

Contract K-2223-7

City of Norman, OK
Sewer Root Control Contract

SEWER ROOT CONTROL REQUIREMENTS CONTRACT

1.0. DEFINITIONS OF TERMS USED IN THIS CONTRACT

DUKE'S: Duke's Root Control, Inc. of Syracuse, NY.

AUTHORITY: Norman Utilities Authority

PESTICIDE: From the Code of Federal Regulations, Title 40: "any substance or mixture of substances intended for preventing, destroying, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (162.3.ff)" including "root control herbicides intended to prevent the growth of, or kill roots in certain sites such as sewer lines and drainage tiles (162.3.ff.9.iv)."

OKDOA: Oklahoma Department of Agriculture

USDOT: United States Department of Transportation.

USEPA: The United States Environmental Protection Agency.

WASTEWATER TREATMENT PLANT: Any facility or facilities used to treat flows from any sewer in which the Contractor performs any work or introduces any material.

WASTEWATER TREATMENT PLANT OPERATOR: The supervisor responsible for daily operations at any wastewater treatment plant as defined above, and/or the Authority of any wastewater treatment plant as defined above.

PRODUCT: Razorooter II®, Duke's chemical sewer root control product, USEPA Registration # 64898-8.

2.0 GENERAL

Duke's Root Control, Inc. (hereafter, Duke's) will apply its chemical sewer root control product to control tree roots in sanitary sewers for Norman Utilities Authority (hereafter, the Authority). The purpose of the application is to kill tree roots present in the lines and to inhibit root re-growth, without permanently damaging the vegetation producing the roots, and without disrupting wastewater treatment plant processes. The chemical agent shall be Razorooter II®.

Razorooter II® contains an herbicide to destroy root tissue, deter re-growth, and a foaming surfactant to deliver the herbicides to the target root growths. The Product is registered with the USEPA and the OKDOA. The Product will be applied as a foam. The foam shall be pumped under sufficient pressure to assure that the entire sewer section is completely filled with foam, and to assure that the foam passes through lateral pipe connections to a distance of **5 to 10 feet up service laterals**. Duke's will be responsible for insuring that the chemical treatments have no adverse effects on wastewater treatment plants and/or receiving waters downstream from the applications. Duke's will take all necessary steps to prevent said adverse effects and conform to the Best Management Program (BMP) for storm water pollution prevention, at Duke's own expense. Duke's will provide, in addition to other insurance the **Pollution and Chemical Liability insurance** as required in the Authority's RFP document.

The project shall be supervised by a licensed applicator, certified by OKDOA (see 14.0 for experience statements).

Duke's will guarantee all treatments in accordance with the terms of the guarantee as set forth in the attachment included with this contract.

3.0 REQUIREMENTS CONTRACT

The Authority is not obligated to any minimum or maximum quantities under the contract. The Authority may issue purchase orders to Duke's on an as-needed basis, although nothing in this document shall be construed as obligating the Authority to do so.

4.0 CONTRACT PERIOD

The initial term of the contract shall be for the period of one year. The contract may be extended for additional one year periods up to a total of four additional years, at the sole option and discretion of the Authority.

5.0 AUTHORITY

The Authority shall decide every question which may arise relative to the fulfillment of the contract on the part of Duke's.

6.0 STOP WORK ORDERS AND CONTRACT TERMINATION BY THE AUTHORITY

The Authority may order Duke's to stop work at any time, without cause. Verbal instruction to Duke's crew foreman by an authorized representative of the Authority, and an email memorializing said notice sent to Duke's on that same date shall be sufficient notice of cancellation.

The Authority may terminate the contract at any time without cause, at the sole discretion of the Authority. An email providing notification of termination sent to Duke's shall be sufficient notice of termination.

In the event a stop work order is issued or the contract is terminated, the Authority shall only be obligated to pay for that portion of the work completed by Duke's prior to the issuance of the stop work order or contract termination.

7.0 PAYMENTS

Payment to Duke's will be made only after all work specified by the Contract has been completed to the Authority's satisfaction, and all reports and submittals requested by the Authority have been received by the Authority.

8.0 WORK SCHEDULE AND TIME FOR COMPLETION

In the event that the Authority desires to have work performed by Duke's, the Authority shall issue a purchase order to Duke's. The Authority may issue more than one purchase order per contract period.

