

CONTRACT BETWEEN CITY AND CONTRACTOR

THIS CONTRACT (the “**Contract**”) is entered into this _____ day of March, 2024, by and between the **CITY OF JACKSON, MISSOURI**, Owner of the Project, hereinafter referred to as “**City**,” and **TOWNSEND TREE SERVICE COMPANY, LLC**, hereinafter referred to as “**Contractor**,” in connection with that work or improvement known as the **ELECTRICAL TRANSMISSION AND DISTRIBUTION LINE TREE TRIMMING AND VEGETATION CONTROL PROGRAM**, to be performed for the City in Jackson, Missouri.

WHEREAS, the City has selected the aforesaid Contractor for the Project and by Ordinance No. _____ has awarded the Contractor the Contract for the amounts named in the bid from the Contractor dated _____, a copy of which is attached hereto and incorporated herein.

NOW, THEREFORE, the parties agree as follows:

A. The Specifications and Proposal Documents for the Project are attached hereto and made a part hereof and nothing herein shall modify said Specifications. The Contract Documents may also consist of such special provisions, addendums, and appendices as may be necessary for the Project.

B. The Contractor shall perform the Work in compliance with the Contract Documents.

C. The Contractor shall supply all labor, materials, equipment, and supervision necessary to complete all of the Work described in the Contract Documents.

D. The Work shall be commenced and completed according to the Project schedule, subject to such extensions and modifications as are made pursuant to the Contract Documents.

E. The City shall pay the Contractor for performance of the Work, subject to additions and deductions as provided in the Contract Documents, the Contract price of \$117.90/per crew hour more fully described in the Contract Documents. All provisions regarding retention, security in lieu of retention, and liquidated damages are fully set forth in the Contract Documents.

GENERAL CONDITIONS

Article 1

Definitions

In this Contract the following definitions shall apply:

1. **Contract:** The signed agreement between the City and the Contractor, including all Contract Documents.

2. **Contract Documents:** The Contract Documents shall consist of this Contract and include the Project Specifications and Proposals, the Contractor Bid Form, all Contractor bond certifications, all Contractor insurance certifications, and all change orders and amendments issued after the execution of this Contract. The Contract Documents are complementary and what is required by any document shall be as binding as if required by all documents. In case of a conflict between the Specifications and Proposals and other documents, the Specifications and Proposals shall govern.

3. **Contractor:** The person, partnership, joint venture, limited liability company, or corporation signatory to the Contract who is to perform the Work in accordance with the Contract Documents.

4. **Contract Price:** The total compensation to be paid to the Contractor for the performance of the Work, as may be amended during the course of performance of the Work.

5. **Contract Time:** The total number of calendar days as set forth in the Contract and as may be amended by the Contract Documents during which substantial completion of the Work must be achieved.

6. **Director:** Whenever the word Director is used in this Contract, it shall refer to the Director of Electric Utilities for the City of Jackson, Missouri, or his designee.

7. **Final Completion:** The completion of the Work, including the submission of all final releases, documents, and manuals required by the Contract Documents.

8. **Specifications and Proposal:** The Specifications and Proposal is the document created for the Project by the Director of Electric Utilities and shall be a part of this Contract.

9. **Project:** The Electrical Transmission and Distribution Line Tree Trimming and Vegetation Contract Program for the City of Jackson, Missouri.

10. **Subcontractor:** Any person, partnership, joint venture, limited liability company, or corporation which has a contract with the Contractor to furnish labor, material, or equipment as part of the Work.

11. **Substantial Completion:** The point in the progress of the Work when the City may consider the Project completed.

12. **Work:** The total of the Contractor's responsibilities as set forth in the Contract Documents.

Article 2

Project Site and Conditions

The Contractor has satisfied itself as to the nature and location of the Work, the character of equipment and facilities needed before and during the prosecution of the Work, the general and local conditions, and other matters which can reasonably be expected to affect the Work

under this Contract. Prior to the site conditions being disturbed, the Contractor shall notify the Director in writing of any latent physical conditions at the site differing materially from those indicated or of any previously unknown physical or other conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The City shall promptly investigate the conditions and, if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of or the time required for the performance of this Contract, the City may execute a change order providing for an equitable adjustment in the Contract Price or the Contract Time. The Contractor shall not be allowed to make a claim for an adjustment unless the Contractor has given prompt notice of each such event or condition.

Article 3

Site Access and Rights of Way

The City shall provide the site upon which the Work is to be performed, including convenient access to the site and any other site designated in the Contract Documents for use by the Contractor.

Article 4

Existing Conditions

Any Work which is disturbed or damaged by the Contractor's operations shall be restored to original condition at the Contractor's cost.

