

## **Pre-Position Agreement for Disaster Debris Management**

This AGREEMENT is between City of Norman, Oklahoma, a municipal corporation (hereinafter referred to as CITY) and T.F.R. ENTERPRISES (hereinafter referred to as CONTRACTOR).

### **WITNESSETH:**

For the purpose and subject to the terms and conditions hereinafter set forth, the CITY hereby contracts for certain services, and CONTRACTOR is prepared to provide such services as are agreed to in this document.

The parties agree as follows:

### **ARTICLE 1 – EFFECTIVE DATE.**

The effective date of this AGREEMENT shall be December 22, 2009. The Agreement shall remain in effect for a three (3) year period, with the option to extend the AGREEMENT for two additional one-year periods upon mutual agreement of the parties, unless otherwise terminated as provided herein. Activation of this agreement shall be based on a Notice to Proceed (NTP) issued by the Mayor of the City of Norman.

### **ARTICLE 2 – NATURE OF AGREEMENT.**

It is agreed and understood between the parties hereto that this is a pre-positioned or “standby” AGREEMENT. As such, there is no value associated with this AGREEMENT and actual quantities will vary based on the applicable disaster type and scope.

### **ARTICLE 3 - SERVICES TO BE PERFORMED.**

CONTRACTOR shall perform the services as stated in the Request for Bid of Contractual Services for Disaster Debris Clearance and Removal Services (the “Request for Bid”) and the CONTRACTOR’S Response attached hereto and incorporated by reference as part of this AGREEMENT, and as may be specifically authorized by the CITY. Such authorizations will be referred to as Task Orders. Each Task Order will set forth a specific scope of services, rate/amount of compensation, estimated completion date, and other pertinent details of the task being authorized.

### **ARTICLE 4 – COMPENSATION**

CITY shall pay CONTRACTOR in accordance with the Hourly Equipment and Labor Price Schedule and Unit Rate Price Schedule included with CONTRACTOR’S Response, which is attached hereto and incorporated by reference as part of this AGREEMENT.

CONTRACTOR may submit weekly or semi-monthly invoices for services rendered in accordance with the attached Request for Bid. Invoices must reference the Task Order number.

CONTRACTOR shall submit invoices on a regular basis and in no instance, for more than a thirty (30) day period. CONTRACTOR shall be paid within twenty (20) days of submitting a complete invoice. If there are any items in dispute, CONTRACTOR will be paid for those items not in dispute, and disputed items will be resolved within 45 days, and paid within 10 days of resolution. Disputed items must be submitted to CONTRACTOR within ten (10) days of the receipt of the invoices.

Payment of CONTRACTOR by CITY is not contingent upon the CITY being reimbursed by any Federal or State agency. Payment to CONTRACTOR will be made for any work directed by the CITY.

In order for both parties to this AGREEMENT to close their books and records, CONTRACTOR will clearly state "Final Invoice" on CONTRACTOR'S final/last billing to the CITY.

#### ARTICLE 5- INSURANCE

CONTRACTOR shall maintain insurance limits in accordance with the Request for Bid. CONTRACTOR shall provide CITY six (6) original Certificates of Insurance evidencing such coverage prior to execution of this Agreement and again within twenty-four hours of receiving a Notice to Proceed under this Agreement.

#### ARTICLE 6 – SURVIVAL

Upon completion of all services, obligations and duties provided for in this AGREEMENT, or in the event of termination of this AGREEMENT for any reason, the terms and conditions of this AGREEMENT shall survive.

#### ARTICLE 7 – INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and save harmless the CITY, its officers, agents and employees from and against all claims, damages, losses, and expenses including attorney fees arising out of or resulting from the performance of the work, caused by any act or omission of CONTRACTOR, any subcontractor, and anyone for whose acts any of them may be liable.

#### ARTICLE 8 – RELATIONSHIP OF PARTIES.

The CONTRACTOR shall operate as an independent contractor, and the CITY shall not be responsible for any of the CONTRACTOR'S acts or omissions. The CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for Federal or State tax, unemployment, or workers' compensation purposes. The CONTRACTOR understands that neither federal, nor state, no payroll tax of any kind shall be withheld or paid by the CITY on behalf of the CONTRACTOR or the employees of the CONTRACTOR. The CONTRACTOR further agrees that the CONTRACTOR is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participating in, any employee pension, health, or other fringe benefit plan of

the CITY. The CITY shall not be liable to the CONTRACTOR for any expenses paid or incurred by the CONTRACTOR unless otherwise agreed in writing. The CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and supplies required to provide the contracted services unless otherwise agreed in writing. The CONTRACTOR shall comply with all federal, state, and local laws regarding business permits, certificates and licenses that may be required to carry out the services to be performed under this Agreement. The CONTRACTOR shall insure that all personnel engaged in work under this Agreement shall be fully qualified and shall be authorized under state and local law to perform the services under this Agreement.