Upon receipt of a purchase order, Duke's shall start work within thirty calendar days, and complete all work in a timely fashion to the satisfaction of the Authority.

Duke's will notify the Authority prior to starting work on any portion of the project. All work shall be performed during normal business hours observed by the Authority. Work during other hours, weekends, or holidays observed by the Authority, may only be performed with written permission from the Authority. The Authority reserves the right to inspect all work as it is performed, and to reject any work that in the opinion of the Authority is unsatisfactory.

9.0 PROPERTY DAMAGES CAUSED BY DUKE'S

Should any damage be caused to public or private property by Duke's or its employees or agents, Duke's will be required to make immediate repairs. The Authority may, however, elect to make repairs or replace damaged property and deduct the cost of such from moneys due or to become due to Duke's from the Authority.

10.0 PROTECTION OF WASTEWATER TREATMENT PLANT AND RECEIVING WATERS

Duke's will take necessary steps to prevent adverse effects on wastewater treatment plant processes.

Duke's is expert in this type of work, and recognizes and understands the risks posed by this type of work on wastewater treatment plant processes. Duke's will not rely on the Authority for guidance in this regard.

Introduction of any materials in any wastewater treatment plant must be with the approval of the wastewater treatment plant operator for that plant.

Duke's will notify the Wastewater Treatment Plant Operator of any wastewater treatment plant that may be affected by Duke's performance of the Contract, of the date and time of all intended work, and provide the Operator with data or other information requested by the Operator, including specimen product labels and Material Safety Data Sheets, for any materials introduced to the collection system.

In the event that a wastewater treatment plant experiences a reduction in operating efficiency during the execution of the project, whether the result of the chemical treatments or not, Duke's will immediately suspend all applications, and notify the Authority. Duke's will resume operations only after problems at the wastewater treatment plant have been corrected, and Duke's has taken appropriate steps, satisfactory to the Authority and the Wastewater Treatment Plant Operator, to mitigate future problems.

11.0 COMPOSITION OF DUKE'S CHEMICAL ROOT CONTROL PRODUCT

The chemical root control agent shall be Razorooter II®. The chemical root control agent is registered with the EPA and the California Department of Pesticide Regulation, and is labeled for use in sewers to control tree roots. The chemical Root control agent contains an active ingredient for controlling sewer roots and deterring their re-growth. There is also a surfactant system to deliver the active ingredient (herbicide) to the target root tissue.

Active ingredient:

1. **Diquat Dibromide** is a Category "E" compound, the most favorable rating attainable on the U.S. EPA's chronic exposure toxicological rating scale.
2. **Diquat Dibromide** is not considered a carcinogen, teratogen, mutagen, or oncogene, based on laboratory testing.
3. **Razorooteer II®** does carry a "signal word" assigned by the U.S. EPA of "Warning" on the product label.
4. **Diquat Dibromide** is non-volatile in order to minimize exposure to workers and other individuals by inhalation.
5. **Diquat Dibromide** is not readily absorbed through the skin.
6. **Razorooteer II®** does not contain the active ingredient(s) metam-sodium or copper sulfate.

Surfactant system:

1. Does produce a dense, small bubble, clinging foam, which sustains its shape for a minimum of one hour.
2. Does enhance the penetration of herbicide into root masses.
3. Does contain an Alkylpolyglucoside (formulations of vegetable oil and carbohydrate from agricultural products).
4. Does not foam chemically upon contact with water.

12.0 COMPLIANCE WITH TRANSPORTATION LAWS

Duke's will comply with all USDOT regulations relative to commercial vehicle numbering, placarding and registration; driver licensing, driver drug testing, and record keeping; and all other pertinent requirements contained in Federal Motor Carrier Safety Regulations.

13.0 INSURANCE AND POLLUTION LIABILITY INSURANCE

Duke's will provide Pollution Liability Insurance, **in addition to** all other insurance required by the Authority (i.e., General Liability, and Automotive liability, etc.) and as required by law.

