

INTERAGENCY AGREEMENT

THIS CONTRACT is entered into between the Oklahoma Department of Environmental Quality, an agency of the State of Oklahoma, hereinafter referred to as "DEQ" or "the State" and the City of Broken Arrow, hereinafter referred to as "CONTRACTOR" (collectively referred to as the "Parties").

WHEREAS, DEQ has the jurisdictional area of environmental responsibility over the prevention, control and abatement of pollution caused by solid waste which presents a threat to human health or the environment, under provisions of 27A O.S. § 1-3-101 and 27A O.S. § 2-10-202;

WHEREAS, the Executive Director of DEQ is authorized under the provisions of 27A O.S. §§ 2-3-201 and 2-3-202 to enter into contracts for the purpose of carrying out any of the purposes, objectives or provisions of the Environmental Quality Code, Title 27A of the Oklahoma Statutes, for which DEQ has jurisdiction;

WHEREAS, DEQ is authorized under the provisions of 27A O.S. § 2-10-802(C) to expend funds and enter into contracts with units of local government and political subdivisions of this State for purposes of administering the Oklahoma Solid Waste Management Act;

WHEREAS, CONTRACTOR is a municipality and thus a political subdivision of the state;

WHEREAS, CONTRACTOR is eligible to provide the services for which DEQ may contract; and

WHEREAS, DEQ and CONTRACTOR desire to enter into this Contract for CONTRACTOR to purchase equipment to manage green waste material including storm debris, brush and other non-contaminated wood waste generated on a routine on-going basis.

Under the authority of Title 27A O.S. §§ 2-3-201 and 2-3-202, DEQ hereby agrees to grant the CONTRACTOR funding for reimbursement of expenses related to the purchase of a brush and wood chipper, or similar equipment as agreed by both parties, for managing green waste. Attachment A provided by CONTRACTOR is an example of such equipment that may be allowed.

Requirements for DEQ Funds:

1. This Contract is to provide for reimbursement of the cost to purchase a brush and wood chipper for managing storm debris, brush and other uncontaminated wood waste.
2. Records and accounts shall be maintained, including property, personnel and financial records that properly document and account for all contract funds in conformance with Generally Accepted Accounting Principles (GAAP). Effective control and accountability is maintained for all funds, property and other assets.
3. Equipment means tangible, non-expendable property having useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit.
4. CONTRACTOR is responsible for properly maintaining equipment and for obtaining all necessary permits associated with use.

5. CONTRACTOR shall coordinate with DEQ to allow for inspection of the equipment at its deployed location, at the time of, or prior to, its initial use.
6. CONTRACTOR certifies that equipment proposed for administering this Contract is not already on hand and is required for the operation of the Contract. Equipment acquired with DEQ funds must be used in the program or project for which it was acquired.
7. CONTRACTOR must maintain records of property acquired with DEQ funds from the date of acquisition through final disposition. A control system must be developed to ensure adequate safeguards against loss, damage, or theft, adequate property records must be maintained, and a physical inventory must be completed at least once every two years.
8. CONTRACTOR may use, manage, and dispose of equipment purchased in accordance with State laws and procedures. Equipment purchased with DEQ funds may not be offered as collateral in any transactions, or sold within three (3) years from the date of purchase unless otherwise agreed by DEQ.
9. In consideration of CONTRACTOR's completion of the work described, DEQ shall reimburse CONTRACTOR for eligible costs not otherwise reimbursed by another funding source. The maximum value of this Contract shall not exceed \$50,000.00; however, DEQ must be billed for exact cost of the allowable services under this agreement; no overage will be paid.
10. The Contract shall be in effect for the period from the date the contract is signed by both parties, or the day an executed Purchase Order has been issued, whichever is later through June 30, 2020.
11. All efforts shall be made by CONTRACTOR to recognize DEQ as a source of funding when describing the project to the public or media, in social media posts and on any signage or printed materials related to the project.

In consideration of the mutual covenants, Contracts, terms, conditions and provisions hereof, the Parties agree as follows:

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A. GENERAL PROVISIONS

A.1. CONTRACT MODIFICATION

A.1.1. The Contract may be modified only through a written Contract Modification. Any modification or amendments to the Contract must be in writing, agreed to by both parties, and approved by DEQ.

A.1.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by DEQ Purchasing Division in writing, or made unilaterally by the CONTRACTOR, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and CONTRACTOR shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract.

A.2. ASSIGNMENT

A.2.1. CONTRACTOR understands and agrees that the Contract cannot be assigned or transferred without written authorization from DEQ.