#### ARTICLE 9 – CITY’S RESPONSIBILITIES

CITY shall be responsible for providing access to all project sites, and providing information required by CONTRACTOR that is available in the files of the CITY to assist CONTRACTOR in completing any assigned tasks. CITY is responsible for assisting in obtaining any permits for CONTRACTOR to complete any Task Order assigned.

#### ARTICLE 10 – TERMINATION OF AGREEMENT

This AGREEMENT may be terminated in accordance with the terms set forth in the Request for Bid and fully incorporated by reference herein.

#### ARTICLE 11 – NON-DISCRIMINATION

CONTRACTOR shall treat all of its employees equally without regard to race, color, religion, gender, age or national origin.

#### ARTICLE 12 – SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of the 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 the AGREEMENT. Any void provision shall be deemed severed from the AGREEMENT and the balance of the AGREEMENT shall be construed and enforced as if the AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to reform the 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 section shall not prevent the entire AGREEMENT from being void should a provision which is of the essence of the AGREEMENT be determined to be void.

#### ARTICLE 13 - ENTIRETY OF AGREEMENT

The CITY and CONTRACTOR agree that this AGREEMENT, including the Request for Bid and CONTRACTOR’s response to said request incorporated by reference and attached hereto, sets forth the entire AGREEMENT between the parties, and that there are no promises or understandings other than those state herein. This AGREEMENT supersedes all prior contracts, representations, negotiations, letters or other communications between the CITY and

CONTRACTOR pertaining to the services, whether written or oral. None of the provisions, terms and conditions contained in this AGREEMENT may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

#### ARTICLE 14 – MODIFICATION

The AGREEMENT may be modified in writing by Amendment executed by both CITY and CONTRACTOR.

#### ARTICLE 15 – SUCCESSORS AND ASSIGNS

CITY and CONTRACTOR bind themselves and their partners, successors, assigns and legal representatives to this AGREEMENT. CONTRACTOR shall not assign this AGREEMENT without the express written approval of the CITY.

#### ARTICLE 16 – NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As To CITY                      CITY OF NORMAN, OKLAHOMA  
   P.O. Box 370  
   Norman, Oklahoma 73070  
   (Attn: Bob Hanger)

As To CONTRACTOR        TFR Enterprises, Inc.  
   601 Leander Drive  
   Leander, Texas 78641  
   Tiffany Wilkes

#### ARTICLE 17 – GOVERNING LAW.

The parties agree that this Agreement shall be governed by the laws of the State of Oklahoma.

#### ARTICLE 18 – BOND

Upon issuance of a Notice to Proceed or Task Order, CONTRACTOR will provide such bonds as described in the Request for Bid attached hereto.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this AGREEMENT.

DATED this 22<sup>nd</sup> day of December, 2009

CITY OF NORMAN, OKLAHOMA

By: Cindy Rosenthal  
Mayor Cindy Rosenthal

ATTEST:

By: Brenda Hall  
Brenda Hall, City Clerk



Approved as to form and legality this 22 day of December, 2009.

CONTRACTOR

[Signature]  
City Attorney

By: [Signature]  
Name: Tipton F. Rowland  
Title: President

ATTEST:

By: Jellie Rowland  
Title: Secretary

**PROPOSER'S BID CERTIFICATION FORM**

To Whom It May Concern:

I have carefully examined the Request for Bid and any other documents accompanying or make a part of this Request for Bid.

I hereby propose to perform the following prices as specified in this Request for Bid No. 0000-00 at the rates described on **SCHEDULE 1 – HOURLY EQUIPMENT AND LABOR PRICE SCHEDULE and SCHEDULE 2 – UNIT RATE PRICE SCHEDULE**. I understand that all debris quantities listed in "SCHEDULE 2 – UNIT RATE PRICE SCHEDULE" are estimates only and actual totals will be based on post event analysis.

