

# ROAD CONTRACTOR SERVICES AGREEMENT

This agreement is made and entered into between Township of Clear Lake, County of Sherburne, State of Minnesota, a public entity, hereinafter referred to as "Town", and \_\_\_\_\_, hereinafter referred to as "Contractor".

**WHEREAS**, the Town, as the road authority, is responsible for providing the maintenance of the town roads in the township;

**WHEREAS**, the Board has determined it to be in the best interests of the Town to have the services listed in this Agreement provided by one contractor instead of incurring the costs and time commitment needed to let and administrate multiple contracts for said services;

**WHEREAS**, after undertaking the appropriate contracting procedures, the Town has determined that the Contractor appears to have sufficient equipment, skill and experience to provide the requested road maintenance services to the Town;

**WHEREAS**, the Contractor desires to perform the needed road maintenance services to the Town;

**NOW, THEREFORE**, upon adequate consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

**1. SERVICES PROVIDED.** During the term of this agreement, the contractor agrees to perform the following services:

**1.1. Shoulder Maintenance and Repair.** Contractor shall repair and maintain by grading, graveling and performing such other work as may be required to keep all town road shoulders properly maintained.

**1.2. Bituminous Road Repair.** At the direction of the Town, Contractor shall seal cracks and perform such road related maintenance and repair work as needed to keep the Town's bituminous roads properly maintained and in good working order.

**1.3. Road Repair.** Contractor shall provide minor road repair services as directed by the Town.

**1.4. Tree Trimming.** Contractor shall provide tree trimming services as directed by the Town within town road rights-of-way.

**1.5. Brush Cutting and Removal.** Contractor shall cut and remove any brush in the town road rights-of-way which interfere with vehicular traffic or which may obstruct a driver's sight.

**1.6. Roadside Mowing and Weed Control.** Contractor shall cut grass and control weeds growing in all town road rights-of-way. Contractor shall perform at least one mowing of up to eight feet from road shoulder on both sides of all Town roads before July 31st. Any mowing occurring before July 31st shall not extend beyond the first eight feet from the shoulder of the road unless a greater width must be mowed to maintain sight distances for safety. Contractor shall perform at least one additional mowing to the width of 8 feet from the shoulder on all town roads between September 1 and November 31. Any mowing wider than 8 feet, Contractor shall provide a list of areas to Town Board for prior authorization.

**1.7. Sign Placement and Repair.** Contractor shall obtain and install or repair traffic control signs as directed by the Town. All signage materials, placement, installation and work shall comply with the Minnesota Uniform Manual of Traffic Control Devices (MUMTCD). The cost of materials for permanent signs shall be paid by the Town. While performing work for the Town, the Contractor shall, without delay and without having to first receive prior Town approval, immediately repair or replace any traffic control signs that it knows or has reason to know are down or damaged to the point that the functionality of the sign is significantly impaired. Contractor shall promptly notify the Town of any such work and whether any additional work is needed to bring the sign into compliance with the MUMTCD.

**1.8. Barricades, Detours, and Warning Sign Placement:** As required in Minn. Stat. § 160.16, Contractor shall, at its own cost, supply and place temporary barricades and warning signs as needed when working in or adjacent to roads. Contractor shall also provide for the establishment of detours as needed. Contractor shall erect other barricades as may be directed by Town.

**2. Specifications and Performance.** Contractor shall perform all services provided for in this Agreement in a good workmanlike manner consistent with industry standards and according to MnDOT specifications, performance standards and performance deadlines. All materials used or supplied under this Agreement shall be of first quality and meet MnDOT specifications.

**2.1. Chemical Use.** No chemicals may be used to control grass, weeds, brush, or other vegetation without prior approval of the Town. Only persons licensed by the state of Minnesota to apply pesticides to public roads may apply pesticides under this Agreement.

**2.2. Work Limited to Right-of-Way.** Contractor shall not perform any work under this Agreement outside of a Town road right-of-way unless specifically and expressly directed to do so by the Town.

**3. Equipment.** Contractor warrants that it has the necessary equipment to perform the work required by this Agreement.

**4. Independent Contractor.** Contractor acknowledges and agrees that it is an independent contractor of the Town and that nothing herein contained shall be construed to create the relationship of employer—employee or joint venture between the Town and Contractor.

**4.1. Independent Judgment.** Contractor shall at all times be free to exercise initiative, judgment, and discretion in how best to perform or provide the services identified herein.

