

**DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA**

DITCH MOWING SERVICES AGREEMENT

This Ditch Mowing Services Agreement (“Agreement”) is made this 8th day of June, 2017, by and between Denmark Township, Washington County, Minnesota, 14008 90th Street South, Hastings, MN 55033 (“Town”) and Tri County Services, Inc., 14235 80th Street South, Hastings, MN 55033 (“Contractor”). In consideration of the mutual promises and agreements hereinafter set forth, and intending to be legally bound thereby, the parties do hereby agree as follows:

- 1. Term.** This Agreement shall commence on the date indicated above and shall terminate at the end of the 2019 mowing season, but no later than November 1, 2019.
- 2. Scope of Services.** Contractor will mow road ditches that are located within Town road right-of-ways at the times and in the manner as set forth by the “Denmark Township Ditch Mowing Policy” (“Policy”), which is attached to this Agreement as Exhibit A, and in this Agreement (collectively “Mowing Services”). Mowing Services are only to be provided on Town road rights-of-way which the Town Board has accepted for public maintenance. Any questions regarding whether Mowing Services should be provided on a particular road or portion of road shall be directed to the Town officer in charge of the supervision of roads (“Road Supervisor”). Mowing Services will consist of cutting grass, weeds and brush in the ditches adjacent to Town right-of-ways, including mowing around all permanent obstacles as necessary, performed in accordance with the Policy. Unless directed otherwise by the Road Supervisor, Mowing Services shall not be performed beyond the line of any adjacent utility poles, which are generally considered to mark the edge of the right-of-ways. Contractor will perform the Mowing Services in an orderly and workmanlike manner. Contractor is solely responsible for providing all necessary personnel, equipment and tools to perform the Mowing Services. Contractor will perform the Mowing Services with care in a timely and competent fashion and will take all steps necessary to protect the public from injury arising from Contractor’s performance under this Agreement.
- 3. Payment.** Town will pay Contractor at a rate of \$85/hour for the Mowing Services. This rate is all inclusive and covers payment for the Mowing Services which includes any salaries, wages, and other personnel costs of Contractor, sales and other taxes, equipment and tool costs, fuel costs and any and all other costs and expenses. Town will not provide the Contractor with any training with respect to the skills needed to perform the services required by this Agreement. Contractor must submit a claim for payment to Town identifying the location (by road name), number of hours and dates of the Mowing Services performed in time for Town’s monthly board meeting, which is held on the first Monday of each month. Failure by Contractor to submit a completed claim form to the Town Clerk by 12 noon on the Wednesday before the regular Town Board meeting may delay consideration of the claim until the following monthly meeting. The Contractor will be issued a 1099 for the payments received from Town for services under this Agreement.

- 4. Independent Contractor.** Contractor agrees it is an independent contractor for all purposes and nothing herein shall be construed as creating an employment relationship. Contractor acknowledges that any general instruction that it may receive from Town will have no effect on its status as an independent contractor. Contractor is not eligible to receive workers' compensation, unemployment insurance, employee pension, health insurance, vacation or sick pay or any other benefit or compensation from Town. Contractor is responsible for withholding, reporting and paying any taxes on the payments that it receives from Town. Upon demand, Contractor shall provide Town with proof that such payments have been made. This Agreement does not create a partnership relationship or joint venture between Town and Contractor. Contractor does not have the authority to enter into contracts on Town's behalf.
- 5. Insurance.** Contractor shall maintain during the entire term of this Agreement insurance policies providing at least \$1,000,000 of general liability coverage applicable to the services provided under this Agreement. Contractor shall also carry workers' compensation insurance at least in the amounts and to the extent required by law. Contractor must provide Town with a current certificate of insurance showing such coverage before starting to provide services under this Agreement. Town shall be listed as an additional insured on the certificate of insurance. If Contractor is exempt under Minnesota law from having to carry workers' compensation insurance, Contractor may submit a statement of exemption in place of a certificate of insurance for that coverage. Town may require Contractor to provide a written statement from its insurer or agent expressing coverage for the services provided to Town.
- 6. Termination.** Either party may terminate this Agreement, with or without cause, upon 30 days written notice to the other party. Without limitation of the foregoing, upon breach of this Agreement by Contractor, Town may immediately terminate this Agreement or may pursue any other available remedies at law or in equity that are necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of this Agreement.
- 7. Subcontracting & Assignment.** Contractor shall not subcontract or assign any portion of this Agreement without prior written permission of Town.
- 8. Miscellaneous.**

 - a.** In accordance with Minnesota Statutes, Section 16C.05, subdivision 5, Contractor's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by Town and the Minnesota State Auditor for a minimum of six years from the expiration date of this Agreement.
 - b.** Contractor shall not provide information or data to anyone outside of Town without written permission from the Town Clerk. Contractor agrees to comply with any

requests for data pursuant to the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

