

# CITY OF JONESBORO

## EXHIBIT A

### MOWING CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this 4-7-09, by and between The City of Jonesboro (herein after referred to as the "City") and, Chad Colbert, d/b/a Colbert Lawn Service (hereinafter referred to as the "Contractor").

Contractor's Address: 300 Rosemary  
Bay, AR 72411

Contract Number 2009:13A

Phone: 870-219-5857

The City of Jonesboro, for the full, complete and faithful performance of this contract, agrees to pay to **Colbert Lawn Service**, in accordance with the terms and conditions as set out in the contractor's bid submitted to the city's finance department and dated March 9, 2009. Said bid sheets (pages 6, 7, and 8) are now attached as Appendix A to this contract. Specifically, Part A. City Offices of that contract is being awarded to **Colbert Lawn Service**.

#### SCOPE OF WORK

##### 1 Description of Work Required

##### 1.1 Work Required

- 1.1.1 The contractor shall furnish all labor, tools, materials, equipment and supervision necessary for the performance of all operations incidental to mowing, weed trimming, and shrub trimming to keep the improved areas of Jonesboro City property in a neat and orderly appearance. The frequency and performance of the work will be in accordance with the detailed specifications as set forth in this contract.
- 1.1.2 Grass is to be maintained with a "cut and trimmed" appearance during the entire growing season. "Cut and trimmed" is considered to be a maximum length of three (3) inches.
- 1.1.3 Bunches and rows resulting from mowing will be removed or raked out. Discharge from mowers does not need to be collected. Discharge may be left on lawn, but it must be evenly distributed (i.e. no clumping or rows left by mowers).
- 1.1.4 After mowing and trimming, grass clippings and other litter or debris shall be swept off sidewalks and other paved areas.
- 1.1.5 Contractor will be responsible for any damage sustained by plantings as a result of mowing.
- 1.1.6 Contractor will be responsible for any damage sustained to private or public property (i.e. glass breaks, playground equipment damage, etc.)
- 1.1.7 Loose debris will be removed from the path of mowers prior to cutting.
- 1.1.8 City will remove all trash from cans and attempt to de-litter city offices and fire stations on a daily basis; however mowers are not to mow through trash which may accumulate between litter servicing.
- 1.1.9 Contractor shall confer with the maintenance director regarding the mowing schedule. Green areas should not be mowed more than the scheduled frequency without prior approval.
- 1.1.10 In the fall, leaves shall be mulched as in regular mowing schedule.

##### 1.2 Mowing Period

- 1.2.1 It is expected that mowing will take place between April and October. It is recognized that the exact start and end of the mowing season depends on weather.

##### 1.3 Mowing Frequency at each Site

- 1.3.1 The contract will be awarded on the basis of a minimum number of annual cuts for each site, as set out below. It is expected that this number of cuts will be sufficient to keep these properties looking neat and tidy. Generally, the greater number of cuts will be done in May, June and July with fewer cuts during the late summer.

##### 1.4 Extra Cuts

- 1.4.1 It is understood that, depending on weather, more cuts may be required. Extra cuts will be compensated at the Per Cut rates set out in the contract: Appendix A
- 1.4.2 Any additional cuts must be approved by the City of Jonesboro before the work is done. The City of Jonesboro is not obliged to pay for any extra work that has not been approved in advance.

##### 1.5 Shrub Trimming Requirements

- 1.5.1 Trimming on all city shrubs in city beds will be performed as outlined in the maintenance levels in Section 2, Item 2.1.5.
- 1.5.2 The City of Jonesboro will prune all trees, including ornamental trees.
- 1.5.3 Deleted

**1.6 Equipment Requirements**

- 1.6.1 Contractor shall provide all equipment necessary to meet the terms of the contract.
- 1.6.2 Contractor shall maintain all equipment required to fulfill contract in safe and operable condition.

**1.7 Additional Facilities**

- 1.7.1 During the course of the contract it is likely that the City should request additional facilities be mowed under the terms of the mowing agreement. Should additional facilities need to be mowed the City shall negotiate the terms of the mowing with the contractor based upon the average cost per acre for similar facilities.

**2 Description of Sites to be Maintained:**

**2.1 Maintenance Levels are described as:**

**2.1 Level 2: A. City Offices and B. Fire Stations**

- 2.1.1 Turf Care: Grass cut once every seven days.
- 2.1.2 Weed Trimming: Trimming shall be done with a weed trimmer and grass should be trimmed to a maximum length of three (3) inches.
- 2.1.3 Irrigation: May be irrigated
- 2.1.4 Litter Control: Minimum of once per day. Five days a week by owner.
- 2.1.5 Shrub trimming will be performed once a month unless species planted require more frequent attention. Sculpted hedges or high growth species may dictate a more frequent requirement than most trees and shrubs in natural growth plantings.