Article 5

Execution of Work

The Contractor shall begin the Work no later than thirty (30) days from date of the Contract and shall proceed with said Work diligently and uninterruptedly so as to complete the

Work within the time set forth in the Contract Documents. The Contractor shall be responsible for the entire Work of the Project until completed and accepted by the City. The Contractor shall diligently prosecute the Work in order to achieve Final Completion as required in the Contract Documents. The Contractor shall, at its own expense, keep the site of the Work free from accumulation of rubbish and waste materials generated as a result of the Work. Upon completion of the Work, the Contractor shall remove from the site of the Work all rubbish, waste materials, temporary structures, equipment, and surplus materials. Any disturbed area shall be returned to its original condition to the satisfaction of the City.

Article 6

Materials, Labor, Equipment, Tools, and Appliances

Contractor shall provide and pay the costs, including taxes, for all materials, labor, equipment, tools, appliances, water, utilities, transportation, and all other services and facilities necessary for the execution and completion of the Work.

Article 7

Labor and Supervision

The Contractor shall at all times maintain good discipline and order among its employees. The Contractor shall provide competent suitably and qualified personnel to perform the Work assigned to them. The Contractor shall employ on the site of the Work a competent superintendent or foreperson and such necessary assistants to represent the Contractor and receive communications for the Contractor from the City. The Contractor shall provide the names and cellular telephone numbers to the Director for such supervisory personnel as are designated to be in contact with the City.

Article 8

Royalties and Patents

The Contractor shall pay all royalties and license fees and shall defend against all suits and claims and save harmless the City from all damages arising from infringement of any patent rights connected with the Work.

Article 9

Permits and Licenses

The Contractor shall procure all necessary permits and licenses and give all necessary notices for the lawful prosecution of the Work. The Contractor shall pay all charges and fees covering said permits and licenses.

Article 10

Inspection of Work

The City shall provide sufficient competent personnel to visit and inspect the site during the course of the Work and to determine in general whether the Work is being performed in a manner that is consistent with the Contract Documents. The inspection schedule set forth in the Plans and Specifications shall be the document controlling scheduled inspections. Notwithstanding such inspections, the Contractor will be held responsible for the acceptability of the finished Work and defective Work shall be corrected. The Director, and any other person designated by the City shall at all times have access to the Work when it is in preparation or progress, and the Contractor shall provide for such access and inspection. If the specifications, laws, ordinances, or any public authority require any Work to be specifically tested or approved, the Contractor shall give the Director timely notice of its readiness for inspection. If any Work is covered up without approval or consent of the Director, it must upon request be uncovered for

examination and properly restored at the Contractor's expense unless the Director or Architect/Engineer has unreasonably delayed the inspection. If a portion of the Work has been covered which the Director has not specifically requested or required to be observed prior to being covered, then the Director may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacement shall be charged to the City. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering and replacement.

Article 11

Warranty

The Contractor warrants to the City that the Work will be performed in accordance with the Contract Documents and in a good and workmanlike manner. The Contractor shall unconditionally warrant the Work for a period of one year from the date of Final Completion unless otherwise required in the Contract Documents.

Article 12

Payments

The City shall pay to the Contractor the Contract Price subject to the change orders, additions, or deletions as full compensation for the Work. The time schedule for payment shall be as set forth in the Contract Documents. The Contractor agrees that all Work, materials, and equipment covered by payment to the Contractor will pass to the City free and clear of all liens, claims, security interests, or encumbrances upon payment by the City. At the request of the City, the Contractor shall provide all necessary liens, releases, and waivers.

Article 13

Retainage of Payment

The City, on the basis of reasonable and verifiable evidence, may withhold from any payment such amounts as may be necessary for the protection of the City against loss caused by defective Work not remedied or by failure of the Contractor to make payments properly to Subcontractors or for material or labor. When these grounds are removed or the Contractor provides a surety bond or other security to protect the City in the amount withheld, the payment shall be made.

Article 14

Change Order

The Work may be subject to change by additions, deletions, or revisions by the City. Prior to the Contract being changed by any addition, deletion, or revision, the City shall approve such change order by action of the Board of Aldermen of the City. In the event that the change order is not approved by the Board of Aldermen, then said adjustment shall be deemed to have been denied. The Contractor shall not perform changes in the Work until the City has approved the change order as set forth herein. It is provided, however, that nothing herein shall limit the parties from “field change directives” as may be necessary and incidental to the Work and as set forth in the Contract Documents. Upon receiving such written approval for the change order, the Contractor shall diligently perform the change in accordance with the Specifications and the Contract.