- c. This Agreement has been made, and its validity, performance, and effect shall be determined in accordance with the internal laws of the State of Minnesota without regard to conflict of law provisions. Any dispute arising out of this Agreement shall be heard in the state or federal courts of Minnesota and the parties hereto waive any objection of such courts, jurisdictional or otherwise, and whether based on convenience or any other grounds.
- d. The waiver by any party of a breach or violation of, or failure of any party to enforce, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation or as a relinquishment of any rights hereunder.
- e. If any part of this Agreement is invalid or unenforceable under applicable law, that part shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining parts or provisions of this Agreement.
- f. The parties acknowledge that they participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court shall construe this Agreement more stringently against one party than the other.
- g. This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all previous agreements of whatever nature between the parties with respect to the subject matter. This Agreement may not be altered or amended except by an agreement in writing signed by the parties. Without limitation of the foregoing, no claim for extra work done or materials furnished by Contractor will be made by Contractor or allowed by Town, nor shall Contractor do any work or furnish any materials not covered by this Agreement, unless such work or materials are ordered in writing by Town.
- h. Notwithstanding anything to the contrary herein, nothing in this Agreement shall constitute a waiver of any immunity from, or limitation on, liability to which Town is entitled, under Minnesota Statutes Chapter 466 or otherwise.
- i. Contractor will maintain all necessary licenses and permits and will comply with all federal, state, and local laws, rules, and regulations pertaining to Contractor's performance under this Agreement.
- j. Contractor will defend, indemnify, protect and hold harmless Town and its employees, officers, and agents from any and all claims, or causes of action, including attorneys' fees incurred by Town or its insurers, arising from any negligent or otherwise wrongful act, or omission in the performance of this Agreement by Contractor, including, but not limited to, damage to private property by Contractor.

- k. Any notice or communications required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

This Agreement is executed as of the date stated in the introductory clause above.

Town

Denmark Township

Kathleen A. Higgins
By: Kathleen A. Higgins, Chairperson

Attest: Becky Herman
Becky Herman, Clerk-Treasurer

Date: 6/8/17

Contractor

TRI County SERVICE
Company Name

By: BEN THOMAS
Print Name

Its: PRES
Title

[Signature]
Signature

Date: 6-8-17

Exhibit A

DENMARK TOWNSHIP DITCH MOWING POLICY

1. It is the policy of Denmark Township to mow Town road ditches twice a year.
2. The first mowing is to occur prior to July 1st and is to include no more than eight (8) feet from the edge of the road.
3. The second mowing is to occur at or near the end of the growing season (mid-September). This mowing is to mow the entire right-of-way to eliminate growth of brush, grass, or weeds that may result in snow drifts forming on roadways or to keep trees from gaining a foothold in the right-of-way.
4. In no case should County or State road right-of-way be mowed by Denmark Township.
5. It is the policy of Denmark Township to mow only Town road right-of-ways that have been accepted by the Town Board for public maintenance. In no instance shall ditches be mowed to a width greater than the legal right-of-way. The mowing contractor shall contact the supervisor in charge of ditch mowing if there are any questions regarding which right-of-ways, or portions thereof, to mow.
6. Where noxious weeds are present in a Town right-of-way, spot mowing only (noxious weeds beyond the first eight feet of Town right-of-way) is allowed during the first mowing of the season. If there are noxious weeds present on private property, the mowing contractor shall notify the Town of the situation.
7. The supervisor in charge of ditch mowing may authorize spot mowing of noxious weeds, or to maintain sight distances, within the right-of-ways the balance of the growing season. The supervisor shall notify the full board at a meeting that such spot mowing has been authorized.
8. All mowing activities are to comply with state statutes including, but not limited to, Minn. Stat. § 160.232 attached hereto.

160.232 MOWING DITCHES OUTSIDE CITIES.

(a) To provide enhanced roadside habitat for nesting birds and other small wildlife, road authorities may not mow or till the right-of-way of a highway located outside of a home rule charter or statutory city except as allowed in this section and section 160.23.

(b) On any highway, the first eight feet away from the road surface, or shoulder if one exists, may be mowed at any time.

(c) An entire right-of-way may be mowed after July 31. From August 31 to the following July 31, the entire right-of-way may only be mowed if necessary for safety reasons, but may not be mowed to a height of less than 12 inches.

(d) A right-of-way may be mowed as necessary to maintain sight distance for safety and may be mowed at other times under rules of the commissioner, or by ordinance of a local road authority not conflicting with the rules of the commissioner.

(e) A right-of-way may be mowed, burned, or tilled to prepare the right-of-way for the establishment of permanent vegetative cover or for prairie vegetation management.

(f) When feasible, road authorities are encouraged to utilize low maintenance, native vegetation that reduces the need to mow, provides wildlife habitat, and maintains public safety.

(g) The commissioner of natural resources shall cooperate with the commissioner of transportation to provide enhanced roadside habitat for nesting birds and other small wildlife.