**2.2 Level 4: C. Vacant Lots and D. Retention Ponds**

- 2.2.1 Turf Care: Grass cut every 10-14 days.
- 2.2.2 Weed Trimming: Trimming shall be done with a weed trimmer and grass should be trimmed to a maximum length of three (3) inches. Contractor may use chemicals to reduce the time spent on trimming. If chemicals are used, the areas shall not exceed four (4) inches in width.
- 2.2.3 Irrigation: None
- 2.2.4 Litter Control: None, however, contractor shall remove litter rather than mow through it.
- 2.2.5 Shrub Trimming: None

**3 Area and mowing frequency are described in chart below:**

**Mowing Chart**

List of properties included in this contract

<b>A. City Offices:</b>	<b>Address</b>	<b>Acres</b>	<b>Beds</b>	<b>Maint. Level</b>	<b>Freq.</b>
Animal Control	6119 E. Highland	0.50	No	Level 2	36
City Hall	515 W. Washington	0.18	Yes	Level 2	36
FAA Complex	Lindberg Dr.	0.56	Yes	Level 2	36
Huntington Building	900 W. Monroe	0.34	Yes	Level 2	36
Old Fire Station	Matthews/Caraway	1.28	Yes	Level 2	36
Police Station	410 W. Washington	0.10	Yes	Level 2	36
Station #2 (Old City Hall)	314 W. Washington	0.13	Yes	Level 2	36

**TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN THE CITY OF JONESBORO AND  
COLBERT LAWN SERVICE**

**THE CITY OF JONESBORO AGREES:**

1) **EXECUTION OF THE CITY OF JONESBORO'S MOWING CONTRACT:** IN CONSIDERATION of the Contractor's bid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by The City of Jonesboro, it is agreed, by and between the Contractor and the City, that The Contractor shall furnish and be responsible for supervision, material, labor, supplies, equipment, tools, appliances, etc., aforesaid necessary to be used in the completion of the Work in accordance with Scope of Work at their own cost and expense, and in accordance with the Contract Documents between City the Contractor. All of the Work shall be executed by skilled and reputable workmen and shall be in full compliance with the Contract Documents, and subject to approval and acceptance of the City. The Contractor shall obtain and pay for all necessary permits and licenses pertaining to the work and shall comply with all Federal, State and Municipal Laws, codes, ordinances, rules and regulations, whether provided for by the Contract Documents, or not so provided for without additional charge or expense to the City, and shall be responsible for any and all corrections of any violations thereof to the Work included in this Contract, and the Contractor shall indemnify and save harmless The City of Jonesboro from and against any and all loss, expense, damages or injury caused or occasioned directly or indirectly by its failure to comply with the provisions of the said laws, codes, ordinances, rules, regulations and requirements, and shall at time upon demand, furnish to The City of Jonesboro an affidavit showing such compliance on its part.

2) **SPECIFICATIONS**

A) **ERRORS & OMISSIONS:** The Contractor represents that it has examined the Contract Documents and is familiar with them and shall, prior to executing this Contract, call to the attention of The City of Jonesboro any errors or omissions contained therein.

B) **CONFLICT CLARIFICATION:** Should any of the Contract Documents contradict each other in any point, or require clarification; the Contractor must call the same to the attention of City of Jonesboro in writing prior to execution of this agreement. The City of Jonesboro's interpretation shall govern the scope and performance of the Work and no allowances shall be made in behalf of the Contractor for error or negligence on his part in this connection. Any deviation from the Contract Documents must be clearly noted in red or bold type, and underlined. Approval of deviation must be initialed by the City of Jonesboro. The Contractor's review in no way relieves the Contractor of the liability of supplying the materials in accordance with Contract Documents.

C) **INSPECTIONS:** Inspections of the areas maintained in the contract are the responsibility of the City of Jonesboro and will be reported to the contract manager to verify payments requested by the Contractor.

3) **BONDS:** Bonds for maintenance, guarantee of workmanship, and to insure prompt and faithful performance of the obligations of the Contract, shall be furnished, as specified or required by the Contract Documents, in forms and conditions acceptable to the City of Jonesboro. Said bond shall be equal to the total annual bid the Contractor has submitted for the specific area awarded by the City to the Contractor.

