

RESOLUTION NO.: 88 -2023
INTRODUCED BY: Mayor Thomas

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
PURCHASE AGREEMENT WITH TOWNSEND ARBORCARE FOR THE
REMOVAL OF TREE STUMPS IN THE PUBLIC RIGHTS OF WAY.

WHEREAS, the Director of Public Service has advised that the City requires, and has received a quote, from Townsend Arborcare of Middleburg Heights, Ohio, for tree stump removal services in public treelawns for the City, as set forth in the quote attached hereto as "Exhibit A".

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to enter into a purchase agreement with Townsend Arborcare for the purchase of tree stump removal services, as set forth in the quote attached hereto as "Exhibit A", at a cost not to exceed \$10,045.00.

Section 2: The Finance Director is authorized to appropriate funds from General Fund #100 for the cost of the purchase agreement authorized in Section 1.

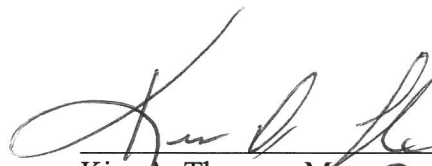
Section 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

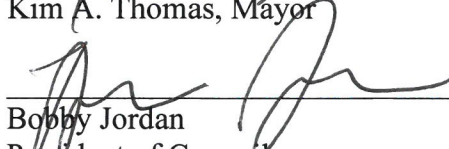
Section 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: June 13, 2023

APPROVED: June 13, 2023

ATTEST: Donnie Hunter
Donnie L. Hunter
Clerk of Council



Kim A. Thomas, Mayor


Bobby Jordan
President of Council

EXHIBIT A



TOWNSEND ARBORCARE

Middleburg Heights, OH 44130 • Phone: (440) 578-7249
Office:
5155 West Old 106th Street • Zionsville, IN 46077
Phone: (317) 420-8548 • www.TownsendArborcare.com

Billing Address

City Of Richmond Heights
Travian Atkins
26789 Highland Rd
Richmond Heights, OH 44143
216-486-2474 Ext1228
travian.atkins@richmondheightsohio.org

Project Site

26789 Highland Rd
Richmond Heights, OH 44143

Estimate



Estimate #: City Of Richmond Heights

Date: May 05, 2023

Expire Date: June 04, 2023

Sales Representative

Christopher Becherer
216-327-9509

Work shall be performed under the supervision of an ISA Certified Arborist. All services shall be performed in accordance with ANSI A300 Standards.

Item	Plant	Scope of Work	Amount
1	Stump(s)	STUMP REMOVAL - 6 TO 8 INCHES All stumps, according to attachment on email, in Richmond Heights to be ground 8-12" and all grindings to remain on site.	\$8,670.00
2	Stump(s)	STUMP REMOVAL - 6 TO 8 INCHES All stumps, as per email from Travian Atkins, for city of Richmond Heights to be ground, clean up grindings, back fill and grass planted.	\$1,375.00

We accept all major credit cards!



Subtotal: \$10,045.00

Tax: \$0.00

Total: \$10,045.00

For acceptance, please sign and return. Thank you.

Client Signature

Acceptance Date



GENERAL TERMS AND CONDITIONS OF SALE

Townsend Outdoor Services, LLC d/b/a Townsend Arborcare ("Townsend") provides these General Terms and Conditions (the "Terms and Conditions") which apply to the estimates, proposals, quotations and/or invoices for services collectively a "Proposal" provided by Townsend to client ("Client"). These Terms and Conditions are hereby incorporated by reference into each Proposal and together with the Proposal represent the complete agreement between the parties (the "Agreement").

