

AGREEMENT FOR ON-CALL SNOW AND ICE REMOVAL SERVICES

This Agreement made and entered into this 13th day of February, 2024, by and between MTS Brushhogging, Dozer & Lawn LLC, hereinafter designated as "Contractor", and the City of Norman, a municipal corporation, hereinafter designated as "City".

WITNESSETH

WHEREAS, the City has caused to be prepared in accordance with law, specifications, and other bidding documents for the work hereinafter described and has approved and adopted all of said bidding documents, and has caused Notice to Bidders to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for the following project:

(a) On-Call Snow and Ice Removal Services

WHEREAS, the City, in the manner provided by law, has determined and declared the above-named Contractor to be the lowest and best on the above prepared project, and has duly awarded this Agreement to said Contractor.

NOW THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this Agreement have agreed, and hereby agree, as follows:

1. The parties desire to enter into this Agreement for an initial one (1) year term, beginning on the date above shown. Thereafter, this Agreement shall renew automatically on an annual basis, unless terminated pursuant to the provisions set forth herein, for a maximum contract term of five (5) years from the date above shown. Upon renewal of the Agreement for additional one (1) year terms, the pre-determined rates established in Exhibit B may be adjusted, if requested by Contractor, for such renewal term, but must not exceed the average Construction Cost Index (CCI) during the twelve (12) months prior to renewal or a 5% increase, whichever is lower.
2. The Contractor shall, in a good and first-class, workman-like manner at their own cost and expense, furnish all labor, materials, tools, and equipment required to perform and complete said work in strict accordance with this Agreement and associated documents, such as Exhibits and Work Orders.
3. It is agreed that the Contractor will commence work only after a Work Order has been issued to it by the City with a Notice to Proceed. Work Order's will be issued on an as-needed basis and shall detail the specific services to be completed for the project at issue. Work shall commence within the reasonable time specified in the Work Order as time is of the essence. Contractor shall pursue the Work Order vigorously and continuously and complete the same in the timeline specified in the Work Order.
4. The City shall pay the Contractor for the work performed under each issued Work Order as follows:

- (a) The Contractor is to be paid according to the agreed upon, pre-determined rates associated with hourly staffing and equipment rentals for the specific services offered, as provided and incorporated herein as Exhibit B.
- (b) City will pay Contractor within thirty (30) days of receipt of a valid invoice for services rendered.
- (c) On completion of the work, but prior to the acceptance thereof by the City, it shall be the duty of the Contractor's project engineer, or other appropriate person, to determine that said work has been completely and fully performed in accordance with the Work Order and this Agreement, and upon making such determinations, said official shall make their final certificate to the City.
- (d) Should any defective work or materials be discovered or should a reasonable doubt arise as to the quality of any work completed, there will be deducted from the payment an amount equal to the value of the defective or questionable work and shall not be paid until the defects are remedied.

5. The Contractor will retain all pertinent records, documents and files for a period of five (5) years beyond completion of services provided or termination, for any reason, of the Agreement. The Contractor shall maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Contractor shall permit periodic audits by City and the City's authorized representative. The periodic audits of the records in support of claims and invoices for the Agreement shall be performed at times and places mutually agreed upon by the City and Contractor, such agreement as to the time and place for audits may not be unreasonably withheld.

6. The Contractor will not undertake to furnish any materials or to perform any work not specifically authorized under the terms of this Agreement or associated Work Orders unless additional materials or work are authorized by written Change Order, executed by the City; and that in the event any additional work and/or materials are provided by the Contractor without such authorization, the Contractor shall not be entitled to any compensation therefore whatsoever.

7. If any additional work is performed or additional materials are provided by the Contractor upon authorization by the City, the Contractor shall be compensated therefor at the unit price and as agreed to by both parties in the execution of the Change Order.

8. The Contractor shall perform the work and provide the materials strictly in accordance with the specifications as to quality and kind and all work and materials shall be subject to rejection by the City through its authorized representatives for failure to meet such requirements, and in the event of such rejection, the Contractor shall replace the work and materials without compensation therefor by the City.

9. The Contractor shall complete the work in accordance with the terms of this Agreement, the accompanying Work Order, and shall comply with all existing federal, state and local laws, rules and regulations.

