

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the 27th day of February, 2024, by and between the Midwest City Memorial Hospital Authority ("Authority")

And Midwest Wrecking Company ("Consultant").

RECITALS

- A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the Authority through its staff that it may provide from time to time.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than ninety (90) days following the execution of this agreement. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the Authority.
3. Compensation. Compensation to be paid to Consultant shall be as set forth in Exhibit A, which is attached hereto and incorporated herein by reference. Payment by Authority under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the Authority at the time of payment.
4. Payment. Authority shall pay Consultant no later than 45 days after approval of the monthly invoice by Authority staff.
5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Authority upon payment to Consultant for such work, and the Authority shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to Authority upon written request.

6. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Authority or the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Authority and/or City employees, and Consultant hereby expressly waives any claim it may have to any such rights.
7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.
8. Professional Ability of Consultant. The Authority has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
9. Indemnity.
 - (a) Consultant agrees to indemnify, including the cost to defend, the Authority, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by the Authority, the City, or its agents, servants, or independent contractors who are directly responsible to the Authority or the City, or the active negligence of the either. To the fullest extent permitted by law, the Consultant shall (1) immediately defend and (2) indemnify the Authority, the City, and its board members, officers, agents, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Consultant's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the

comparative active negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

- (b) The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Authority, the City and its board members, officers, agents, and employees, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.
- (c) The review, acceptance or approval of the Authority or the City's work or work product by any indemnified party shall not affect, relieve or reduce the Authority or the City's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

10. Insurance Requirements.

Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

- (a) Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of Oklahoma. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Oklahoma for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the Authority at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the Authority, the City, and its officers, agents, employees and volunteers for losses arising from work performed by Consultant for Authority or the City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.
- (b) General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general

liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

- (c) Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than two million dollars (\$2,000,000) combined single limit for each occurrence.
- (d) Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than two million dollars (\$2,000,000).
- (e) Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
 - i. The Authority, the City, and their elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.
 - ii. This policy shall be considered primary insurance as respects the Authority and the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Authority and the City, including any self-insured retention by either.
 - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, the City, its elected or appointed officers, officials, employees, agents or volunteers.
 - v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the Authority.
- (f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Authority and the City. At the Authority's option, Consultant shall demonstrate financial capability for payment of such

deductibles or self-insured retentions.

- (g) Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to Authority as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Authority on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Authority at all times during the term of this Agreement.
11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.
12. Licenses. Consultant represents and warrants to Authority that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to Authority that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.
13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of Oklahoma and any action brought relating to this Agreement shall be held exclusively in the applicable court of law in Oklahoma County, Oklahoma.
14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to the Authority:

General Manager/Administrator
100 N Midwest BL
Midwest City, OK 73110

If to Consultant:


Chris Cates
Midwest Wrecking Co., LLC
PO Box 14668
Oklahoma City, OK 73113

15. Consultant's Books and Records.
- (a) Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Authority for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
 - (b) Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
 - (c) Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the General Manager/Administrator, Authority's Counsel, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Authority for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
 - (d) Where the Authority has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, Authority may, by written request by any of the above named officers, require that custody of the records be given to the Authority and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.
16. Entire Agreement. This Agreement, including Exhibit A, constitutes the complete and exclusive statement of Agreement between the Authority and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and Authority and approved as to form by the Authority's Counselor.
18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to Authority for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the Authority. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the Authority. If the Authority consents to such subcontract, Consultant shall be fully responsible to Authority for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the Authority and subcontractor nor shall it create any obligation on the part of the Authority to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
21. Termination. This Agreement may be terminated by the Authority immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

**MIDWEST CITY
MEMORIAL HOSPITAL AUTHORITY:**




Tim Lyon,
General Manager/Administrator

MIDWEST WRECKING:



Signature

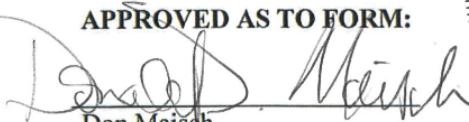


Printed Name



Title


APPROVED AS TO FORM:



Don Maisch
Legal Counsel



ATTEST:



Sara Hancock
Secretary

EXHIBIT A

Scope of Services, Terms and Conditions

For a total cost not to exceed One Hundred Thirty-Eight Thousand, Eight Hundred and Forty Dollars (\$138,840), Midwest Wrecking Company (the "Consultant") agrees to provide the Midwest City Memorial Hospital Authority (the "Authority") certain professional services related to asbestos abatement and demolition of the vacant professional office building and accessory structure located at 2828 Parklawn DR, Midwest City, OK (the "Project"). In doing so, the Consultant hereby agrees to perform all tasks in accordance with generally acceptable professional standards and further represents that the advice and consultation provided shall be within its authority and capacity as a professional.