1. **Services Listed in Proposal:** The Proposal, together with any attachments, defines the services to be performed by Townsend (the "Work") and the materials to be provided by Townsend (the "Materials").
2. **Acceptance and Execution:** Client shall indicate acceptance of the Agreement by either (a) signing the Proposal or (b) indicating Client's acceptance of the Proposal terms by email or text message. This Agreement shall be considered executed on the date the Client accepts the Agreement by either method. Townsend reserves the right to withdraw the Proposal if not accepted by the Client within the earlier of 30 days of delivery to the Client or the date set forth in the Proposal.
3. **Time and Material:** Work performed on a time and material basis includes the contracted amount per individual labor hour plus any Materials supplied by Townsend for use on Client's property. This may include the travel to and from the Work site, time spent preparing prior to the Work, time spent clearing and organizing after the Work is performed, and debris disposal.
4. **Partial Services:** If partial services are requested by Client, Townsend reserves the right to adjust the prices listed in the Proposal to reflect increased mobilization costs.
5. **Additional Work:** Any additional Work must be contracted separately, either as a new Proposal or as a written amendment to an existing Agreement. Client cannot request additional Work from a Townsend crew directly. Client shall contact the appropriate Townsend project representative to arrange for any additional Work.
6. **Change Orders:** As determined by Townsend, it is necessary to the safe and timely completion of the Work. Work may be added to or subtracted from the scope of work in the Proposal. Any modification or change to the Proposal is an amendment to the Agreement, and any such modification or change may only be authorized in writing by Client. An email or a text from the Client shall be considered a writing under this Agreement.
7. **Clean-Up:** All areas affected by Work performed on the property will be cleaned up to include raking and blowing off the lawn and hard surfaces and hauling away any related debris, unless otherwise noted on the Proposal. Excessive amounts of saw dust will be removed, but small quantities and other small debris will not be removed.
8. **Scheduling:** Work scheduling is dependent on weather, availability of staff qualified to do the Work, type of Work to be performed, geographic relationship to other scheduled Work, and other unforeseen issues. By accepting this Agreement, Client agrees that every day during the Agreement's term is a day on which Work may be performed, and Client is continuously on notice that Townsend may perform Work on any day during the term of this Agreement if rescheduling becomes necessary.
9. **Concealed Contingencies:** Any additional Work or equipment required by Townsend to complete the Proposal caused by (a) Client's failure to make a condition known, (b) previously unknown circumstances, or (c) any other condition not apparent in estimating the Work specified shall be paid for by Client on a time and material basis.
10. **Workmanship:** All Work will be performed in a professional manner by personnel outfitted with the appropriate tools and equipment to properly complete the Work. All Work will be performed in accordance with guidelines and standards set forth by the Occupational Health and Safety Administration (OSHA) and American National Standards Institute (ANSI).
11. **Terms for Tree Care Proposals:** The following terms apply to Proposals that include Tree Care services:
 - a. **Tree Removal:** Tree removals will be cut down to a height between 3 to 6 inches above grade unless the Proposal states otherwise. Unless the Agreement states otherwise, tree removal will include debris cleanup.
 - b. **Stump Removal:** Stump removal will be a mechanical grinding of the visible tree stump, surface, and subsurface roots to a specified depth below grade. Stump areas will be backfilled with stump grinding debris to grade level and remaining chips will be hauled away for disposal, unless otherwise stated in the Proposal.
 - c. **Underground Utilities:** Townsend will contact (USAB) prior to any stump removal projects. If a stump is located above or within two feet of an identified underground utility, additional tools and costs may apply to safely remove the stump to a predetermined depth below grade. If outlined in the Proposal, Client shall arrange with a professional underground line service to mark any other lines for sprinkler lines, dog fence, septic systems, or other electric wires. **TOWNSEND IS NOT RESPONSIBLE FOR DAMAGE TO LINES THAT ARE NOT MARKED.**
12. **Terms for Storm Damage Proposals and Emergencies:** Client acknowledges and agrees that Townsend cannot reasonably perform storm damage Work without the risk of damage to Client's real or personal property and that Townsend shall not be responsible or liable for any damage to Client's real or personal property caused by, contributed to, or resulting from storm damage Work or Townsend's presence at or near Client's real or personal property unless caused by Townsend's gross negligence. In the event of adding damage to Client's real or personal property at or near the work site prior to the Work being performed, Townsend does not guarantee that no further damage will occur, and Townsend shall not be responsible or liable for any additional damage to Client's real or personal property caused by, contributed to, or resulting from the Work or Townsend's presence at or near Client's real or personal property unless caused by Townsend's gross negligence.
13. **Terms for Plant Health Care and Pest Management Proposal:** Townsend's programs provide a proactive approach to managing plant stresses, diseases, and insects, encompassing landscape management, site evaluation and preparation, plant selection, establishment, and cultivation, pest control, and plant utilization and removal. Plant health care programs embrace Integrated Pest Management (IPM). IPM manages pest that combine preventative and therapeutic tactics, with the goal to manage, not eradicate, pest and their damage at levels tolerable to the client. Townsend's Plant Health Care programs are site specific and customized to each individual property. Some plant health care applications are estimated by the application, not an individual tree or plant. Other applications are pest specific and treat specific trees and plants. Due to a shortened residual of available pesticides, multiple applications are required. Most foliar spray applications require one hour of drying time on plant material. In the event Client's property receives rain within a 4 hour window of an applied foliar spray application, a secondary application will be applied to ensure adequate coverage is achieved.
14. **Terms for Consulting Services:** Client's property may be analyzed by a certified arborist or licensed pesticide applicator. Townsend may perform a tree risk assessment to identify potential tree failures. Townsend may recommend programs for tree preservation and root management. Townsend may evaluate the soil conditions either physically or by recommending a soil analysis test. Upon determining and receiving the results, Townsend may recommend a soil management program that will provide Client's property with a soil environment designed to maintain the vitality of healthy plants and improve the vitality of unhealthy plants. Soil management programs may include fertilizers and other organic soil amendments.
15. **Terms for Use of Cranes:** Townsend and its subcontractors will attempt to minimize all disturbances to Client's lawn and property surfaces resulting from using a commercial. Townsend cannot take responsibility for any damage caused by the weight of the crane or caused during the use of the crane, including but not limited to cracking of paved surfaces. Townsend and its agents and employees are not liable for any damage resulting from the proper use of the commercial crane, except in any instance of sole negligence or willful misconduct of Townsend employees.
16. **Client's Responsibilities:**
 - a. **Accessibility of Work Site:** Client shall make the Work site accessible to Townsend on the days when Work is to be performed under the Proposal. If the Work site is inaccessible to the crews of Townsend and associated sub-contractors because of parked vehicles or other obstructions, Client may be billed the contracted amount per individual labor hour spent