4) **PRIVITY/INDEPENDENT THE CITY OF JONESBORO:** The Contractor shall perform the Work as an independent. The Contractor has exclusive control of the manner and means of performing the Work in accordance with the requirements of the Contract. The Contractor has no authority to act or make any agreements or representation on behalf of The City of Jonesboro. No employee or agent

engaged by the Contractor shall be, or shall be deemed to be, an employee or agent of The City of Jonesboro.

5) **HOLD HARMLESS AGREEMENT:** The Contractor shall be responsible for his Work and every part thereof, and all of the work of every description undertaken or performed by its agents in connection therewith. The Contractor shall specifically and distinctly assume, and does assume, all risk of damage, injury or death from whatever cause to property or persons used or employed by The Contractor or his subcontractors Work, and of all damage, injury, or death from any cause to property wherever located or to any person whatsoever from any operation under this Contract or in any way connected with his Work and undertakes and promises to protect, defend and indemnify The City of Jonesboro against all claims on account of any such damage, injury or death. The Contractor further agrees to hold The City of Jonesboro harmless from the filing of any liens arising out of any work, labor, services and/or materials performed or provided in connection with The City of Jonesboro. Should any such lien be filed, The Contractor shall immediately cause same to be removed or reimburse The City of Jonesboro for all costs including cost and attorneys fees associated with removal of the lien.

6) **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall indemnify defend, protect and hold harmless The City of Jonesboro, its' employees, agents, officers, and all persons acting in concert with them from any and all claims, damages, loss and expenses for personal injury, bodily injury, property damage or other damage, including but not limited to attorney's fees and costs whether suit is brought or not, arising out of or relating to the performance or non-performance of Contractor's Work provided that:

A) any such claim, damage, loss or expense is attributable to bodily injury to or destruction of tangible property including the loss of use resulting therefore, the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of employed by the Contractor or anyone for whose acts the Contractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

B) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. The Contractor shall specifically and distinctly assume, and does assume, all risks of damage or injury from whatever cause to property or persons used or employed on or in connection with his work, and of all damage or injury from any cause to property or persons used or employed on or in connection with his work, and of all damage or injury from any cause to property wherever located, resulting from any action or operation with his work, and agree to protect and undertake defense of the City of Jonesboro against all claims on account of any such damage or injury.

This indemnification agreement shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for The Contractor under Worker's compensation Acts, disability benefit acts or other employee benefit acts.

7) **CERTIFICATE OF INSURANCE:** Contractor shall provide certificate of insurance on an approved form to The City of Jonesboro prior to commencement of Work and must state coverage will not be altered, canceled, or allowed to expire without thirty (30) days written notice by registered mail to The City of Jonesboro. The Certificate must specifically state that:

1. Contractual Liability (either specifically applicable to the Indemnity Agreement or Blanket) applies for General Liability.
2. Additional Insured Endorsement applies for General Liability and Umbrella Liability.
3. Waiver of Subrogation applies for General Liability and Workers compensation.
4. Per job aggregate applies for General Liability

Renewal Certificate must be furnished to The City of Jonesboro prior to expiration date of all policies noted therein.

8) **SCHEDULING AND COMMENCEMENT OF THE WORK:** Time is of the essence in the performance of this Contract. The Contractor shall commence the Work under this Contract as directed by The City. The Contractor will be provided with a "Notice to Proceed" on or about April 8, 2009.

9) **REMEDIES UPON DEFAULT:** The Contractor shall be in default under this Contract if A) refuses or fails to supply enough properly skilled workers, proper equipment, or maintain the Schedule of Work (Frequency), B) fails to execute and perform the Work or provide labor, work, materials, or services in accordance with any applicable Progress Schedule or Completion Date C) fails to comply with the terms of the Contract as to quality of workmanship, D) fails to make prompt payment for its workers, sub-contractor or suppliers, E)) disregards or fails to comply with any applicable laws, ordinances, rules regulations or orders of any public authority having jurisdiction, F) the occurrence of circumstances that reasonably leads the contractor to anticipate its inability to do its work properly (as determined solely by The City) or inability to complete the Work on schedule, inability to comply with any of the provisions of this Contract, or inability to meet the financial obligations that the Contractor will incur in the course of performance of this Contract in a timely manner, G) filing of a petition under any of the provisions of the federal Bankruptcy Code with respect to the Contractor, the commission of any act of bankruptcy as that term is used in connection with the Federal Bankruptcy Code by the Contractor, H) the appointment of a Receiver under the laws of any state with respect to the Contractor; I) the garnishment or attachment of funds due or coming due to the Contractor from The City; K) failure to commence or carry forward the Contractor's Work in accordance with the Project Schedule after notice; L) the insolvency the Contractor illustrated by his inability to meet his debts as they mature; M) the failure or refusal of the contractor to respond by written reply to or by satisfactory compliance with any written order or notification issued by The City of Jonesboro; N) or otherwise is guilty of a material breach of a provision of this Contract. If the Contractor fails within three (3) working days after receipt of written notice, sent via telefax, telegram, or overnight mail, to commence and continue satisfactory correction of such default with diligence and promptness, then The City of Jonesboro, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