**4.2. No Benefits or Withholdings.** Contractor acknowledges and agrees that Contractor is not entitled to receive any of the benefits received by Town employees and is not eligible for workers' or unemployment compensation benefits under the Town. Contractor also acknowledges and agree that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor and that it is Contractor's sole obligation to comply with the applicable provisions of all federal and state laws.

**5. Term.** The term of this Agreement shall be from \_\_\_\_\_, 2017 through \_\_\_\_\_, 2020, unless terminated earlier by law or the provisions in this Agreement.

**6. Insurance.** Contractor agrees that it will provide and maintain at all times during the term of this agreement such insurance coverage's as are indicated herein and that will otherwise comply with the provisions that follow. Such policy or policies shall apply to the extent of, but not as a limitation upon or in satisfaction of, the indemnity provisions of this agreement. The provisions of this section shall also apply to all subcontractors, other lower tier contractors, and independent contractors engaged by Contractor with respect to this Agreement, and Contractor shall be entirely responsible of securing the compliance of all such persons or parties with these provisions. All policies required by this agreement shall be issued by financially responsible insurers licensed to do business in the State of Minnesota. Contractor shall not commence or perform any work under this Agreement until certificates of insurance are presented to the Town showing the required coverage's are in full force and effect with at least the required coverage limit amounts.

**6.1. General Liability.** Commercial General Liability insurance coverage providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for bodily injury, property damage, personal injury, contractual liability (applying to this Agreement), independent contractors, "XC&U" and products-completed operations liability (if applicable). Contractor agrees to maintain at all times during the period of this Agreement a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for bodily injury, personal injury and property damage, which total limit may be satisfied by the limit afforded under its commercial general liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an umbrella or excess liability policy (or policies); provided that the coverage afforded under any such policy in combination with the limits afforded by an umbrella or excess liability policy is at least as broad as that afforded by the underlying commercial general liability policy. The policy shall name the Town as an additional named insured.

**6.2. Automobile Liability.** Business automobile liability insurance covering liability for bodily injury and property damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned, and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Agreement. Such policy shall provide total liability limits for combined bodily

injury and/or property damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an umbrella or excess liability policy(ies); provided that the coverage afforded under any such umbrella or excess liability policy(ies) shall be at least as broad with respect to such business automobile liability insurance at that afforded by the underlying policy. Unless included within the scope of Contractor's commercial general liability policy, such business automobile liability policy shall also include coverage for motor vehicle liability assumed under contract. The policy shall name the Town as an additional named insured.

**6.3. Workers' Compensation.** Workers' compensation insurance in compliance with all applicable statutes including an all-states or universal endorsement where applicable. Such policy shall include employer's liability coverage in an amount of no less than \$1,500,000. If Contractor is not required by statute to carry workers' compensation insurance, Contractor agrees: (1) to provide Town with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining workers' compensation insurance; (2) to provide prior notice to the Town of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to defend, hold harmless, and indemnify Town from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for workers' compensation or employers' liability benefits for damages arising out of any injury or illness resulting from performance of work under this agreement. If any such change requires Contractor to obtain workers' compensation insurance, Contractor agrees to promptly provide Town with evidence of such insurance coverage.

**7. Indemnification and Hold Harmless.** Any and all claims that arise or may arise against Contractor, its agents, servants, or employees as a consequence of any act or omission on the part of the contractor or its agents, servants, or employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the Town. Contractor shall indemnify, hold harmless, and defend the Town, its officers, agents, and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the Town, its officers, agents, or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of Contractor, its agents, servants or employee, in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Agreement.

**8. Nonwaiver of Rights.** Nothing in this Agreement shall constitute a waiver by the Town of any statutory limits or immunities from liability.

**9. Payment.**

**9.1. Rates.** The Town agrees to pay Contractor for work performed under this Agreement based upon the rates set out in the attached **Exhibit A**.

**9.2. Claims for Payment.** Contractor must submit detailed claims for payment in order to be eligible to receive payment from the Town. Claims must satisfy the requirements, including the specificity

requirements, established in Minn. Stat. §§ 471.38; 471.391; and other applicable law. Claims must provide a description of the work performed, the location of the work performed, the dates the work was performed, and the number of hours for each type of equipment used to complete the work. On a monthly basis, Contractor shall provide a per mile cost of each road for services completed. Claims must be submitted to the town clerk at least seven days before the day of the regular monthly board meeting. Claims submitted less than seven days before the meeting may be held and not considered for payment until the next regular board meeting.