I certify that all information contained in this Bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this Bid on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this Bid is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a Bid for the same product or service; no officer employee or agent of the City of Norman or any other proposer is interested in said Bid; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

It is distinctly understood that the Board of City Commissioners reserves the right to reject any or all Bids.

TER Enterprises, Inc.  
NAME OF FIRM

[Signature]  
AUTHORIZED SIGNATURE

Tipton F. Rowland, President  
NAME & TITLE, TYPED OR PRINTED

601 Leander Drive  
MAILING ADDRESS

Leander, Tx. 78041  
City, STATE, ZIP CODE

Federal Tax ID: 72-1149862

Phone: (512) 200-3322

Fax: (512) 528-1942

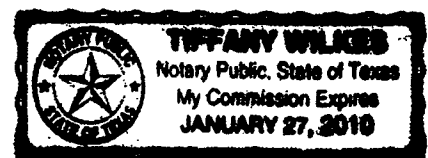
Email: tiffanyw@tfrinc.com

Subscribed and sworn to before me this 11<sup>th</sup>  
day of November, 2009

Notary Public Tiffany Wilkes

My Commission expires: January 27, 2010

(SEAL)



### SCHEDULE 1 – HOURLY EQUIPMENT AND LABOR PRICE SCHEDULE

Equipment Type – Ref. to Section No. 24.1 of RFB	Hourly Equipment Rate
Bobcat Loader	\$ 70.00
Bucket Truck w/Operator	150.00
Crash Truck w/Impact Attenuator	135.00
Dozer, Tracked, D5 or similar	95.00
Dozer, Tracked, D6 or similar	125.00
Dozer, Tracked, D7 or similar	175.00
Dozer, Tracked, D8 or similar	250.00
Dump Truck, 18 CY-20 CY	70.00
Dump Truck, 21 CY-30 CY	80.00
Generator and Lighting	15.00
Grader w/12' Blade	145.00
Hydraulic Excavator, 1.5 CY	165.00
Hydraulic Excavator, 2.5 CY	185.00
Knuckleboom Loader	145.00
Lowboy Trailer w/Tractor	125.00
Mobile Crane (Adequate for hanging limbs/leaning trees)	170.00
Pickup Truck, .5 Ton	15.00
Truck, Flatbed	65.00
Water Truck	65.00
Wheel Loader, 2.5 CY, 950 or similar	110.00
Wheel Loader, 3.5 – 4.0 CY, 966 or similar	125.00
Wheel Loader, 4.5 CY, 980 or similar	140.00
Wheel Loader-Backhoe, 1.0 – 1.5 CY	85.00
Other – Please List	

Labor Category	Hourly Labor Rate
Operations Manager w/Cell Phone and Pickup	70.00
Crew Foreman w/Cell Phone and Pickup	59.00
Tree Climber/Chainsaw	65.00
Laborer w/Chain Saw	47.00
Laborer w/small tools, traffic control, or flagperson	29.00

SCHEDULE 2 - UNIT RATE PRICE SCHEDULE Reference to Section 24 of RFB			
<b>25.2 ROW Vegetative Debris Removal (Collect &amp; Haul)</b> Work consists of collection and transport of vegetative debris on the ROW to a City approved DMS or other designated disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	4.20	536,000	2,251,200.00
<b>25.3 ROW C&amp;D Debris Removal (Collect &amp; Haul)</b> Work consists of collection and transport of C&D debris on the ROW to a City approved DMS or other designated disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	4.80	80,000	384,000.00
<b>25.4 Private Property Vegetative Debris Removal</b> Work consists of collection and transport of vegetative debris on the private property to a City approved DMS or other designated disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	4.20	60,600	254,520.00
<b>25.5 Private Property C&amp;D Debris Removal</b> Work consists of collection and transport of C&D debris on private property to a City approved DMS or other designated disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	4.80	37,600	180,480.00
<b>25.6 City Parks and Other City Property Vegetative Debris Removal</b> Work consists of collection and transport of vegetative debris from City parks or other City property to a City approved DMS or other designated disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	4.20	100,000	420,000.00
<b>25.7 Removal of Hazardous Leaning Trees and Hanging Limbs in City Parks and Other City Property</b> Work consists of removing hazardous leaning trees or hanging limbs from City parks or other City property.	\$ Per Tree	Estimated Tree Total	Total
6 inch to 11.99 inch diameter	75.00	300	22,500.00
12 inch to 23.99 inch diameter	85.00	200	17,000.00
24 inch to 35.99 inch diameter	105.00	100	10,500.00
36 inch to 47.99 inch diameter	195.00	20	3,900.00
48 inch and larger diameter	285.00	10	2,850.00
	\$ Per Tree	Estimated Tree Total	Total
Hangers greater than two (2) inches in diameter	70.00	2,660	186,200.00
<b>25.8 Removal of Hazardous Stumps from City Parks and Other Public Property</b> Work consists of removing hazardous stumps and placing them on the ground for haul-off.	\$ Per Unit	Estimated Units	Total
24 inch to 35.99 inch diameter	145.00	50	12,250.00
36 inch to 47.99 inch diameter	245.00	30	1,350.00
48 inch and larger diameter	385.00	10	3,850.00
<b>25.9 DMS Management and Operation</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary to manage and operate a DMS on an inbound debris basis.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	1.10	536,000	589,600.00
<b>25.10 Chipping (Reduction of Storm Generated Debris)</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary to reduce storm generated debris by chipping.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	.90	653,600	588,240.00
<b>25.11 Haul-out of Reduced Debris to Final Disposal Site</b> Work consists of collection and transport of reduced debris from a DMS to a City approved final disposal facility.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	3.80	130,800	497,040.00