A.3. INVOICING AND PAYMENT

A.3.1. Pursuant to 74 O.S. § 85.44(B), invoices will be paid on a reimbursement basis. To receive payment, CONTRACTOR shall submit to DEQ a complete and accurate invoice reflecting activity performed, cost incurred, the period of time in which the services were provided, the CONTRACTOR's FEI number and the assigned Purchase Order number. Invoices shall be submitted monthly. The invoice shall be submitted to:

Oklahoma Department of Environmental Quality
Attention: Patrick Riley, LPD
PO Box 1677
Oklahoma City, OK 73101-1677

A.3.2. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. § 34.71 and 62 O.S. § 34.72.

A.3.3. Pursuant to Title 62 of the Oklahoma State Statutes, the State's payment terms are net 45 days from receipt of accurate invoice, which is subject to DEQ approval.

A.3.4. Purchase Order Number must appear on all invoices. If CONTRACTOR

fails to provide purchase order number, it may result in the delayed payment of the invoice.

A.3.5. CONTRACTOR shall not invoice DEQ for services required under the Contract for which the CONTRACTOR has already received, or will receive compensation for the same services from sponsor or another source (e.g. any Federal, State, Local government or private entity). CONTRACTOR may seek additional funding from another source to enhance the services for which DEQ is providing compensation.

A.3.6. When submitting invoices, CONTRACTOR shall certify that all expenses identified in the invoice have not and will not be paid for through any other grant, reimbursement, or sponsorship program.

A.4. TAX EXEMPTION

A.4.1. State agency acquisitions are exempt from sales taxes and federal excise taxes. CONTRACTORS shall not include these taxes in invoices.

A.5. AUDIT AND RECORDS CLAUSE

A.5.1. **AUDITS:** It is further understood and agreed that books, records, documents, accounting procedures, practices or any other items of the CONTRACTOR relevant to the Contract are subject to examination by DEQ and the Oklahoma State Auditor and Inspector upon request. CONTRACTOR is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract.

A.6. MONITORING AND FINANCIAL COMPLIANCE REVIEW

A.6.1. DEQ, through any authorized representative, has the authority, at reasonable times, to inspect, investigate or otherwise evaluate the services performed under this Contract and financial transactions related thereto. Such inspections, investigations or evaluations may be conducted on the premises where the services are being performed.

A.6.2. If any inspection, investigation or evaluation is conducted by DEQ, CONTRACTOR shall provide all reasonable assistance necessary.

A.6.3. All inspections, investigations or evaluations shall be performed in such manner as will not unduly interfere with the CONTRACTOR's performance of the services. DEQ shall have access to and the authority to examine and copy all records related to this Contract and the services to be provided under it at any time during the period such records are required to be maintained or retained by the

CONTRACTOR. DEQ will not impose an unreasonable administrative burden on CONTRACTOR. CONTRACTOR shall establish and maintain confidential files or otherwise make such files available at the service delivery site for all program personnel and service recipients.

A.7. UNALLOWABLE COSTS

A.7.1. In the event any audit, audit resolution, review, monitoring, or any other oversight results in the determination that CONTRACTOR has expended DEQ funds on unallowable costs on this or any previous Contract, CONTRACTOR shall reimburse DEQ in full for all such costs on demand. DEQ may, at its sole discretion, deduct and withhold such amounts from subsequent payments to be made to the CONTRACTOR under this or other contracts.

A.8. APPEAL

A.8.1. In the event any audit resolution, review, monitoring, or oversight results in the determination that DEQ has overpaid the CONTRACTOR for this or any previous Contract, CONTRACTOR has a right to file a written appeal to the DEQ Executive Director. DEQ will consider the appeal before final action or reimbursement is sought by DEQ. Payments under the Contract will continue while the appeal is pending unless the Contract is otherwise terminated.

A.9. CHOICE OF LAW

A.9.1. Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

A.10. CHOICE OF VENUE

A.10.1. Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

A.11. TERMINATION FOR CAUSE

A.11.1. The CONTRACTOR may terminate the Contract for default or other just cause by giving thirty (30) days written request for termination and upon written approval from the DEQ Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the CONTRACTOR.

A.11.2. The State may terminate the Contract immediately, without a 30-day written notice to the CONTRACTOR, when violations are found to be an impediment to

the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance.

- A.11.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services rendered and accepted prior to the effective date of the contract termination.

A.12. TERMINATION FOR CONVENIENCE

- A.12.1. The State may terminate the Contract, in whole or in part, for convenience if DEQ determines that termination is in the State's best interest. DEQ shall terminate the Contract by delivering to the CONTRACTOR a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by DEQ Executive Director or designee.

- A.12.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the CONTRACTOR.