10. The Contractor shall furnish surety bonds and certificate of insurance as specified herein which bonds and insurance must be approved by the City prior to issuance of a Work Order and commencement of work on the project.

- (a) Insurance. During performance of this Agreement, Contractor shall maintain the following insurance, in limits prescribed by the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq.) and subsequent revisions thereto:
 - i. Commercial General Liability (Combined Property Damage, Bodily Injury): \$1,000,000.
 - ii. Automobile Liability (Combined Property Damage and Bodily Injury): \$1,000,000.
 - iii. Workers Compensation: Statutory; plus Employers' Liability insurance (each occurrence): \$500,000.
 - iv. Professional Liability: \$2,000,000.

Contractor shall furnish City certificates of insurance with provisions that such insurance shall not be canceled, decreased, nor fail to be renewed without thirty (30) days written notice to City.

11. Termination.

- (a) For convenience: The City may terminate or suspend this Agreement, in whole or in part, for the City's convenience upon written notice to Contractor. The City shall pay Contractor for all the services performed to date at an amount not to exceed the normal pre-determined rate amount for the authorized services rendered.
- (b) For cause: This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the party initiating termination. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the initiating party.
 - i. If this Agreement is terminated by reason of default on the part of the Contractor, upon final determination by a court that the termination was improper, the termination will be deemed converted to a termination for convenience and the Contractor's remedy shall be limited to the recovery of compensation set out in paragraph (a) above.

12. Communications. Any communication required by this Agreement shall be made in writing to the address specified below:

City:

Jason Olsen
Director of Parks and Recreation

225 N. Webster Ave
Norman, Oklahoma 73073

Contractor:

MTS Brushhogging, Dozer & Lawn, LLC
34910 OK-51 Mannford, OK 74044

13. No provision of this Agreement or of any associated document shall be interpreted or given legal effect to create an obligation on the part of the City to third persons, including, by way of illustration but not exclusion, sureties upon performance bonds, payment bonds or other bonds, assignees of the Contractor, subcontractors, and persons performing labor, furnishing material or in any other way contributing to or assisting in the performance of the obligations of the Contractor; nor shall any such provisions be interpreted or given legal effect to afford a defense against any obligation owed or assumed by such third person to the City or in any way to restrict the freedom of the City to exercise full discretion in its dealing with the Contractor.

14. Contractor and City each agrees to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by its negligent acts, errors or omissions.

15. Severability: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

16. Governing Law; Venue: This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this Agreement shall be in the District Court of Cleveland County, Oklahoma or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.

17. Entire Agreement; Amendments: This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. Assignment: This Agreement shall not be assigned by the Contractor without prior written consent of the City, said consent not to be unreasonably withheld.

19. Nondiscrimination: The Contractor agrees that it, or any of its subcontractors, will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age,

place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.

20. Non-Waiver: No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to either party at law or in equity.

21. Liability, Indemnification, and Insurance shall survive completion, suspension, or termination, for any reason, of this Agreement.

22. The Contractor's bid is hereby made a part of this Agreement as Exhibit C.

23. The sworn, notarized contract affidavit, provided and incorporated herein as Exhibit A, must be signed and notarized before this Agreement will become effective.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the 13th day of February, 2024.

CONTRACTOR:

[Signature]

By:
Title:

ATTEST: _____

CITY OF NORMAN:

Approved as to form and legality this _____ day of _____, 2024.

City Attorney

Approved by the Council of the City of Norman, this _____ day of _____, 2024.

ATTEST:

City Clerk

Mayor

EXHIBIT A

CONTRACT AFFIDAVIT

STATE OF Oklahoma)
) SS
COUNTY OF Creek)

Bryan Brennan Spivey of lawful age, being first duly sworn, on oath says that (s)he is the Agent authorized by the Firm to submit the above Contract to the City of Norman, Oklahoma.

Affidavit further states that such firm has not paid, given or donated or agreed to pay, give, or donate to any officer or employee of the City of Norman, Oklahoma, any money or other thing of value, either directly or indirectly, in the procuring of the Contract.

Bryan Brennan Spivey
CONTRACTOR

Subscribed and sworn to before me this 13th day of February, 2024.

