

## **Contract Agreement**

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**THIS AGREEMENT** entered into on the 1st day of September, 2022, by and between Trace and Company, hereafter referred to as *the Contractor*, and the City of Hendersonville, hereafter referred to as *the Owner*, to provide all labor, materials, and/or equipment necessary to satisfy completely the Owner in regards to the professional quality or work stated here within.

**WITNESSETH** that the Contractor and the Owner for the conditions named agree as follows:

### **Scope of Services**

Contractor will provide materials, labor, and equipment necessary to complete brush and leaf grinding the windrow the material into a pile.

### **Work Performed**

No work shall begin until the Owner has issued the Contractor a purchase order. Work will include mobilizing equipment to the site and grind all brush and/or leaves once then push the finished material into a pile.

### **Term of Agreement**

The initial term of this agreement shall be for 36 months commencing on the effective date, unless otherwise terminated or canceled as provided in this contract. The Contractor shall guarantee all work for one (1) year following completion of all work.

**EXCUSABLE DELAY.** The contractor shall not be liable for any delays or failure in performance of Services hereunder if such delays or failures are due to strikes, inclement weather, acts of God, or other causes beyond the Contractor's reasonable control.

### **Requirements Prior to Service**

The Contractor shall provide the Owner with appropriate documentation verifying the following requirements have been fulfilled prior to commencing work. All insurance is at the expense of the Contractor subject to normal industry exclusions.

- General Liability Insurance with City of Hendersonville listed as additional insured for \$1 million (if applicable)
- Worker's Compensation Insurance
- Employer's Liability Insurance
- Professional Liability Insurance
- Federal tax identification number or social security number (W-9 form required)
- Privilege license from City of Hendersonville for work performed within city limits
- Demolition Permit for demolition projects (if applicable)

- Confirmation number of NC One Call center for utility locations (if applicable)

### **Standard of Care**

The Contractor and its agents, employees, and subcontractors shall endeavor to perform Services for Owner using that degree of care and skill ordinarily exercised, under similar circumstances, by others ordinarily providing Services in the same or similar locality as the project at the time Services are provided. In the event any portion of the Services fails to substantially comply with this standard of care obligation and the Contractor is promptly notified in writing prior to one year after completion of such portion of the Services, the Contractor will re-perform such portion of the Services, or if re-performance is impractical, the Contractor will refund the amount of compensation paid to the Contractor for such portion of the Services.

### **Safety**

The Contractor will maintain a safety program for its employees. The Contractor specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Contractor. Should Owner, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.

The presence of Contractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation, or field-testing of specific aspects of the project as authorized by Owner. The Contractor will be solely responsible for working conditions on the jobsite, including safety of all persons and property during performance of the work, and compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours.

### **Changes**

Any additional work or changes, which are requested or required, shall be performed only after a written change order, "Addendum", is signed by the Owner upon the Contractor's change order form. Such changes, including any increase or decrease in the amount of the Contractor's compensation that may be mutually agreed upon between the Owner and Contractor, shall be incorporated in written amendments to this contract after appropriate authorization as called for in this contract.

### **Compensation for Services**

The Owner shall pay the Contractor for materials and labor to be performed under the sum of \$53,900.00 for the Fall 2022 Grind then \$7.00 per cubic yard for the following grinds. The Contractor and City will agree on the volume of material prior to each grinding to establish the cost to grind the material.

## **Equipment Damage**

The City will attempt to remove all metal and/or foreign objects from the brush and leaf piles. If metal or foreign objects damage the grinder, the City will compensate the Contractor for the cost of the repairs to the grinder. If damages occur, the City will be notified immediately so a visual inspection can be completed, and damage verified. The Contractor will provide the City with a quote of the repairs for the damage.

## **Method of Payment**

Payments of Compensation for Services shall be made as follows:

Full payment will be made upon completion of work.

The Contractor shall breakout all labor, material, and tax costs when submitting an invoice for payment and include the PO number on the invoice.

## **Termination of Contract**

This contract shall be determined complete upon delivery by Owner of the final payment to the Contractor after all terms have been met.

*For Convenience-* Upon 14 days prior written notice, Owner may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon dispatch or receipt of the termination notice, Contractor shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Owner and Owner shall pay Contractor within 30 days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Contractor and Owner shall have no further rights or remedies other than those included in this paragraph.

*For Cause-* In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within ten days of receipt of the written notice. Upon Termination for Cause, Contractor shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Owner and Owner shall pay Contractor within 30 days for all Services performed up to the termination. Upon Termination for Cause, Contractor and Owner shall have no further rights or remedies other than those included in this paragraph.

## **Indemnity**

The Owner agrees to indemnify, and save harmless the Contractor, its agents, employees, and subcontractors from and against any and all losses, liabilities, and costs and expenses of every

kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which the Contractor, its agents, employees, and subcontractors may incur, become responsible for, or payout as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by the Owner's negligence or willful misconduct.

The Contractor agrees to indemnify, and save harmless the Owner from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which the Owner may incur, become responsible for, or payout as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Contractor's negligence or willful misconduct.

The Owner and the Contractor shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify, and save harmless each other in proportion to their relative degree of fault.

### **Legal Remedies**

The Contractor shall not be relieved of any liability to the Owner for damages sustained by the Owner by virtue of any breach of this contract by the Contractor. It is specifically understood that the Owner may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the Owner from the Contractor is determined. The Owner reserves all legal remedies as may be provided by law.

### **Governing Law**

This Agreement shall be construed in accordance with the laws of the State of North Carolina with Henderson County, North Carolina having jurisdiction for litigation purposes. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.

### **Representations of Owner**

Owner warrants and covenants that sufficient funds are available or will be available upon receipt of Contractor's invoice to make payment in full for the Services rendered by Contractor. Owner warrants that all information provided to Contractor regarding the project and project location are complete and accurate to the best of Owner's knowledge.

### **Utilities**

Owner agrees to disclose the identity of all utilities serving the Project Site and the presence and accurate location of hidden or obscure man-made objects known to Owner.

### **Equal Employment Opportunity**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, because of handicapping condition, or Vietnam Era Veteran status. The City of Hendersonville is an equal opportunity provider and employer.

### **Notices & Approvals in Writing**

Notice of the breach of any covenant, warranty, or other provision of the Agreement and all communications and notices provided for in this Agreement shall be deemed given when in writing, addressed to the parties at the addresses set forth below, and deposited, certified mail, postage prepaid in the United States mail:

### **Contractors Must Use E-Verify**

Per Session Law 2013-418, no city may enter into a contract unless the contractor and the contractor's subcontractors comply with Article 2 of Chapter 64 of the General Statutes.

### **E-Verify Employer Compliance**

Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

### **Iran Divestment Act Compliance**

Through the execution of this contract the contractor certifies that they meet the requirements of North Carolina General Statute 143C-6A-1 through 9 - **Iran Divestment Act**.

City of Hendersonville  
Attn: City Manager  
160 6<sup>th</sup> Avenue East  
Hendersonville, NC 28792

**Accepted:**

Owner \_\_\_\_\_  
Signature

Contractor/Company \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Attest:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(SEAL)

(SEAL)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

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(Signature of finance officer)