

AGREEMENT FOR SERVICES

City of Marshalltown, Iowa
and
Thorp Sawmill & Pallet

This Service Agreement is made this ____ day of _____, 2019, in the City of Marshalltown, Iowa by and between the City of Marshalltown, an Iowa municipal corporation ("City"), and Thorp Sawmill & Pallet, an Iowa company ("Contractor").

Recitals

WHEREAS, the City has a substantial amount of tree debris collected from trees damaged by the July 19, 2018 tornado within the city limits;

WHEREAS, the City does not have the capacity to undertake the chipping of such tree debris and finds it necessary to contract for such chipping services;

WHEREAS, the City has established a budget item for funds for the payment of the fees incurred relative to the performance of the services;

WHEREAS, the City issued a request for sealed bids for the chipping of tree debris from which Contractor provided the lowest, best, and most responsive bid within the scope of work as described below; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Agreement.

Agreement

THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the City and Contractor agree as follows:

1. **TERM.** The term of this Agreement shall commence upon April 23, 2019 and end July 1, 2019. If work is not expected to be completed by that date, Contractor must provide City written notice 30 days in advance of July 1, 2019 with the reason(s) why an extension is necessary.

2. **IDENTIFICATION OF TREE DEBRIS.** The City shall direct Contractor which tree debris is to be chipped. This shall include only tree debris located at the compost facility. Upon completion of services, Contractor shall notify the City of completion by phone, text message, email, or such other method as the parties may designate in writing, and the City shall inspect the work and register the completion.

3. **TREE DEBRIS CHIPPING.** Contractor agrees to provide all tree debris

chipping services for the debris identified by the City, within the scope of the bid. This shall include only tree debris located at the compost facility. Contractor shall, at its own risk and expense, perform promptly and diligently all authorized work in a good, proper, and workmanlike manner in accordance with the local, state, and federal guidelines, laws, and ordinances. All labor, tools, equipment, and transportation will be furnished by the Contractor.

4. **PAYMENT.** Contractor agrees to invoice the City for Services performed upon completion. Except as otherwise provided in this Agreement, the City agrees to tender payment to Contractor for Services rendered within thirty (30) days of receiving an invoice from Contractor. Payment will be paid in a lump sum for the cubic yards estimated in Contractor's bid. The City will only consider change orders to a contract when the Contractor can show the actual cubic yards exceeds the estimate provided. The City agrees to pay a lump sum of \$ 59,980.00 to the Contractor. The City's obligation to make payments as aforesaid shall survive the termination of this Agreement. No interest or late fees shall accrue on amounts carried forward in this manner. Any and all other services the City may require of Contractor shall be performed outside of this Agreement at rates and upon terms separately negotiated by the parties.

5. **DAMAGE; INDEMNIFICATION; INSURANCE.** Contractor agrees to repair any damage caused to residents' property or City's property to the City's specification, and to indemnify, defend, and hold harmless City from all claims, suits, actions, damages and cost of every name and description, arising out of or resulting from Contractor's obligation pursuant to this Agreement. Contractor, at Contractor's sole cost and expense, shall protect, defend, and indemnify City from and against any and all related claims including, but not limited to, any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property in the performance of this Agreement. Further, Contractor shall provide City proof it carries compliant workers' compensation insurance covering its employees and commercial general liability insurance in an amount of no less than \$1,000,000. Such policy shall include liability arising from business operations, independent contractors, personal injury, and liability assumed under an insured contract.

6. **REGISTRATIONS AND PERMITS.** Contractor certifies that it has or is in the process of obtaining a DUNS number. Contractor certifies that it is registered as a vendor with SAM.gov. Contractor certifies that it has a current City of Marshalltown Tree Trimmer Permit. Contractor certifies that all such registrations and permits are in place prior to commencing work under this Agreement. Contractor shall produce written documentation of the same upon request from the City.

7. **BOND.** Contractor shall provide a Performance Bond equal to 100 percent of the contract price, which is to be provided with this signed agreement prior to work commencing.

8. **SUBCONTRACTORS.** The Contractor must be the entity completing the Scope of Work. No subcontracting will be allowed of work awarded.

9. **INCORPORATION OF BID REQUEST.** With this reference, the parties incorporate the terms and conditions set forth in the Request for Sealed Bids for the Chipping of Tornado-Related Tree Debris.

10. **GENERAL PROVISIONS.** In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement contains the entire agreement of the parties and shall not be amended, except by a written instrument duly signed by the City and Contractor. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.

11. **NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS.** The parties acknowledge that some or all of the funds used to cover the costs of service are provided by and through the Federal Emergency Management Agency. As such, the following provisions are included:

- a. Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:
 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such

- disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- b. Davis-Bacon Act. The Contractor shall comply with the terms of the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). The Contractor shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Contractor shall pay wages not less than once a week. This Agreement is conditioned upon the Contractor's acceptance of the wage determination. Any suspected or reported violations will be reported to the Federal awarding agency.

- c. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the terms of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Further, the Contractor shall compute the wages of every laborer and mechanic on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- d. Copeland "Anti-Kickback" Act. The Contractor shall comply with the terms of the Copeland "Anti-Kickback" Act (40 U.S.C. 3145, as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Any suspected or reported violations will be reported to the Federal awarding agency.
- e. ~~Byrd Anti-Lobbying Amendment. The Contractor shall file the required certification as provided for by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).~~
- f. Termination of contract: The City may terminate the Agreement if the Contractor:
 - 1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - 2. Persistently disregards laws, ordinances, or rules, regulations, safety precautions or orders of the person(s) having authority over the project or
 - 3. Otherwise is guilty of a material breach of a provision of the Agreement.
 - 4. When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Contractor five (5) days written notice, terminate employment of the Contractor and finish the work by whatever reasonable method the City may deem expedient.
 - 5. When the City terminates the Agreement for one of the reasons stated, the Contractor shall not be entitled to receive further payment other than for the work already performed for which compensation has not yet been paid.

12. **NOTICE.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery, email, or mailed by certified mail, addressed to the parties at the addresses given below.

13. **APPROVAL; AUTHORITY.** This Agreement is expressly contingent upon approval by the City Council of Marshalltown, Iowa. In the performance of this Agreement, City, as a municipal corporation, shall take all action legally required of a municipal corporation.

14. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all parties are not signatories to the original or the same counterpart. Furthermore, the parties may execute and deliver this Agreement by electronic means, such as .pdf or a similar format. Contractor and City agree delivery of the Agreement by electronic means shall have the same force and effect as delivery of original signatures and that each of the parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.

15. **EXECUTION.** When and if executed by both Contractor and City, this Agreement shall become a binding contract.

THORP SAWMILL & PALLET,
an Iowa company

Dated this ___ day of _____, 2019.

By: _____

Address:

Telephone:

CITY OF MARSHALLTOWN, IOWA,
an Iowa municipal corporation

Dated this ___ day of _____, 2019.

By: _____
Joel Greer, Mayor

Attest:

Shari Coughenour, City Clerk

Address: 24 N. Center Street
Marshalltown, Iowa 50158

Telephone: 641-754-5701