



Reso 23-083

AGREEMENT FOR VENDOR/CONTRACTOR SERVICES

This Agreement for Vendor/Contractor Services is made and entered into this 4th day of April, 2023, between the **City of Powder Springs, Georgia**, a municipal corporation, and **C & M Tree Service & General Contracting**, contracted Vendor /Contractor. The City of Powder Springs and Vendor/Contractor may hereafter be referred to as "**Party**" individually or collectively as the "**Parties**."

WITNESSETH:

WHEREAS, the City desires to retain a qualified, experienced, and licensed Vendor/Contractor with demonstrated skills and experience in providing certain services, the exact nature, scope, and price of which is more completely and fully set forth in Vendor/Contractor's bid for services, which is attached hereto as Exhibit A and expressly incorporated herein by way of reference as a part hereof (hereinafter, "the attached quoted services");

WHEREAS, Vendor/Contractor is knowledgeable and experienced in the attached quoted services required by the City and desires to provide, furnish, and deliver all necessary materials and to perform the work necessary to complete attached quoted services;

WHEREAS, the Parties desire to contract for the provision of attached quoted services according to the terms and conditions and provisions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- Contract Time. Vendor/Contractor shall complete and/or perform attached quoted services within timeframe agreed upon by the City of Powder Springs. All Work shall begin after notification by the City and shall be carried through to completion without unreasonable delay and suspension. If there are unreasonable delays or unauthorized suspensions of work, the City reserves the right to charge the Vendor/Contractor, not as a penalty, but as liquidated damages, the cost incurred by the City to complete the Work by another contract or otherwise.
- Contract Price. Vendor/Contractor shall complete the Work for the agreed upon sum of **\$18,775.00** as dictated by the attached quote/qualified bid response – Exhibit A.
- Agreement shall mean this written agreement between City and Contractor covering the work to be performed, including any and all exhibits hereto, said exhibits being incorporated herein by reference.
- Required Documentation. Vendor/Contractor shall furnish to the City certificates of insurance and any other documents, affidavits, or things required to be submitted by the terms of this Agreement and/or the State law of Georgia for review and approval by the City (i) prior to the commencement of the Work or (ii) upon the Vendor/Contractor's execution of the Agreement. (Security and Immigration Affidavit, W-9, etc.)
- Insurance. Required insurances (Liability, Worker's Comp, etc.) shall be maintained in full force and effect during the life of the Agreement and through final completion. Subcontractors shall be required to obtain all insurance which the Vendor/Contractor is required to obtain. Vendor/Contractor shall agree to waive all rights of subrogation against the City, the City council, the mayor, its officers, officials, employees, and volunteers from losses arising from attached quoted services performed. Vendor/Contractor shall at a minimum apply risk management practices accepted by the Vendor/Contractors' industry.
- Services Performed. Vendor/Contractor will perform, supervise, and direct the attached quoted services efficiently and with its best skill and attention. Vendor/Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures. Vendor/Contractor will provide competent, suitably qualified personnel to perform the Work. Vendor/Contractor and its employees, agents, and Subcontractors shall be fully equipped, staffed, certified, authorized, and licensed for the attached quoted services. In the event the Vendor/Contractor causes damages, the Vendor/Contractor shall repair such damage at its sole expense. The Vendor/Contractor shall use those materials identified in the attached quoted services. In addition, the attached quoted services shall be performed to the entire satisfaction of the City. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Agreement or of such inspections,

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tests, or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected, or accepted