Article 15

Claims

The Contractor shall give the City written notice within a reasonable time after the happening of any event, occurrence, or any direction, acts, or negligence by the City or its employees, agents, or representatives whom the Contractor believes may give rise to a claim for an equitable adjustment in the Contract Price or the Contract Time or for other damages. Within a reasonable time after becoming aware of such claim, the Contractor shall supply the City with a statement supporting such claim, which statement shall include an estimate of the change in the Contract Price and the Contract Time as circumstances allow. The Contractor shall provide reasonable documentation to substantiate its claim. The Contractor agrees to continue performance of the Work during the time any claim is pending so long as the Work requested is a reasonably foreseeable addition to the Work originally contemplated in the Contract Documents. In no event shall the term “reasonable time” be interpreted to be a period of more than thirty days. No Contractor claim shall be allowed by the City if it is first asserted after the City makes final payment under this Contract.

Article 16

Rights and Remedies

The duties, obligations, rights, and remedies in the Contract Documents shall be cumulative, in addition to, and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law unless otherwise indicated herein. No action or failure to act by the City or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract nor shall any such action or failure to act constitute an approval of or

acquiescence in any breach except as may be specifically agreed in writing or specified in the Contract.

Article 17

Termination Upon Insolvency or Neglect

In the event the Contractor becomes insolvent or in the event the Contractor refuses or neglects to supply a sufficient number of properly skilled workmen, tools, and materials within the Contractor's control or should the Contractor commit a material breach of this Contract and should the Contractor fail to act in good faith to remedy such defect within ten days after notice by the City, then the City may terminate this Contract. Upon any such termination, the Contractor shall be compensated for all costs incurred for the portion of the Work properly performed in a good and workmanlike manner. The Contractor shall be liable to the City for any costs incurred by the City in completing the Contract in excess of the difference between the Contract Price and the amount paid to the Contractor to the date of termination.

Article 18

Work Day Limitations

All Work on the Project shall be performed during the work week of Monday through Friday from 6:00 a.m. through 6:00 p.m. Any night, Saturday, Sunday, or holiday work on the Project shall only be performed after written permission from the Director.

Article 19

Utilities

The Contractor shall be responsible for notification to all utility companies. The Contractor shall be responsible for all location and protection of all utilities during the construction period.

Article 20

Power Outages, Utility Interruptions, and Traffic Safety

The Work shall be performed so as to avoid any unscheduled power outages or utility interruptions. In the event that power outages or utility interruptions are necessary for the completion of the Work, the Contractor shall provide a detailed schedule to the Director and the Director shall approve such schedule with any modifications he deems reasonable and necessary.

Article 21

Extensions of Time

The Contract Time shall be extended as necessary to accommodate delayed progress of the Work resulting from changes in the Work; suspension of the Work (in whole or in part) by the City; any other act or omission by the City or its employees, agents, or representatives contrary to the provisions of the Contract; or any other cause which could not have been reasonably foreseen or which is beyond the control of the Contractor, its Subcontractors, or suppliers, including, but not restricted to, acts of any governmental authority, acts of a public enemy, fire, flood, unusual delay in transportation, abnormal weather conditions, labor disputes, strikes, lack of Work site access, acts of God, natural disasters, or acts of third parties. The Contract Time will not be extended for delays that solely result from the Contractor's fault, negligence, or neglect. The Contractor shall provide the City notice of any delay within a reasonable time after the occurrence or commencement of a cause of delay. Failure to give notice of any delay within a reasonable time shall constitute a waiver by the Contractor of any claim for extension of Contract Time resulting from that cause of delay. The Contractor's notice shall include an estimate of the probable effect of the cause of delay on the progress of the Work.

Article 22

Completion and Acceptance

The Contractor shall be responsible for the Work until Final Completion. The Contractor shall notify the City upon Substantial Completion of the Work. The Director shall promptly verify whether Substantial Completion has occurred and if so shall so certify to the City. If not, the Contractor will be promptly notified in writing as to what must be done to achieve Substantial Completion of the Work. The Contractor shall notify the City upon Final Completion of the Work. The Director shall promptly verify whether Final Completion has occurred and if so shall so certify to the City. If not, the Contractor will be promptly notified in writing as to what must be done to achieve Final Completion of the Work

Article 23

Surety Bonds

The City shall have the right, prior to the execution of the Contract, or at any time for good cause shown, to require the Contractor to furnish bonds executed by one or more financially responsible sureties and in such form as the City may, in its absolute discretion, prescribe covering the faithful performance of the Contract and payment of all obligations under the Contract.

Article 24

Protection of the Public and of Work and Property

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to:

1. All employees on the Work and all other persons who may be affected.
2. All the Work and its materials and equipment.
3. Other property at or adjacent to the site of the Work.