- a. **Pollution Insurance:** Duke's will maintain, throughout the period of the work contracted herein, **Pollution Liability insurance in the amount of \$5,000,000.00 total loss.** This coverage protects Duke's, the Authority, and the Authority's officers, agents and employees from claims for damages for bodily or personal injury, sickness or disease, including death, and from claims for damages to property and/or the environment, which may arise directly out of the use of chemicals and/or pollution. The insurance carrier used by Duke's will hold an A.M. Best rating of at least "A."
- b. **General Insurance:** Duke's commercial general liability limit, including umbrella coverage totals \$10,000,000.00 (total occurrence), \$1,000,000.00 each occurrence.

- c. **Automotive:** Duke's carries a combined single limit of \$1,000,000.00 in Automotive insurance.

14.0 DUKE'S QUALIFICATIONS AND KEY PERSONNEL

Duke's is the largest, and most experienced sewer root control contractor in the United States. As such, Duke's is licensed with the OKDOA, and Duke's has four applicators certified to perform root control applications with the OKDOA (listed below).

All work discussed herein will be performed, or supervised by Certified Pesticide Applicators licensed with the OKDOA. Duke's on-site Foremen, are all experienced, certified pesticide applicators, with certification in several states. Any Duke's Foreman assigned to perform work for the Authority will have a minimum of five (5) years experience as a sewer root control applicator, and shall have personally performed a minimum of 5,000,000 linear feet of treatments as a Certified Pesticide Applicator and/or under the direct supervision of a Certified Pesticide Applicator. All other Duke's employees assigned to perform work for the Authority shall be experienced pesticide applicators certified in several states, and shall have personally performed a minimum of 3,000,000 linear feet of treatments.

Staff Resumes Assigned to Project

Brian Conroy, Project Manager

Brian Conroy, a Licensed Certified Applicator with 31 years' experience at Duke's will be responsible for all contract negotiations and representations made prior to the award. Brian shall also be responsible for assisting the city in program planning, insuring customer satisfaction, strategic planning questions such as budget planning and program needs.

Braden Boyko, Vice President

Braden Boyko has 17 years of experience with Duke's and shall be responsible for contract execution up to and following the award. Braden shall be responsible for job scheduling, overseeing job performance, documentation and record keeping. Questions related to invoices, reports, insurances, scheduling and Data Base Management should be directed to Braden Boyko.

Charles Morse, Certified Applicator and Foreman

Charles Morse, First Certified Applicator and Foreman for the Authority's project. Charles has over 40 years of experience in sewer line chemical root control and is a Licensed Certified applicator in 24 states. Charles is the highest rated applicator in the company. Charles shall provide on-site supervision for the project.

Jacob Morse, Austin Baker, Rick Yazel: Certified Applicators

Jacob Morse, Austin Baker and Rick Yazel are Oklahoma Licensed Certified Pesticide Applicators and will provide on-site supervision.

Assistants and Additional Staff

Additional field personnel may provide assistance to the Certified Applicators. All field personnel are trained, experienced, and properly licensed.

15.0 MANNER OF APPLICATION

Application of the chemical root control agent shall be by foaming in accordance with the best recommended practice for conditions present in the line under treatment. All foaming procedures shall be in strict accordance with the instructions on the container label.

A foam discharge hose shall be inserted throughout the entire length of the sewer section to be treated. To avoid injury to plant tissue that would reduce the effectiveness of the treatments, hydraulic or mechanical sewer cleaning machines shall not be used on any sewer section scheduled for treatment for a period of at least sixty days prior to the treatment. Hydraulic or mechanical sewer cleaning machines will not be used to convey the foam discharge hose through the sewer section, or to convey ropes or cables through the sewer section. Methods of conveying the foam discharge hose through the sewer section are: 1) manually or mechanically shoving the foam discharge hose through the section, or 2) floating a rope through the sewer section and using the rope to pull the foam discharge hose into the section.

The equipment used shall discharge foam at approximately 30 PSI, so as to force foam up connecting lateral sewers approximately 5 - 10 feet. Hose retrieval rates must be timed to evenly distribute the full quantity of foam throughout the entire area of treatment. The quantity of foam shall be sufficient to completely fill the entire volume of the main sewer treated, plus an additional 10% to allow for the penetration of material up lateral sewers, and for loss in manholes. Sewer service to homeowners shall not be interrupted.