- Subcontractors. Vendor/Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it.
- Permits. Vendor/Contractor will secure and pay for all permits, certifications, and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the Attached quoted services.
- Laws and Regulations. Vendor/Contractor will give all notices and comply with and cause all Subcontractors to comply with all federal, state, and/or local laws, ordinances, requirements, standards, rules and/or regulations ("Laws") applicable to the attached quoted services and materials to be provided. If the Vendor/Contractor performs any services contrary to such laws, it shall bear all costs arising therefrom.
- Taxes. Vendor/Contractor will pay all sales, consumer, use, and other similar taxes required by the law of the place where the Work is to be performed. Notwithstanding the preceding sentence, no sales tax shall be charged to the City on any of the material and/or equipment incorporated or used in the performance of the Work.
- Indemnification and Limitations of Liability. Vendor/Contractor, shall indemnify and save harmless the City, its officers, council members, agents, contractors, assigns, volunteers, and employees from and against all claims, demands, liabilities, suits, judgments and decrees, including reasonable attorneys' and other professional fees, losses and costs and expenses of any kind or nature whatsoever on account of injuries to or death of any person or persons or damage to any property occurring directly or indirectly from performance of the attached quoted services by the Vendor/Contractor or its employees, agents, servants, associates, or Subcontractors however such injuries or death or damage to property may be caused arising out of any breach by the Vendor/Contractor of any representation, warranty, covenant, duty or obligation; City shall not be liable to the Vendor/Contractor or any Subcontractor, of any tier, for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages, arising out of or resulting from the City's performance or non-performance of the City's obligations under this Agreement, or from the City's termination or suspension of Work under this Agreement, or for any other reason. Furthermore, the City shall not be liable in contract or tort to Vendor/Contractor, Subcontractors, or suppliers thereof, regardless of tier, for incidental or consequential damages arising out of or resulting from the City's performance or non-performance of the City's obligations under the Agreement, or from the City's termination or suspension of Attached quoted services under the Agreement, or for any other reason.
- Warranty and Guarantee. Vendor/Contractor will perform the attached quoted services in accordance with this Agreement, the Laws, and, at a minimum, that degree of care and skill ordinarily exercised by and consistent with the standards of care of others ordinarily providing the same or similar services/work in the same or similar locality as the area where the Work is to be performed. Vendor/Contractor further warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified and that all Work will be, at a minimum, of the degree of care and skill set forth above and in accordance with the requirements of the Agreement and of any inspections, tests, or approvals. Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will have passed to the City prior to the making of the application for payment, free and clear of all liens, claims, security interests, and encumbrances (referred to below as "liens"); and that no work, materials, or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest or encumbrance is retained by the seller or otherwise imposed by the Contractor or such other person.
- Work Stoppage. If the attached quoted services are defective, or if the Vendor/Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or if the Vendor/Contractor fails to make prompt payments to Subcontractors or for labor, materials, or equipment, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such an order has been eliminated; however this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.
- Correction or Removal of Defective Work. If required by the City prior to approval of final payment, the Vendor/Contractor will promptly, without cost to the City and as specified by the City, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Contractor does not correct defective Work or remove and replace rejected Work within a reasonable time, all as specified in a written notice from

the City, the City may have the deficiency corrected or the rejected Work removed or replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

- Termination. The Agreement may also be terminated for cause upon five (5) days written notice for a failure to both (a) perform substantially in accordance with the terms and conditions of the Agreement and (b) for the sole convenience of the City. Upon written notice to the Vendor/Contractor, the City may also exercise its right to early termination in the event of the cancellation of funds, a change of priorities, or cancellation of a program with no right of appeal available to the Vendor/Contractor. City shall reimburse the Vendor/Contractor for Work actually and properly performed by the Contractor up to the date of termination. The City has the right to monitor performance, certification, and any subsequent recourse available in the event of default or non-performance by the Vendor/Contractor.
- Force Majeure. Except for payment of sums due and except as otherwise specified herein, neither Party shall be liable to the other nor deemed in default under the Agreement if and to the extent that such Party's performance under the Agreement is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Force Majeure shall not include (i) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with the terms and conditions set forth herein and (ii) the Contractor's failure to comply with the terms and conditions of this Agreement regarding disaster recovery.
- Registration with a Federal Work Authorization Program. Vendor/Contractor shall comply with the requirements of the Official Code of Georgia ("O.C.G.A.") Sec. 13-10-91 and Rule 300-10-1-.02 and compliance therewith is a condition of the Agreement. Compliance shall include but not be limited to execution of the attached Contractor Affidavit and Agreement and Subcontractor Affidavit should there be any subcontractor or subcontractors.
- Jurisdiction. The Agreement shall be governed and interpreted by the laws of the State of Georgia and any action brought to clarify or enforce this Agreement shall be brought in a court of competent jurisdiction located in Cobb County, Georgia.
- Contractual Relationship. The relationship between the City and the Vendor/Contractor is that of an independent contractor. Vendor/Contractor is not authorized to act as an agent, employee, or legal representative of the City, and may not hold itself out to the public as such. The method and manner of performance of the Work shall be under the exclusive control of the Contractor. The City shall have the right to inspect such undertakings at any time without prior notice.

IN WITNESS WHEREOF, each of the parties hereto has executed this Contract as of the date first above written.

The City of Powder Springs, Georgia

C & M Tree Service & General Contracting

BY: Albert Thurman

BY: Marshall F Blanton

PRINT: Albert Thurman

PRINT: MARSHALL F BLANTON

ITS: Mayor

ITS: OWNER

DATE: 4/17/23

DATE: 4-10-2023

ATTEST: Kelly Axt

ATTEST: David W Commons

PRINT: Kelly Axt

PRINT: DAVID W COMMONS

ITS: City Clerk

ITS: FRANK

CITY ATTORNEY:

[Signature]

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