Article 25

Workers' Compensation Insurance

The Contractor shall maintain a Workers' Compensation Insurance Policy covering all workers employed on the Project. Coverage in the Workers' Compensation Insurance Policy shall have a limit of liability as required by the statutes of the State of Missouri with a minimum limit of \$1,000,000 per accident. The Workers' Compensation Insurance shall protect the Contractor against all claims under applicable State and Federal Workers' Compensation Laws. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation Law. This policy shall include an "all states" or "other states" endorsement.

Article 26

Liability Insurance

The Contractor shall maintain Liability Insurance in the form and amounts set forth hereinafter. The Contractor shall indemnify and save harmless the City, its officers, agents, employees, and servants against all loss, damage, or expense that it or they may sustain as a result of any suits, actions, or claims of any character brought on account of property damage, injury to or death of any person or persons, including all persons performing any Work under the Contract. Said insurance shall insure the City from all claims for bodily injury and property damage arising from Work performed by the Contractor, including employees of the Contractor and Subcontractors.

The form and amounts of insurance shall be as follows:

- (a) Comprehensive General Liability:
 - (1) Bodily Injury
 - \$2,000,000 Each Occurrence
 - \$5,000,000 Annual Aggregate
 - (2) Property Damage
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Annual Aggregate
- (b) Personal Injury, with employment exclusion deleted:
 - \$1,000,000 Annual Aggregate
- (c) Comprehensive Automobile Liability:
 - (1) Bodily Injury
 - \$1,000,000 Each Person
 - \$2,000,000 Each Accident
 - (2) Property Damage
 - \$1,000,000 Each Occurrence
- (d) Contractual Liability Insurance:
 - (1) Bodily Injury
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Annual Aggregate
 - (2) Property Damage
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Annual Aggregate

All coverage shall be on an “occurrence” basis and not “claims made” with an Additional Insured Endorsement naming the City of Jackson as an additional insured.

No provision of this Contract shall constitute a waiver of the City's right to assert a defense based on sovereign immunity, official immunity, or any other immunity available under law.

Article 27

Assignment

The Contractor shall not assign, in whole or in part, any obligations under this Contract without the express written consent of the City.

Article 28

Verification of Employment Eligibility

Notice is hereby given that Section 285.530 of the Revised Statutes of Missouri requires that no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. Any business entity providing work under any contract in excess of \$5,000.00 shall participate in a federal work authorization program such as E-Verify and shall provide documentation of such participation to the City.

Article 29

Prevailing Wage and Minimum Wage

The Contractor shall comply with the prevailing wage and minimum wage laws of the State of Missouri and the United States of America.

Article 30

OSHA Safety Training Requirement

In accordance with Section 292.675 of the Revised Statutes of Missouri, Contractors and Subcontractors who agree to provide Work under this Contract must provide a ten-hour OSHA

construction safety program or other similar program approved by the Department of Labor and Industrial Relations of the State of Missouri to be completed by their on-site employees within 60 days of beginning Work under this Contract. Documentation of compliance with this provision shall be provided to the City within 65 days of beginning Work under this Contract. Contractors and Subcontractors in violation of this provision will forfeit to the City \$2,500.00 plus \$100.00 per day for each employee who is employed without training. The aforesaid penalty shall be withheld from any payment due to the Contractor or Subcontractor.

Article 31

Subcontract

Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City.

Article 32

Governing Law

This Contract shall be governed by the laws of the State of Missouri and the venue for any dispute between the parties shall be in the Circuit Court of Cape Girardeau County, Missouri.

Article 33

Notice

Any notice required by this Contract to be given shall be in writing and shall be delivered during normal business hours or mailed first class, postage prepaid. If notice is to be given to the City or the Contractor, it shall be sent to the City at 101 Court Street, Jackson, MO 63755, or to the Contractor at the postal address shown in the signature block at the end of this Contract. Notice shall be effective upon personal delivery or five calendar days after the date of mailing.

In addition, the parties may supplement any written notice with e-mail confirmation to the e-mail address provided by the City or the Contractor.

Article 34

Entire Agreement

This Contract contains the entire agreement between the parties and supersedes all prior or contemporaneous written or oral communications. This Contract may not be changed or terminated orally but only by an instrument in writing signed by the party against whom enforcement of such change or termination is sought. No breach of any agreement, warranty, or representation shall be deemed waived unless expressly waived in writing by the party who asserts such breach.

Article 35

Successors and Assigns

The terms, covenants, and conditions of this Contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective parties to this Contract.

Article 36

Exhibits

All exhibits attached to the Contract are incorporated herein as if fully set forth.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

CITY:

CITY OF JACKSON, MISSOURI

By: _____
Mayor

ATTEST:

City Clerk

Address:
101 Court Street
Jackson, MO 63755

CONTRACTOR:

By: _____

Title: _____

Address:
Townsend Tree Service Company, LLC
1015 W. Jackson Street
Muncie, IN 47305