16.0 DUKE'S RESPONSIBILITIES

- a. Duke's is liable to the Authority for all expenses, losses or damages, as determined by the Authority, incurred in consequence and any defect, omission or mistake of Duke's, his subcontractors, agents, or employees, or for the making good thereof.
- b. Should any chemical root control agent spill on the ground, the chemical and affected soil shall be removed and safely disposed of. The area shall be restored to a condition equal to or better than before the spill. Any damage to vegetation

resulting from misuse of the chemical root control agent shall be the responsibility of Duke's.

- c. Duke's is responsible for any and all damages to structures inside and out caused by root control chemicals.
- d. Duke's is responsible for insuring that there are no adverse effects on wastewater treatment plant processes, or adverse effects on the quality of wastewater treatment plant effluent, as a result of chemical applications.
- e. Duke's will place proper traffic warning devices to protect the specific job site, and to prevent accidents or personal injury to the public. Police protection and/or flagmen for safe traffic control shall be provided by Duke's as conditions dictate or when so directed by the Authority.
- f. Filling of a chemical mixing tank shall be done with an air gap or reduced-pressure-zone backflow prevention device approved by the Authority. Duke's will only draw water from public water supplies at locations approved by the Authority.
- g. Duke's will keep complete, accurate records of each day's operation. Records shall show date of treatment, sections of line treated, pipe size and distance, and other pertinent information. Logsheets shall be submitted with the invoice.
- h. A Duke's representative will periodically check on the treatments throughout the life of the guarantee, in order to evaluate the success of the project and address any concerns the Authority may have.
- i. Duke's will be responsible for handling, transporting, use of any hazardous materials, and insure disposal of all pesticide containers is done according to State and Federal regulations.

17.0 ASSISTANCE PROVIDED BY THE AUTHORITY

- a. The Authority will provide a representative to accompany Duke's crew and/or provide sewer system drawings showing the exact locations of the pipes to be treated.
- b. The Authority shall provide for the entering of private lands, public lands and right-of-ways.
- c. The Authority shall provide a source of fresh water at locations to be designated by the Authority.

- d. The Authority shall locate and uncover hidden or buried manholes, and restore street surfaces, easements, etc.

18.0 REPORTS ON COMPLETED WORK PROVIDED BY DUKE'S

Accompanying the invoice, or whenever requested by the Authority, Duke's will submit logsheets and reports which show, as a minimum, the following information:

- The name of the Authority
- The report date
- The date each given sewer line was treated
- Street name for each given sewer line
- A description (manhole numbers, house numbers, cross streets, etc.) which will enable the Authority to accurately identify the exact location of each sewer line
- The pipe size for each given sewer line
- The length (manhole to manhole) for each given sewer line
- Special conditions found by Duke's crew
- The date the guarantee expires on each given sewer line

The reports on completed work shall be submitted in two separate formats to assist the Authority, as follows:

1. Arranged by Date Treated in order for the Authority to easily determine and compare which sewer lines were treated on a given day, Duke's will submit a complete set of completed work reports sorted on the date treated.
2. Arranged by Street Name in order for the Authority to easily look up a particular street or sewer section, and determine particulars of the treatment, Duke's will submit a complete set of reports sorted by Street Name.

In addition, all reports are available in electronic form at the request of the Authority.

19.0 GUARANTEE

For each sewer section (manhole-to-manhole) that is treated under the Contract, Duke's will guarantee the work as follows:

At the option of the Authority, Duke's, at its own expense, will re-treat a sewer section, or refund 100% of the payment received to treat that section, in the event that: (1) live roots are found in the section within six months after the application; or, (2) the section plugs up and floods due to tree root obstructions within a period of three years, beginning the date of treatment, and ending three years after the date of treatment.

Re-treatments, performed at no charge in honor of the guarantee, do not extend the expiration date of the guarantee.

The decision of the Authority as to the cause of a stoppage is binding.

The guarantee applies only to sewer stoppages caused by live tree roots. It does not apply to stoppages caused by grease or other foreign matter; flat, collapsed or deformed pipe; or flooding caused by a surcharged or plugged sewer section downstream from a guaranteed sewer section. This guarantee applies to main line sewers only. **Duke's is not responsible for damage caused by main line stoppages.**

Duke's will return periodically (every 4 to 8 months), at Duke's sole expense, to perform free re-treatments as required under this guarantee.