<b>25.12 Removal of ROW Hazardous Leaning Trees and Hanging Limbs</b> Work consists of removing hazardous leaning trees or hanging limbs and placing them on the ROW for haul-off.	\$ Per Tree	Estimated Tree Total	Total
6 inch to 11.99 inch diameter	75.00	500	37,500.00
12 inch to 23.99 inch diameter	85.00	300	25,500.00
24 inch to 35.99 inch diameter	105.00	200	21,000.00
36 inch to 47.99 inch diameter	195.00	10	1,950.00
48 inch and larger diameter	285.00	5	1,425.00
	\$ Per Tree	Estimated Tree Total	Total
Hangers greater than two (2) inches in diameter	10.00	23,250	1,022,500.00
<b>25.13 Removal of Hazardous Stumps from City ROW</b> Work consists of removing hazardous stumps and placing them on the ROW for haul-off.	\$ Per Unit	Estimated Units	Total
24 inch to 35.99 inch diameter	145.00	50	7,250.00
36 inch to 47.99 inch diameter	245.00	30	7,350.00
48 inch and larger diameter	385.00	10	3,850.00
<b>25.14 Household Hazardous Waste Removal Transport and Disposal</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary for removal, transportation and disposal of HHW.	\$ Per Pound	Estimated Pounds	Total
	2.75	100,000	275,000.00
<b>25.15 Canals and Waterways Debris Removal (Collect &amp; Haul)</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary for removal, transportation and disposal of debris from City canals and waterways.	\$ Per Cubic Yard	Estimated Cubic Yards	Total
	11.90	5,000	59,500.00
<b>25.16 Abandoned Vehicle Removal</b> Work consists of the removal of abandoned vehicles in areas identified and approved by the City and subsequently transported to a City approved staging area.	\$ Per Unit	Estimated Units	Total
	125.00	100	12,500.00
<b>25.17 Animal Carcass Removal and Disposal</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary for removal, transportation and disposal of Animal Carcasses.	\$ Per Pound	Estimated Pounds	Total
	8.00	1000	8,000.00
<b>25.18 ROW White Goods Debris Removal (Collect &amp; Haul)</b> Work consists of all labor, equipment, fuel and miscellaneous costs necessary for removal, transportation and disposal of White Goods.	\$ Per Unit	Estimated Units	Total
	45.00	1000	45,000.00
<b>25.19 Freon Removal</b> Work Consists of the recovery and disposal of refrigerants from items containing Freon.	\$ Per Unit	Estimated Units	Total
	35.00	750	26,250.00
<b>Total Estimated Contract Price</b>		\$ 7,604,080.20	

\*\*Cradle to grave pricing for vegetative, stump and tree removal and disposal are encouraged and may be included by the Contractor for consideration by the City. If alternative pricing is included, the Contractor must specify which unit rate scope items are included. All estimates are derived using the Norman, Oklahoma Disaster Debris Management Plan. Estimates are calculated using a moderate disaster model and should not be considered actual totals. It is assumed that all portions of the above rate schedule may be necessary during debris removal and clearance operations.

\* please see attached additional pricing.