any dispute arising out of or in connection with this **Agreement** shall be submitted to the exclusive jurisdiction and venue of the state courts located in Cheatham County, Tennessee, and both parties specifically agree to be bound by the jurisdiction and venue thereof.

ARTICLE 18. INSURANCE

(A) Contractor shall provide a copy of insurance in the bid packet and: agrees to maintain at its' own cost throughout the Term or any Renewal Term of this **Agreement** the following policies of insurance from a reputable insurance provider acceptable to the **City**:

(i) commercial general liability insurance for bodily injury or death and property damage on an occurrence basis, with coverage limits of at least five hundred thousand dollars (\$500,000.00) each occurrence, and one million dollars (\$1,000,000.00) general aggregate, and

(ii) automobile vehicle liability insurance for bodily injury or death and property damage, covering any auto, with coverage limits of at least five hundred thousand dollars (\$500,000.00), combined single limits, and

(iii) worker's compensation insurance in the current statutory maximum required amount.

(B) Contractor agrees to provide proof of said insurance to the **City** by way of a Certificate of Insurance, or such other form and manner acceptable to **City**, and to name **City** as an "additional insured" for such policies of insurance, and to provide immediate notification of the cancelation or termination of any such policy of insurance at least 30 days prior to said cancelation or termination of said policy of insurance. The receipt of any such certificate of insurance shall not be deemed to constitute agreement by the **City** that the insurance requirements provided herein have been fully met or that the insurance policies indicated on the certificate are in compliance with all the terms herein. Further, failure of the **City** to obtain certificates of insurance or other evidence of insurance from **Contractor** shall not be deemed to be a waiver by the **City**. Failure of the **Contractor** to obtain or to maintain the any insurance required herein shall be grounds for termination of this **Agreement** by the **City** at its' sole discretion. **Contractor** agrees that its' policies of insurance shall make provision whereby its' insurer(s) shall waive their rights of subrogation against the **City**, its' employees, elected or appointed officials, officers and agents. **Contractor** further represents its' express understanding and agrees that any insurance coverages

and limits or exclusions, contained in any policies of insurance obtained by **Contractor** shall in no way limit the **Contractor's** liabilities or responsibilities specified herein or by law.

ARTICLE 19. TAXES

The **City** is a tax exempt entity and, as such, shall not be responsible for payment of any taxes of any type whatsoever.

ARTICLE 20. NOTICE

Any notice required or permitted to be given under this **Agreement** shall be sufficient if in writing and shall be sent by certified or registered United States Postal Service mail, or a generally recognized public courier service, to the **Contractor**, LCJW Lawn Services
ATTN: Leslie Stewart, at its' principal office address, 3629 Sweethome RD Ashland City TN, 37015; or to the **City**, The Town of Ashland City, Public Utilities-Public Works Department, ATTN: Parks and Recreation Director, at its principal address, PO Box 36, Ashland City TN 37015. Either party may change contact personnel by notifying the other in writing of such change.

ARTICLE 21. FORCE MAJEURE

Neither party will be liable to the other or be deemed to be in breach of this **Agreement** for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or nature, or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

ARTICLE 22. SEVERABILITY

Every provision of this **Agreement** shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this **Agreement** so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this **Agreement**, and all other provisions shall remain in full force and effect.

ARTICLE 23. COMPLIANCE WITH LAW

Nothing contained in this **Agreement** shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this **Agreement** and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the term, condition or provision of this **Agreement** affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the parties as expressed in this **Agreement**. **Contractor** shall be responsible to secure at its' own cost all permits and licenses required by law, to pay all fees and charges required to be paid by law, and to give all notices necessary and required by law for the lawful procession of the work / services to be performed under this **Agreement**. **Contractor** shall comply with all federal, state and local statutes, laws, ordinances or regulations, as applicable to the work / services to be performed under this **Agreement**, to include but not limited to all traffic, environmental and safety laws.

ARTICLE 24. PERFORMANCE BOND

None required for this contract.

ARTICLE 25. RIGHT TO INSPECT RECORDS

Contractor agrees to maintain and preserve in legible condition any ledgers, documents, papers and records, to include computer files, which are directly pertinent to any work or services performed by **Contractor** hereunder, during the Term or any subsequent Renewal Term, and for an additional period of three years beyond the end date or termination of the **Agreement**, to include any Renewal Term. **Contractor** agrees that the **City**, or any of its' duly authorized representatives, shall have access to any ledgers, documents, papers and records, to include computer files, of the **Contractor** which are directly pertinent to any work or services performed hereunder for audit or financial examination purposes, and **Contractor** agrees to cooperate with and make reasonable accommodation to **City** for such purposes. **Contractor** further agrees that failure to cooperate or to carry out the requirements set forth above shall constitute a breach of contract and may result in termination of this **Agreement** by **City**.

ARTICLE 26. HEADINGS

The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this **Agreement**.

ARTICLE 27. ENTIRE AGREEMENT

This **Agreement** and the attached exhibit(s) represent the entire agreement between the parties with respect to the subject matter hereof. Should there be a conflict between the terms of this **Agreement** and any of the attached exhibit(s), the terms of this **Agreement** shall control. This **Agreement** may be amended only by written instrument signed by both parties.

ARTICLE 28. COUNTERPARTS

This **Agreement** may be executed in three counterparts, each of which when fully executed shall be deemed some original and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this **Agreement**.

ARTICLE 29. IRAN DIVESTMENT ACT

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106."

NOTHING FURTHER THIS PAGE

IN WITNESS WHEREOF, the parties have executed this **Agreement** by their duly authorized representatives.

Contractor: Leslie Stewart DBA LCJW Lawn Services

Printed Name: Leslie Stewart

Title: Owner

Signature: Leslie Stewart

Date: 7 Feb 2018

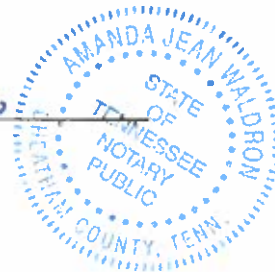
STATE OF TENNESSEE)

COUNTY OF Cheatham)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, Leslie Stewart, president, officer, principal, owner and / or agent with authority to bind Leslie Stewart, and with whom I am personally acquainted (or who proved to me on the basis of satisfactory evidence), and who executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal this 7th day of February, 2018.

Amanda Jean Waldron
NOTARY PUBLIC 11/3/18



Town of Ashland City

Printed Name: Richard Johnson

Title: Mayor, Town of Ashland City

Signature: Richard Johnson

Date: 2-13-18

ATTEST:

Kellie Reed
Kellie Reed, City Recorder/CMFO