

## CONTRACT

Contract entered into this 22<sup>nd</sup> day of November, 2005, between the City of McMinnville, Tennessee, hereinafter known as "City" and H.L. Johnson Mulch existing under the laws of the State of Tennessee, and located at 2930 Old Tullahoma Hwy., Manchester, Tn.37355 hereinafter known as "Contractor."

WHEREAS, the governing body of the City has authorized the entering into of this contract to grind and remove the City's yard wastes, and has requested and received proposals for the chipping, shredding, grinding, and removal of wood, brush and other yard waste, and submitted the most responsive and qualified proposal, and has the qualifications to perform that work;

NOW THEREFORE, pursuant to the authority of the governing body of the City of McMinnville, Tennessee, and in consideration of the mutual covenants and undertakings contained herein, it is agreed between the above parties that:

### Article I. General

1. Definition. The definition of yard waste within the meaning of this contract shall be brush, leaves, yard trimmings, wood wastes, pallets, and sawmill slabs.
2. Scope of Contract. The Contractor agrees to furnish all labor, tools, equipment and materials, supplies and services to chip, shred, grind, and remove wood, brush, and other yard waste stockpiled at the City's Transfer Station site.
3. Duration of Contract. This contract shall begin on the 1<sup>st</sup> day of January, 2006, and end on the 31<sup>st</sup> day of December, 2008. By and upon the mutual consent of parties, this contract can be extended for one additional period of three years under the identical terms contained in this contract.

4. Consideration. In consideration for the chipping, shredding, grinding, and removal of wood brush, and other yard waste at the City's site. The City shall pay the Contractor (\$15.00) per ton for all chipped, shredded, and removed ground material. In addition to the per ton amount, the City shall pay the Contractor three hundred dollars (\$300.00) for all mobilization costs incurred by the Contractor for each visit to the City. This unit price for mobilization is inclusive of all stockpile sites within the City.

## **Article II. Responsibilities of Contractor**

1. Anticipated weight and volume of yard waste. The Contractor will chip, grind and shred the City's yard waste in the approximate weight and volume indicated below:

Estimated Tons (per year)

First year: 1,300

Second Year: 1,300

Third Year: 1,300

Total: 4,200

2. Weighing of yard waste. All materials to be chipped, shredded, ground, and removed, i.e., wood, brush and other yard waste shall be weighed in at the City scales for the purpose of payment.

3. Schedule of work. The Contractor shall chip, shred or grind, and remove the City's yard waste on a once per three month schedule commencing with the first full month following the execution of this contract. All chipping, shredding or grinding, and removal of wood, brush and other yard waste at the City's stockpile shall be conducted

between the hours of 7:00 a.m. and 3:30 p.m. local time, Monday through Friday. By mutual agreement of the parties, the Contractor and the City can in writing agree to a different schedule. However, the City and the Contractor can orally agree to ad hoc changes in the work performance schedule, but no number of such ad hoc changes shall be considered or treated by the Contractor as a waiver of the City's right to performance according to the written schedule.

4. Contractor solely responsible for operation. The Contractor shall be solely responsible for loading stockpiled yard waste into chipping, shredding and grinding equipment, and shall convey the chipped, shredded and ground material into a separate stockpile. The City will do its best to keep any foreign objects out of the materials to be shredded or ground. However, the contractor shall be responsible for assuring that the materials are free and clear of any objects which may damage the contractor's equipment. The City shall have no liability for damage to the contractor's equipment for any reason. The Contractor shall be responsible for removal and repair of grinder, this will not be considered as part of the mobilization charge.

5. Record keeping. The Contractor shall maintain accurate records of the yard waste chipped, ground and shredded. The records shall be made and kept in a manner permitting the City to determine the date of work performed, the weight and volume of yard waste chipped, shredded and ground. All records shall be open for inspection by the City at any time during the regular business hours of the Contractor.

6. Invoices. The Contractor shall submit invoices after a grinding session is complete to the City for work performed under this contract. The City agrees to pay the Contractor within fifteen (15) days after receipt of the Contractor's invoice.