- preparing for the service, addressing the issue on site, and traveling to/from the Work site.
- b. **Removal of Personal Property.** The Client shall remove any personal property, including but not limited to vehicles, furniture, and yard ornaments, from the Work site in advance.
 - c. **Property Lines.** Client shall clearly indicate the location of all property lines and corners for Townsend employees, at Townsend's request and as outlined in the Proposal.
17. **Payment.** Unless otherwise noted in the Proposal, payment is due upon receipt of the invoice. Failure to remit full payment within thirty (30) days of receipt will result in a finance charge of 1.5% per month and/or a suspension of Work. A deposit may be required for scheduling if noted in the Proposal. Client agrees to pay all fees incurred by Townsend for checks returned for insufficient funds or any other reason. If any payment obligation under this Agreement is not paid in full when due, Client promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.
 18. **Termination.** Client may cancel the Work to be performed under the Proposal, in full or in part, if Client provides at least 48 hours advance notice. If 48 hours advance notice is not provided, the deposit is not refundable. If a crew has been dispatched to the Work site, Client will be billed (a) the contracted amount per individual labor hour spent preparing for the service, addressing the issue on site, and traveling to/from the Work site, plus (b) any Materials or equipment rental costs incurred by Townsend.
 19. **Townsend's Representations and Warranties.** Townsend represents and warrants to Client as follows:
 - a. **Insurance.** Townsend will maintain insurance in commercially reasonable amounts calculated to protect itself from claims for damage to property or personal injury that may arise from activities performed or facilitated by this Agreement. Certificates of coverage are available upon request. This must be requested at least 1 week prior to when Work will be performed.
 - b. **Pesticide Licensing.** Townsend warrants that it is licensed for the application of pesticides in each state where pesticide application Work is performed and that all technicians performing Work on site are appropriately trained and licensed.
 - c. **LIMITED WARRANTY. CLIENT'S SOLE AND EXCLUSIVE WARRANTY FOR MATERIALS, IF ANY, IS THAT PROVIDED BY THE MATERIALS' MANUFACTURER. THIS WARRANTY IS EXCLUSIVE, AND TOWNSEND MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS CONCERNING THE MATERIALS (WHETHER IMPLIED BY STATUTE OR OTHERWISE) AND SPECIFICALLY EXCLUDES SUCH WARRANTIES AND REPRESENTATIONS TO THE FULLEST EXTENT PERMITTED BY LAW. TOWNSEND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. TOWNSEND SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING FROM THE FAILURE OF ANY MATERIALS TO BE SUITABLE FOR ANY PURPOSE WHATSOEVER.**
 - d. **NO OTHER WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT. TOWNSEND MAKES NO REPRESENTATION, WARRANTY OR GUARANTEES, EXPRESS OR IMPLIED, WITH REGARD TO THE WORK OR MATERIALS PROVIDED BY TOWNSEND.**
 20. **Client's Representations and Warranties.** Client represents and warrants to Townsend as follows:
 - a. **Property Ownership.** Client warrants that (a) the Client is the owner of all property where the specified Work is to be performed, and (b) the Client has the necessary rights and authority necessary to enter into and perform this Agreement.
 - b. **Tree Ownership.** Client warrants that all trees listed in the Proposal are located on Client's property, and, if not, that the Client has received full permission from the trees' owner to allow Townsend to perform the specified Work. Should any tree be mistakenly identified as to ownership, the Client shall indemnify Townsend for any and all damages or costs incurred from the result thereof.
 - c. **Duty to Inspect.** Client has the duty to inspect their property within fifteen (15) days after completion of the Work and provide written notice within that time of alleged damage or insufficiency of any nature. If written notice is not provided within that time, Client agrees that any claims alleging damage or insufficiency of any nature and/or rights to withhold future payments under the Agreement are waived.
 21. **Limitations and Disclaimers.**
 - a. **General Disclaimer.** Townsend may attempt to tell Client when Work done may not be aesthetically pleasing and Townsend may tell the Client when the Work may be detrimental to plant health, but if Client chooses to accept the Proposal and the Work is done as specified then Client is responsible for the visual, physical, and monetary outcomes.
