

THIS CONTRACT is made and entered into this the 1st day of July, 2009, by and between TOWN OF SOUTHERN SHORES, a body corporate and politic existing pursuant to the laws of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and Atlantic Tree Experts, (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

The TOWN shall divide the TOWN into four sectors and the CONTRACTOR shall be required to complete chipping and clearing for one sector per week on a schedule as proscribed by the TOWN. The CONTRACTOR shall only be paid for the completion of a sector within the week specified.

From September 1 to May 31 of each year under this contract the CONTRACTOR shall:

1. Pick up, chip and otherwise remove any and all brush and woody items found at the edge of the right-of-way and related materials such as vines and small roots. Contractor will not pick up pine straw, leaves, grasses, or limbs more than 5 inches in diameter.
2. Trim all trees and other vegetation (so as to enhance and train the "canopy") to a height of fifteen (15) feet above the asphalt portion of all TOWN streets and 10 feet above all TOWN maintained multiuse paths and for not less than five (5) feet on either side of the street, not less than one (1) foot on either side of the paths. In doing so, CONTRACTOR shall use its best efforts to protect the life of the tree or other vegetation being trimmed, to protect adjacent property owner landscaping that may be located in the right-of-way, and to protect landmark trees and other vegetation. CONTRACTOR shall pick up and dispose of trimmings in an appropriate and legal manner;
3. Deliver, when available, collected and chipped material to persons identified by TOWN as having requested the chipped material and shall place said material on the requester's property at a location identified by a sign displaying the word "chips;"
4. Complete each weekly sector by starting work in the TOWN no later than 12:00 Noon on Mondays (weather and other conditions permitting) and working continuously each day until a sector is completed. CONTRACTOR may begin the work day no earlier than 7:00 a.m., nor work later than 7:00 p.m. during the period Monday through Saturday. No work shall be performed on Sundays or the following holidays: New Year's Day, Good Friday, Memorial Day, Labor Day, Veterans Day, Thanksgiving Day and the day after Thanksgiving; Christmas Eve, Christmas Day and New Year's Eve;
5. CONTRACTOR shall be responsible to provide in proper repair and properly maintained equipment necessary for CONTRACTOR'S performance of this contract.

B. CONTRACTOR shall be available to provide unscheduled or emergency chipping services as the need might arise as determined by the Town throughout the year including, but not limited to, the period of June 1- August 31. The TOWN shall pay CONTRACTOR at the rate of one hundred eighty dollars (\$180) per hour and per crew for such services.

6. Chipping is only available for brush cut by homeowners. This chipping service is not for contractors or anyone doing major lot clearing.

7. This CONTRACT does not cover clean up of broken limbs and trees clearly caused by storm damage; wind storms, hurricanes, tornados, or a nor-easter. CONTRACTOR shall be compensated for such work at the hourly rate of one hundred eighty dollars (\$180) per hour, per crew.

2. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from July 1, 2009 to June 30, 2012 and shall continue thereafter for each succeeding one-year period until June 30, 2014 or such time as a new written contract is effective between the parties. Either party may nonetheless cancel this contract on ninety (90) days written notice to the other party by certified mail or personal delivery. This contract is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

3. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized report to the TOWN at the end of each week worked showing the area of the TOWN that has been serviced under this contract. Such weekly report shall be on a form as proscribed by the TOWN.

The TOWN shall pay the CONTRACTOR a total base contract amount of ninety three thousand three hundred twelve dollars (\$93,312) plus applicable fuel charge from July 1, 2009 to June 30, 2010; ninety two thousand dollars (\$92,000) annually plus applicable fuel surcharge from July 1, 2010 to June 30, 2012; and shall pay contractor ninety two thousand dollars (\$92,000) plus applicable fuel charge annually for each additional term of this agreement. The TOWN shall also pay the CONTRACTOR for any hourly services provided for pursuant to this CONTRACT at the hourly rates of compensation agreed to herein.

For the work completed From September 1 to May 31 of each contracted year the Town shall pay the CONTRACTOR in nineteen (19) equal installments every two weeks.

Due to rising cost of fuel prices, the CONTRACTOR will charge a monthly fuel surcharge for diesel fuel upon fuel cost exceeding two dollars and eighty five cents (\$2.85) per gallon as set forth below. The fuel surcharge will be based on a percentage of the two week draw, (pay period).

\$2.85-3.05-2%
\$3.06-3.26-3%
\$3.27-3.47-4%
\$3.48-3.68-5%
\$3.69-3.89-6%
\$3.90-4.10-7%

4. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent CONTRACTOR and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent CONTRACTOR and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

5. INSURANCE AND INDEMNITY

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-CONTRACTOR'S and of persons either directly or indirectly employed by CONTRACTOR.

The CONTRACTOR shall forthwith, upon execution of this agreement, procure at his own cost and expense, a minimum of one million dollars (\$1,000,000 dollars) in liability insurance, also appropriate vehicular, and Workman's Compensation insurance policies so as to protect the TOWN against any and all claims for accidents to employees of the CONTRACTOR and accidents and claims that any other person or persons may have or sustain, and against any and all claims and demands for the performance of this contract and any act or thing done and performed in connection with this contract.

The CONTRACTOR shall, within five (5) days of contract signing, furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN, verifying the existence of any insurance coverage required by the TOWN.

6. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

7. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further TOWN contracts.

8. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

9. OTHER PROVISIONS

This contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

10. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. The parties agree that this Contract supercedes all prior contracts between the parties.

11. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.

In Testimony Whereof, the parties have executed this Service Contract in duplicate originals the 12th day of July, 2009.

ATLANTIC TREE EXPERTS

By: Mark Fletcher
Its: OWNER

WITNESS OR ATTEST BY:

[Signature]

TOWN OF SOUTHERN SHORES

By: [Signature]
Its: TOWN MANAGER

ATTEST:

Carm Gordon
Town Clerk



This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Bonnie M. Swain
Finance Officer