7. Liability for operation. The Contractor shall assume all liability for operations relative to this contract, and shall hold the City harmless for its actions under the contract, and shall defend, indemnify, and hold harmless the City, its agents and employees from all claims and damages that may arise out of or as a result of the Contractor's performance of this contract, whether such operations be by himself, or by any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

### **Article III. Responsibilities of the City**

1. Designation of stockpile site(s). The City shall designate the location of the site or sites for the stockpile of yard waste to be chipped, shredded, ground, and removed under this contract. The site or sites shall be reasonably accessible to the Contractor's equipment and personnel. The City shall notify the contractor in writing five (5) days in advance of any change in the stockpile site or sites.

2. Stockpiling According to Work Schedule. The City shall stockpile the yard waste to be chipped, shredded and ground at the designated site on or before the date and time the Contractor is scheduled to perform its work under Article II, Section 3. Such yard waste shall not exceed twelve inches (12 inches) in diameter.

### **Article IV. Insurance, Bonds and Permits.**

1. Insurance. The Contractor shall maintain general liability insurance in the minimum amount of one million dollars (\$1,000,000), and proof of worker's compensation, and such other insurance as is necessary to protect the City against all claims that might arise within the scope and meaning of Article II, Sections 4 and 7, of this contract, and against any worker's compensation claims. Policies shall include a

provision requiring a minimum of thirty (30) day notice to the City of cancellation of the policy or if the certificate is approaching its maximum pay out. Certificates of insurance acceptable to the City shall be filed by the Contractor with the City prior to the commencement of this contract, and annually thereafter.

2. Bonds. The Contractor shall provide to the City a performance bond in the amount of ten thousand dollars (\$10,000.00) that names the City as an insured and that insures the performance of the contract for the City for one hundred eighty (180) days, from the date of a performance default by the Contractor.

3. Licenses and Permits. The Contractor shall obtain at its own expense all permits and licenses required by Federal, state, and local laws, ordinances and regulations, and shall maintain them at all times during the life of the contract.

#### **Article V. Termination of Contract**

1. By Written Notice. The Contractor may during the initial three year term of this contract or during the term of any extension of the contract, terminate this contract by submitting notice in writing of the termination to the City one hundred eighty (180) days in advance. The City may terminate this contract only during the term of any contract extension, by submitting notice in writing of the termination to the Contractor one hundred eighty (180) days in advance.

2. Failure to Perform by Contractor. During the initial three year period of this contract, and during the term of any contract extension, the City may at its discretion, treat the contract as automatically terminated, and invoke the performance bond, if the Contractor fails to correct a missed chipping, shredding and grinding schedule within seventy-two (72) hours of the missed-scheduled visit. Nothing in this provision shall be

construed to limit the right of both the City and Contractor to exercise any legal remedy provided by law for breaches of contracts.

**Article VI. Amendments to Contract**

The City and Contractor shall amend this contract only by a written agreement.

**Article VII. Assignability of Contract**

The Contractor shall not subcontract with another person, corporation or any other entity to perform work under this contract, or assign or transfer any other person, corporation or entity of any kind any duties, obligations or rights created under this contract without the express prior written consent of the City.

**Article VIII. Documents Constituting this Contract/Conflicts**

This contract shall consist of the following documents:

- A. This contract;
- B. The bid proposal entitled "INVITATION TO BID" dated October 12, 2005 and to which the Contractor responded antecedent to this contract, and which is attached and incorporated by reference and made a part of this contract as if fully set out herein.
- C. The Contractor's response to the City's request for bids, which is attached and incorporated by reference and made a part of this contract as it fully set out herein.

The Contract represents the entire Agreement between the City and the Contractor, and no prior representations, promised, agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. In the case of any irreconcilable conflicts between this contract, the bid specifications, and the Contractor's response to the City's request for bids, this contract shall prevail.

**Article IX. Cost of Living Increase**

The parties understand and agree that the first year's rate shall be fixed. However, the second and third year's rate shall be increased by the percentage rate of the U. S. Consumer Price Index, All Urban Consumers South, group size less than 50,000 population.

**Article X. Governing Law**


This Contract shall be governed by the laws of the State of Tennessee.

IN WITNESS WHEREOF, the City of McMinnville, and have caused this Contract to be executed on the date and year first above written.

CITY OF MCMINNVILLE

APPROVED AS TO FORM AND  
CORRECTNESS

  
(Mayor)

  
(City Attorney)

CONTRACTOR

  
(Authorized Representative)