20.0 QUALITY CONTROL

In addition to the terms of the Guarantee, set forth above, Duke's will provide the following, in order to ensure the quality of the work proposed herein:

- a. Dukes agrees to only use fresh (i.e., bottled within six months) material, that exhibits excellent foaming capability. The active ingredient and Foaming agent will be packaged separately in order to eliminate any incompatibility problems associated with these different chemical compounds.
- b. Duke's Oklahoma Regional Manager located will make direct, personal visits to the Owners Public works facilities (Line Maintenance Division) in order to inspect the work and to ensure Authority satisfaction.
- c. Duke's will notify the Authority, by mail, on a semi-annual basis that the lines treated are under guarantee (Duke's standard guarantee reminder letter) and provide additional log sheets. The purpose of this letter is to remind the Authority that the treated lines are under guarantee, in order to schedule any necessary guarantee re-treatments.

21.0 EQUAL EMPLOYMENT OPPORTUNITY

Duke's hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. Duke's affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is the Duke's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. Duke's further affirms completion of applicable

governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

22.0 -WAIVER

A waiver by either the AUTHORITY or by DUKE's of any breach of this AGREEMENT shall be in writing provided by email. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

23.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this ARTICLE shall not prevent this entire AGREEMENT from being void should a provision which is of the essence of this AGREEMENT be determined void.

24.0 SUCCESSORS AND ASSIGNS

The AUTHORITY and DUKE's each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this AGREEMENT and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this AGREEMENT.

25.0 ASSIGNMENT

Neither the AUTHORITY nor DUKE's shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, DUKE's may assign its rights to payment without the AUTHORITY's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this AGREEMENT. Nothing contained in this ARTICLE shall prevent DUKE's from engaging independent consultants, associates and subcontractors to assist in the performance of the SERVICES.

26.0 NO THIRD PARTY RIGHTS

The SERVICES provided for in this AGREEMENT are for the sole use and benefit of the AUTHORITY and DUKE's. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the AUTHORITY and DUKE's.

27.0 REFERENCES

Owner/Agency:	Norman Utilities Authority
Date of Engagement	Annual Contract since 1997
Nature of Engagement	Chemical Root Control Application
Results Achieved	Excellent
Contact:	Jared Mattern
Phone:	405-329-0703

Owner/Agency:	City of Portland
Date of Engagement	Annual Contract since 1993
Nature of Engagement	Chemical Root Control Application
Results Achieved	Excellent
Contact:	John Ordiz
Phone:	503-823-7381

Owner/Agency:	City of Oklahoma City
Date of Engagement	Annual Contract Since 2010
Nature of Engagement	Chemical Root Control Application
Results Achieved	Excellent
Contact:	Derald Ross
Phone:	405-297-2278

Owner/Agency:	City of Midwest City
Date of Engagement	September 1999 - May 2021
Nature of Engagement	Root Control Application Services
Results Achieved	Excellent
Contact:	Shelby Madison
Phone:	405-739-1380

28.0 APPLICATOR'S QUALIFICATIONS

Name	Jacob Morse
License Number	CA-32225
Years of Service	8 Years
Footage Treated	9,069,187

Name	Austin Baker
License Number	CA-81516
Years of Service	3 Years
Footage Treated	2,976,400

Name	Rick Yazel
License Number	CA-021836
Years of Service	21 Years
Footage Treated	19,510,531

29.0 PRICING

Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price per linear foot of each size pipe. Unit prices are to be computed per linear foot manhole-to-manhole.

PIPE SIZE	UNIT PRICE PER FOOT
6 inch	\$1.69
8 inch	\$1.69
10 inch	\$1.96
12 inch	\$2.13
15 inch	\$2.98

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Agreement

On this day, the _____ day of _____, 2022 The Norman Utilities Authority, Oklahoma and Duke's Root Control, Inc., a New York corporation, do accept the terms of this contract (No. K-2122-127) attached hereto.

Duke's Root Control, Inc.

ATTEST

By: _____

Printed

Name: Branden L. Boyko

Title: Vice President

Mark Motto

Mark Motto

Operations Coordinator

Norman Utilities Authority - OWNER

APPROVED as to form and legality this 6 day of July, 2022.

City Attorney

APPROVED by the Trustees of the Norman Utilities Authority this _____ day of _____, 20____.

ATTEST

By: _____

Printed

Name: Larry Heikkila

Title: Chairman

Brenda Hall

Secretary