Consultant shall comply with the regulations, laws, ordinances and requirements of all governmental impact applicable by completing the following task leading to the abatement of asbestos, demolition of the structures, clearing of debris; backfilling, grading and reseeding excavated areas leading to final inspection and approval by the Authority:

I. GENERAL REQUIREMENTS

- a. Coordinate and pay all costs of all utility disconnects to include, but not limited to electric power, water, sewer, natural gas, and telecommunications. Must also cap sewer as required by the City Plumbing Inspector
- b. Obtain a City demolition permit as well as all certifications, permits and other permission(s) necessary for completion of the project from the appropriate regulatory agencies.
- c. Provide any temporary facilities necessary to successfully complete the project – to include, but not limited to, portable restrooms, site fencing, site security, water, etc, as needed.
- d. Proceed with caution and care so as to prevent damage to adjacent structures, sidewalks and streetscapes and to ensure that existing establishments in the area can operate normally without significant disruption during demolition activities.
- e. Take all necessary precautions and preventive measures to prevent the flow of water, including ground water, from mixing with hazardous substances. Such preventative measures may consist of, but are not limited to: berms, cofferdams, grout curtains, freeze walls, and seal course concrete or any combination thereof. If water does enter an excavation and becomes contaminated, such water, when necessary to proceed with the work, shall be dewatered consistent with applicable state and federal requirements.
- f. Direct the Water Pollution Control Manager, foreman, and/or construction supervisor in monitoring on-site contaminated soil storage and disposal procedures.
- g. Monitor air quality continuously during excavation operations at all locations containing hazardous material.
- h. Coordinate contaminated soils and hazardous substances/waste management with the appropriate federal, state, and local agencies.
- i. Inspect hazardous waste receptacles and areas regularly.
- j. Obtain approval for any and all street closures and/or detours at least 48 hours in advance through the City's Engineering & Construction Services Division.

II. ASBESTOS ABATMENT

- a. Assume responsibility for all aspects regarding the legal removal and disposal of any/all hazardous materials from the Project including, but not limited to, identification, testing, permitting, certification, notifications, best management practices, hauling, disposal fees, etc. according to the asbestos survey report prepared for this project and in compliance with all EPA, OSHA, and application State of Oklahoma regulations, and any other applicable law, using best practices.

NOTE: The excavation, transport, and disposal of contaminated material and hazardous material shall be in accordance with the rules and regulations of the following agencies (the specifications of these agencies supersede the procedures outlined in this document):

- 1) United States Department of Transportation.
 - 2) United States Environmental Protection Agency.
 - 3) Oklahoma Department of Environmental Quality.
 - 4) Oklahoma Department of Transportation.
 - 5) Oklahoma Department of Labor.
- b. Submit the required notifications to any agency as regulations may require.
 - c. Furnish all labor, equipment, supervision, and incidentals necessary to provide complete asbestos abatement for the structures.
 - d. Provide the project monitor and all costs associated with the use of same if so required.
 - e. Provide any additional cleaning required after the final cleaning.
 - f. Properly handle and dispose of all hazardous materials in accordance with all applicable laws.
 - g. Obtain the Authority's permission prior to authorizing any additional sampling/testing; the cost of which shall be split equally between the parties.
 - h. Provide the final asbestos clearance inspection prior to commencing any demolition work.

III. DEMOLITION

- a. To demolish, remove and properly dispose of the structures and their contents including the demolition of all slabs and all underground structures. The entire structures and foundation should be removed, and since no materials from the project are proposed for reuse by the City, the Consultant shall take ownership of all scrap/salvage materials.
- b. Pay all costs incurred to transport and properly disposing of all demolition debris.
- c. Suppress airborne particulate matter by using water for dust control during demolition, as needed. The City may be able to provided a temporary hydrant meter as needed.
- d. Deploy barriers and/or techniques to prevent debris, dirt and mud from being spread onto public rights-of-way for the duration of the project.

IV. PROJECT COMPLETION

- a. Backfill all excavated areas with suitable material and grade the area to provide for positive surface drainage for the entire site (generally, 0.5% min. slope from highest point of adjacent curb or sidewalk).
- b. Install a silt fence at the edge of curb or sidewalk to prevent sediment runoff, until the required 70% soil stabilization has been reached with proper grassing.
- c. Repair damage to other adjacent public improvements including, but not limited to any curbing, sidewalk, or asphalt damaged during the project.

PROJECT COMPLETION *(Continued)*

- d. Request a final inspection from the General Manager/Administrator of the Authority or his designee.
- e. Submit an invoice and executed Non-Collusion Affidavit to:

Robert Coleman, Director of Economic Development
City of Midwest City
100 N Midwest Boulevard
Midwest City, OK 73110