A.13. TERMINATION/CONTRACT REDUCTION DUE TO LACK OF FUNDING

- A.13.1. DEQ may terminate the Contract in the event that DEQ is not granted funding to pay for the services herein described or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds. Reallocation of budgeted funds is at the sole discretion of DEQ. DEQ shall notify CONTRACTOR of any such termination by delivering to the CONTRACTOR a Notice of Termination Due to Lack of Funding, specifying the terms and effective date of Contract termination. The effective date of termination shall be specified in the notice.

- A.13.2. In the event DEQ experiences a budget reduction for any reason or experiences a revenue failure or reallocates funding at its discretion, DEQ may reduce the Contract amount. Notice of such reduction shall be sent in writing to the CONTRACTOR.

A.14. COMPLIANCE WITH APPLICABLE LAWS

A.14.1. CONTRACTOR certifies that all services are provided without discrimination on the basis of race, color, national origin, creed, political affiliation, age, sex or handicap.

A.14.2. CONTRACTOR and any subcontractors shall comply with all applicable state and federal laws including any regulations and rules promulgated by any governmental authorities which are applicable to the Contract. Observance of and compliance with these requirements shall be the sole responsibility of CONTRACTOR, without reliance on or direction by DEQ.

A.15. SPECIAL PROVISIONS

A.15.1. Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

A.16. INDEMNITY

A.16.1. Unless prohibited by Article 10 of the Oklahoma Constitution, CONTRACTOR agrees to indemnify and hold DEQ harmless against any and all bodily injuries and property damages, civil rights violations, deficiencies or liability resulting from any action, inaction or conduct on the part of CONTRACTOR or non-fulfillment of any term or condition of this Contract. Unless prohibited, by Article 10 of the Oklahoma Constitution, CONTRACTOR shall indemnify and hold DEQ harmless under this Contract from any and all assessments, judgments, costs including attorneys' fees, and legal and other reasonable expenses incidental to any of the foregoing.

A.16.2. CONTRACTOR agrees to ensure that any subcontractor under this Contract shall indemnify and hold DEQ harmless from any and all claims for bodily injuries, property damages, or other liabilities whatsoever arising from the subcontractor's actions, inaction, or other conduct relate to or arising from this Contract.

A.17. LIABILITY

A.17.1. The parties agree that each entity shall be responsible for its own negligence, if any, in the delivery of service pursuant to this Contract. Neither party, by executing this Contract, assumes any liability for acts of omission or commission of the other.

A.18. SEVERABILITY

A.18.1. If any provision under this Contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Contract or its application that can be given effect without the invalid provision or application.

A.19. INTERPRETATION REMEDIES

A.19.1. In the event of any disagreement between CONTRACTOR and DEQ relating to the technical competence of the work and services being performed and its conformity to the requirements of this Contract, the decision of DEQ shall prevail.

B. SPECIAL PROVISIONS

B.1. NOTICES

B.1.1. All notices or other communication shall be in writing by letter or email. All notices given by telephone shall be confirmed in writing within two (2) working days of such notice. All written notices and invoices shall be forwarded to one of the following applicable addresses:

DEQ:

Patrick Riley
Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

CONTRACTOR:

Kenny Schwab, Assistant City Manager
City of Broken Arrow
PO Box 610
Broken Arrow, OK 74013-0610

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:

Kenneth D. Schwab

Signature of Person Authorized to Sign

01-23-20

Date

KENNETH D. SCHWAB

Printed Name

ASSISTANT CITY MANAGER

Title

kschwab@brokenarrowok.gov

E-mail

Signature of DEQ Executive Director, or
Director of Administrative Services

Date

Attachment A

Community Based Environmental Protection Projects

Request to enter contract for reimbursement

The Oklahoma Department of Environmental Quality (DEQ) has the jurisdictional area of environmental responsibility over the prevention, control and abatement of pollution caused by solid waste which presents a threat to human health or the environment, under provisions of 27A O.S. § 1-3-101 and 27A O.S. § 2-10-202; and

The Executive Director of DEQ is authorized under the provisions of 27A O.S. §§ 2-3-201 and 2-3-202 to enter into contracts for the purpose of carrying out any of the purposes, objectives or provisions of the Environmental Quality Code, Title 27A of the Oklahoma Statutes, for which DEQ has jurisdiction.

DEQ is authorized under the provisions of 27A O.S. § 2-10-802(C) to expend funds and enter into contracts with units of local government and political subdivisions of this State for purposes of administering the Oklahoma Solid Waste Management Act. Funding is limited.

Grant money is not guaranteed. Funding is limited. DEQ's ability to fund requests to local governments is entirely dependent on the amount of money available to DEQ to issue grants.

