

## SERVICES CONTRACT

THIS CONTRACT made and entered into this 29th day of March, 2023, by and between the City of Aurora, Missouri (the “City”) and Curt Mooneyham DBA C-Moon’s Lawn Service, LLC (“Service Provider”).

WITNESSETH:

WHEREAS, the City of Aurora desires to engage the Service Provider to provide certain services hereafter more particularly described in Exhibit 1 (Scope of Work); and

WHEREAS, the Service Provider made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal;

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Service Provider as follows:

1. **Scope of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services hereinafter set forth in Exhibit 1.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in Exhibit 1. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available, and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials, and supplies required to perform the services called for under this contract by Service Provided. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence on April 15, 2020 after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. The length of this contract

shall be one (1) year. With the agreement of both parties, this contract may be extended for an additional period of two (2) years, in one (1) year increments, for a maximum combined duration of three (3) years.

**6. Payment.**

- A. Conditioned upon acceptable performance. The City agrees to pay the Service Provider in accordance with the terms set forth in Exhibit 2, which shall constitute complete compensation for all work to be rendered under this contract; provided, that where payments are to be made periodically to Service Provider for work rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the work performed during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of work set forth in Exhibit 2.

**7. Termination of Contract.**

- A. Termination for breach. Failure of the Service Provider to fulfill Service Provider's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of work set forth in Exhibits 1 & 2 shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Service Provider by one of three different means: Facsimile Transmission ("FAX") if Service Provider has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Service Provider; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Service Provider or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Service Provider under this contract shall at the option of the City become its property, and the Service Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Service Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Service Provider.

**8. Surviving Terms.** Notwithstanding any provisions to the contrary, provisions pertaining to liability and indemnity shall survive the termination of this contract.

**9. Assignment.** The Service Provider shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however,

that claims for money due or to become due to the Service Provider from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

10. **Performance.** It is understood by the parties that time is of the essence in this contract.
11. **Discrimination.** The Service Provider agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Service Provider or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
12. **General Independent Service Provider Clause.** This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Service Provider will be an independent Service Provider and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Service Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Service Provider's activities and responsibilities hereunder. The Service Provider agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, that this agreement shall not be construed as creating any joint employment relationship between the Service Provider and the City, and the City will not be liable for any obligation incurred by the Service Provider.
13. **City Benefits.** The Service Provider shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.
14. **Liability and Indemnity.** The parties mutually agree to the following:
  - A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract.

- B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. The Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider.
- C. The Service Provider shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

**15. Insurance Requirements.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the contractor to always maintain adequate insurance coverage during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

- A. The certificates of insurance, including evidence of the required endorsements there under or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance and shall list the City as certificate holder. Such notices shall be mailed to:

City of Aurora – City Clerk P.O. Box 30, Aurora, MO 65605

- B. The minimum coverage for the insurance referred to herein shall be in accordance with the requirements established below:
  - a. Worker's Compensation: Statutory coverage per RSMo.281.010 et seq

- b. **General Liability Insurance:** Such coverage shall apply to Bodily Injury and Property Damage on an “Occurrence Form Basis” with limits of not less than \$500,000.

16. **Notices.** All notices required or permitted herein under and required to be in writing may be given by FAX or by first class mail addressed to City and Service Provider at the addresses provided. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

17. **Jurisdiction.** This contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Lawrence County, Missouri.

18. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

19. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referred hereto and signed by both parties.

20. **Compliance with Laws.** The contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of

services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

**21. Contact Information:** City of Aurora

City Clerk  
2 W Pleasant  
P.O. Box 30  
Aurora, MO 65605  
417-678-5121 Ext. 23  
fax: 417-678-6599

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the day and year herein stated.

SERVICE PROVIDER:

CITY OF AURORA, MISSOURI

By: \_\_\_\_\_

\_\_\_\_\_  
Jon Holmes  
City Manager

Name: \_\_\_\_\_

Address: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
Kamy Kulow  
City Clerk

Fax: \_\_\_\_\_

Tax ID: \_\_\_\_\_

\*Exhibit 1 & 2 refer to documents which can be found in the bid packet and are incorporated hereto.