 - b. **Tree Risk.** When prominent risk conditions in trees are observed and identified by Townsend and the Client approves a Proposal to proceed with the Work Townsend has recommended, Townsend will make a reasonable effort to proceed with the Work promptly. Townsend does not assume any liability for any accident, damage or injury that may occur on the ground or on any other object or structure prior to the Work beginning.
 - c. **Property Damage.** Client understands that, in connection with the Services, Townsend may be required to bring trucks and other heavy equipment onto Client's driveway and other parts of Client's property. Townsend operates under the assumption that any and all parts of Client's property onto which such equipment is brought can sustain the presence, weight, and movement of that equipment. Client understands that that certain Work, such as dismantling large trees, will likely have a visible impact on Client's lawn and other parts of their property (e.g., divots, holes, sand/dust, etc.). Client understands that, after removal of stumps/roots, some shrubs/trees will continue to produce sprouts that may require multiple treatments for control and that these treatments may result in damage to nearby plants/shrubs/trees. While Townsend will do its best to minimize, mitigate, and repair any such impact, Client hereby holds Townsend harmless for, and agrees not to bring any claims against Townsend as a result of, any damage or degradation to any part of Client's property that results from the performance of the Work.
 - d. **Working With Living Things.** Trees and other plant life are living, changing organisms affected by factors beyond Townsend's control. There is no guarantee on tree, plant, or general landscape safety, and neither health nor condition is expressed or implied in the Agreement unless specifically stated in writing. Townsend cannot guarantee that any treatment will be effective or prevent insect or fungus damage. If Townsend recommends treatment, it is because Townsend believes that the tree/shrub/lawn is a worthy candidate for treatment at that time.
 - e. **Completion of Work.** Townsend will use commercially reasonable efforts to meet any agreed upon performance dates; however, Townsend will not be liable in damages or otherwise for delays due to inclement weather, labor or any other cause beyond their control.
 - f. **LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY IN CONTRACT, TORT OR OTHERWISE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, PUNITIVE OR ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER EITHER PARTY SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY.**
 22. **Miscellaneous.** The Agreement can only be amended by a writing executed and authorized by representatives of Townsend and Client. Any dispute concerning the Agreement, including as to the legality, interpretation or application shall be governed by the laws of the State of Indiana, without regard to its principles of conflicts of laws. Client agrees that any disputes that concern the Agreement shall be brought in the state courts of the State of Indiana, County of Marion, and Client specifically waives any and all objection to venue in those courts. The prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs and other expenses from the non-prevailing party. Townsend's failure to strictly enforce any term or condition contained in the Agreement shall not constitute a waiver of Townsend's right to strictly enforce such terms or conditions at any time in the future. If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings contained herein are for convenience only and are not to be considered in interpreting the Agreement. The Agreement benefits and binds Townsend, Client and their respective legal representatives, successors, and permitted assigns. Notices to Townsend shall be sent to Townsend Outdoor Services, LLC, 1015 W. Jackson Street, Muncie, IN 47305, and notices to Client shall be sent to Client's last known billing address. Townsend is an independent contractor and not an employee of Client. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. Unless the context otherwise requires, singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable. Unless expressly provided otherwise, the word "day" refers to a calendar day. This Agreement reflects the parties' final and exclusive agreement as to the matters addressed in this Agreement and supercedes all prior and contemporaneous negotiations and agreements between the parties as to such matters.