Brandie A Varner
Notary Public

My Commission Expires:

June 2, 2024

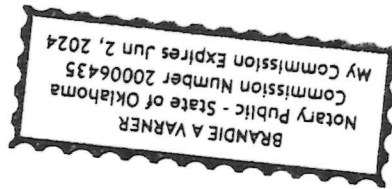


EXHIBIT B

MTS Brushhogging, Dozer & Lawn LLC

Snow Plow/operator - \$200/hr

Construction equipment/operator - \$140/hr

Sidewalk Clearing Labor - \$40/hr

Ice Melt per lbs. - \$0.80/lbs.



The City of
NORMAN

225 N. Webster Ave.
Norman, Oklahoma 73069

PARKS AND RECREATION
Phone: 405-366-5472
Fax: 405-366-5470

SNOW CLEARING PROPOSAL SHEET

Name of Company: MTS Brushhogging, Dozer & Lawn, LLC

Contact information: Landon Sloan

List of Equipment available to be used – Please be descriptive

(3) 289D Skidsteer with 10' snow plow

(2) 2020 Ford F450 w/slow plow

(5) 6120E4X4 John Deer Tractors with front end loaders equipped for snow removal

(1) Newholand backhoe with front end loader with angle blade equipped for snow removal

All Tractor equipment has angle blade in rear if needed for the city if needed to help maintain roads.

Number of Personnel available: 15

Truck with Plow hourly rate: \$ 200.00 /hour

Skid Steer hourly rate: \$ 140.00 /hour

Sidewalk Clearing/treating hourly rate \$ 40.00 /hour

Per lbs. Price Ice Melt \$ 0.80 /lbs.

References

<u>Name</u>	<u>Company</u>	<u>Contact</u>
Reference: <u>Tommy Overholser</u>	<u>ODOT Dist. 4 Maintenance Mgr.</u>	<u>405-613-3582</u>
Reference: <u>R.D.</u>	<u>Turner Turnpike Maintenance Division</u>	<u>405-388-7314</u>
Reference: <u>John Remington</u>	<u>Tulsa County Engineer</u>	<u>918-798-6949</u>

EXHIBIT C



The City of
NORMAN

225 N. Webster Ave.
Norman, Oklahoma 73069

PARKS AND RECREATION
Phone: 405-366-5472
Fax: 405-366-5470

Request for proposal 2324-35

The City of Norman, located at 201 West Grey, is seeking written proposals for snow and ice clearing services at our Main Municipal Campus, as depicted in the attached map, on an as needed basis.

Scope of Work: Work will include plowing, shoveling and dispensing ice melt from parking lot, drives, and sidewalks during winter weather events.

Snow and ice shall be pushed to or placed in designated areas that will be agreed upon by the contractor and City of Norman Parks and Recreation Department.

The term contract will be for one (1) fiscal year, July 1, 2024 – June 30th, 2025. When the City of Norman deems it is necessary to utilize the successful bidder, the Park Manager will contact the successful bidder, giving as much notice as possible to inform that their services will be needed. The successful bidder should only respond when contacted by the Park Manager. The successful bidder will be responsible for any damage to City of Norman property while removing snow on campus grounds. The City of Norman will not be responsible for any damage to the successful bidder's equipment under any circumstances. City of Norman has some capabilities for snow removal and may work in coordination with the successful bidder when applicable.

To be considered the bidder must,

1. Possess appropriate state and local business licenses and insurance
2. Provide a completed snow clearing proposal sheet
3. Possess and provide appropriate equipment inventory list
4. Provide three (3) references with proposal

Upon selection, bidder must be able to provide:

1. A form W-9 with Tax ID
2. A Certificate of Liability Insurance with a minimum of \$1,000,000 worth of liability insurance, pursuant to the Oklahoma Governmental Tort Claims Act 51 O.S. §154.

A map of the City of Norman Main Municipal Campus is attached with a legend of areas and their treatment styles and priorities.

Please complete and return the attached proposal labeled "Snow Clearing Proposal sheet". Deliver to the Parks and Recreation Office at 225 N. Webster Ave. Norman, Ok 73069 or mail your proposal ATTN: Wade Thompson, Parks Manager and the address referenced above. Proposals will be accepted until December 29, 2023 at 5:00 p.m. If you have any questions, please contact the Park Manager, Wade Thompson at 405-366-5478.