The following information must be provided before a contract for reimbursement will be considered.

1. Name of organization: City of Broken Arrow, OK – Stormwater Division
2. Contact information for organization
 - a. Name: Tim Wilson, Stormwater Superintendent
 - b. Phone number: (918) 259-7000 Ext: 7388 Fax: (918) 259-8376
 - c. Email address: twilson@brokenarrowok.gov
 - d. Mailing address: P.O. Box 610 Broken Arrow, OK 74013-0610
3. Signatory Authority for organization (has legal authority to sign contract with DEQ)
 - a. Name: Kenny Schwab, Assistant City Manager
 - b. Phone number: (918) 259-7000 Ext: 5429 Fax: (918) 259-8226
 - c. Email address: kschwab@brokenarrowok.gov
 - d. Mailing address: P.O. Box 610 Broken Arrow, OK 74013-0610

4. Project Description. (may attach additional pages as necessary):

At a minimum describe:

- a. What type of solid waste will be managed with this project? Green waste material
- b. How is this waste currently managed? Currently taken to landfill with household trash
- c. Will the requested funding be used to purchase equipment and/or supplies? If so describe. The Stormwater division would like to purchase an 18" wood chipper for the purpose of chipping up the green waste and utilizing the chips as mulch within our parks and recreation facilities. Include specifications and a cost estimate, if available. As you may aware, the City would have to advertise for bid for the purchase of a wood chipper, and would like to purchase something similar to a Vermeer BC1800 XL Brush Chipper. The cost of this machine will be \$50,000.
- d. Will funding be used to pay for labor? No, the City will use existing City employees to provide the labor for the green waste site.
- e. What is the total cost of the program? This is just one part of the City's proposed recycling program, estimated funds to be reallocated to curbside recycling is \$680,000 annually. We expect just the green waste site to cost \$150,000 annually for labor and equipment.
- f. How much of total program cost will be requested for reimbursement? A one-time reimbursement of \$50,000 for the purchase of the wood chipper.
- g. Who will be served by the program (municipalities, county, region, estimate population)? We plan to separate tree waste from our solid waste stream and utilize the chips as mulch within our parks and recreation facilities. The 115,000 citizens of the City of Broken Arrow will be beneficiary of this program.
- h. How long do you intend for the program to remain in place? Perpetual
- i. What is the environmental benefit of this project? (e.g. waste reduction, resource conservation, pollution prevention, litter abatement, education) ? We hope to pull an enormous amount of tree waste from the waste stream and hopefully save a lot in tipping fees each year. Environmentally and economically, it is the right thing to do for our community.
- j. How will benefits be measured? In reduced annual tipping fees & from usable mulch made from the greenwaste and used in our City parks.
- k. Are you partnering with anyone else to implement this program? This is a stand-alone project for the City.

- k. Are you partnering with anyone else to implement this program? This is a stand-alone project for the City.

Return information by email if possible or send a hard copy to:

Oklahoma Department of Environmental Quality
Attn: Patrick Riley, Land Protection Division
P.O. Box 1677
Oklahoma City, OK 73101-1677
Phone: 405-702-5100
Fax: 405-702-5101
Email: patrick.riley@deq.ok.gov

Overview of Program:

On November 5, 2019 the City Council approved a curbside recycling program for the residents of Broken Arrow. The approved recommendation includes:

- Issuing all customers a 96-gallon recycling cart with the option to opt-out
- Issuing all customers a black refuse cart with multiple size options
- Implementing a walk-up service for disabled and elderly customers
- Discontinuation of the City-provided trash bag program
- Replenishing the City's sanitation fleet with automated trucks for collecting recyclables

Broken Arrow sanitation crews collect approximately 3,100 tons of refuse monthly. The average Broken Arrow household generates about 203 pounds of solid waste per month. Refuse is currently taken to the Covanta Energy Waste Facility. Covanta is approximately 15 miles from the center of Broken Arrow.

Our Stormwater Department is responsible for the tree trimming and creek clearing in our City. We generate a lot of waste that is currently hauled to one of the Tulsa landfills. Our Stormwater crews want to contribute to the new recycling venture coming in 2020, so after much consideration we would like pull the green waste materials out of the waste stream. The Stormwater crews would like to take the green waste and run through a wood chipper and utilize the chips as mulch within our parks and recreation facilities. Having a wood chipper would make this dream a reality and would greatly benefit the residents of Broken Arrow.

Thank you in advance for the opportunity!

CITY OF BROKEN ARROW

Tim Wilson, Stormwater Superintendent

PR/last update 6/17/19