A) Supply such number of workers and quantity of equipment the City deems necessary for the completion of the Work, or any part thereof which the contractor has failed to complete or perform to after the aforesaid notice;

B) Contract with one or more additional Contractors to perform such part of the Contractor's Work as The City shall determine will provide the most expeditious completion of the total Work;

C) Withhold payment of any monies due The Contractor pending corrective action to the extent required by and to the satisfaction of The City;

D) Without prejudice to any rights or remedies, terminate this Contract, and any loss resulting therefrom shall be borne by the Contractor.

E) Deduct from amount due the Contractor all damages to The City of Jonesboro for said delay, as determined by the City.

F) Take actions necessary to involve the Surety of the Performance Bond in completing and/or making payments for any remaining portion of the contract.

10) **NO ASSIGNMENT OR TRANSFER:** It is agreed that no part of this Contract or any sums payable hereunder will be assigned or sublet by the Contractor without prior written notice to or written approval by The City of Jonesboro.

11) **PAYMENT:** Subject to the faithful performance by the Contractor of all the covenants and the conditions aforesaid, The City of Jonesboro agrees to pay the Contractor the sum aforesaid, to be paid as the Work progresses.

#### **PAYMENT REQUEST PROCEDURES**

##### 1. Payment Requests

a) Payment Requests Invoice) shall be delivered to City Hall (515 W. Washington Ave., Jonesboro, AR), no later than the 5th of the month for work completed the previous month.

(b) Payment Request (Invoice) will reflect actual properties serviced number of times each property was serviced, price per service as reflected on Attachment A, and sales tax.

c) The maintenance supervisor shall verify payment requests. Copies of the invoice should be delivered or faxed to the maintenance supervisor as listed on your "Notice to proceed".

2. Payment

a) Payments shall be released or mailed to the Contractor on or about the 10<sup>th</sup> of each month for requests turned in by the 5<sup>th</sup> of the month. Payments turned in after the 5<sup>th</sup> of the month may not be released or mailed till the 25<sup>th</sup> of the month.

12) **PROTECTION OF THE WORK:** The Contractor shall take necessary precautions to properly protect the Contractor's Work and the work of others from damage caused by the Contractor's operations. Should the Contractor cause damage to the Work, the property of The City of Jonesboro or private property, or property of others, the Contractor shall promptly remedy such damage to the satisfaction of the City of Jonesboro or the property owner, or the City of Jonesboro may so remedy and deduct the cost thereof from any amounts due or to become due the Contractor. The City of Jonesboro shall not be responsible for loss or damage to the Work included in this Agreement. All materials damaged, lost or stolen shall be promptly repaired or replaced by Contractor at no cost to City of Jonesboro. Subcontractor shall be totally responsible for loss or damage, however caused, to materials, tools, or appliances of the Contractor used or to be used in performance of work under this Agreement.

13) **SAFETY:** The Contractor, its agents, employees, laborers, and sub-subcontractors shall perform all work at the various facilities in this contract in a safe and responsible manner.


14) **CHANGE ORDERS:** During the course of the contract it is likely that the City should request additional facilities be mowed under the terms of the mowing agreement. Should additional facilities need to be mowed the City shall negotiate the terms of the mowing with the contractor based upon the average cost per acre for similar facilities in the Contractor's bid at Appendix A. It is also likely that as additional facilities are added, current facilities may be deleted from the contract. In this event, the Contractor shall be notified that a property has been deleted and will no longer be serviced by the Contractor. No change or payment can be authorized unless approved by the City and the Contractor.

15) **NOTICES:** Any notice required pursuant to the terms of this Contract shall be in writing and shall only be effective if delivered to Contractor. Any other notice provided shall be deemed ineffective unless noted is also provided in the foregoing manner.

16) **CONTRACT PERIOD and EXTENSION:** This contract is effective during calendar 2009 and may be awarded for two additional years if both parties agree. Prior to a contract extension the Contractor can request changes to per site mowing costs based on reasonable inflationary factors. The City can accept the increase in costs or decline and rebid the contract.

Date: 4-3-09

Chad Colbert d/b/a  
Colbert Lawn Service

  
\_\_\_\_\_  
Signature

Chad Colbert Owner  
\_\_\_\_\_  
Printed name and title