**9.3. Proof of Payment.** Any claim for payment that involved the use of materials or labor supplied by someone other than the Contractor shall be accompanied by proof of payment for such materials or labor. The Town has the option of allowing the Contractor to receive payment for a period without submitting proof of payment for materials or services on the condition that such proof shall be submitted before the Town makes any other payments to the Contractor.

**9.4. Prompt Payment.** Town will pay undisputed claims promptly submitted under the terms and conditions of this Agreement in accordance with the prompt payment requirements in Minn. Stat. § 471.425.

**9.4.1. Payment of Subcontractors.** If the Town permits the use of subcontractors, Contractor shall pay the subcontractors for undisputed services provided by them within 10 days of receiving payment from the Town. Contractor shall pay interest of 1-1/2 percent per month or any part of a month to a subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Contractor shall pay the actual penalty due to the subcontractor.

**9.5. Final Payment.** Town shall withhold final payment consisting of up to 5% of the total price over the entire term of the Agreement until the following conditions are satisfied:

(1) Town conducts an inspection of the work performed under this Agreement and accepts the work; and (2) Contractor provides, if required under Minn. Stat. § 290.97, the Town with an IC-134 form signed by the Minnesota Department of Revenue indicating compliance with the withholding requirements of Minn. Stat. § 290.92.

**10. Warranty.** Contractor warrants and guarantees all services and materials provided under this Agreement for a period of one year from the date the work is completed and accepted by Town. All materials provided must satisfy any applicable specifications and be of good quality. The warranty must be secured either by the Contractor's performance bond or such other security as is acceptable to Town.

## **11. Default.**

**11.1. Force Majeure.** Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following uncontrollable circumstances unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure:

fire, flood, epidemic, strikes, wars, acts of God, acts of public authorities, or delays or defaults caused by public carriers; provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The Town and the Contractor agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable effort to mitigate its effects. If a matter arising under this paragraph is unable to be resolved within thirty (30) days, the party aggrieved by the other party's non-performance may terminate this Agreement upon ten (10) days written notice.

**11.2. Inability to Perform.** Contractor shall make every reasonable effort to maintain staff, facilities, and equipment to deliver the services required by this Agreement. Contractor shall immediately notify Town in writing whenever it is unable to, or reasonably believes it is going to be unable to, provide the agreed upon quality and quantity of services. Upon such notification, Town shall determine whether such inability requires a modification or cancellation of this Agreement.

**11.3. Change in Policy or Staff.** Town reserves the right to terminate this Agreement on ten (10) days written notice if Town, in its sole discretion, does not approve of proposed or actually significant changes in Contractor's policy or staff.

**11.4. Failure to Perform.** Town may, by written notice to the Contractor, immediately terminate this Agreement if it determines any of the following have occurred: failure to adequately perform or deliver the required services; failure to following the specifications or standards established by this Agreement; failure to perform or complete the services in a timely fashion as established by the Town; failure to provide the required bonds or other acceptable security; or failure to correct deficiencies within ten (10) days. If the Town terminates this Agreement for the Contractor's failure to perform, it shall provide the Contractor written notice that includes the reasons for the Termination.

**11.5. Default by Contractor.** Unless excused by Town's default, the occurrence of an uncontrollable circumstance, or Town issuing a written waiver of default, each of the following shall constitute default on part of the Contractor:

- (1) The written admission by Contractor that it is bankrupt; or filing by Contractor of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Contractor unless dismissed within ninety (90) days. The Notice of Default and cure provision of this Agreement do not apply to this paragraph.
- (2) The making of any arrangement with or for the benefit of Contractor's creditors involving an assignment to a trustee, receiver or similar fiduciary. The Notice of Default and cure provisions of this Agreement do not apply to this paragraph.
- (3) Making material misrepresentations in the attached exhibits and documents or in any other provisions or conditions relied upon in the making or modification of this Agreement.
- (4) Contractor is found to persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.
- (5) Failure to make satisfactory progress towards completion of this Agreement.
- (6) Failure to perform any other material provision of this Agreement.

**11.6. Default by the Town.** Unless excused by Contractor's default or the occurrence of uncontrollable circumstances or Contractor waiver of default, each of the following shall constitute a default on the part of Town:

- (1) The persistent or repeated failure or refusal by Town to pay or prevent payment of any uncontested amount to the Contractor timely and properly submitted as required by this Agreement.
- (2) Making material misrepresentations either in the attached exhibits and documents or in any other provisions or conditions relied upon in making this Agreement.
- (3) Persistent or repeated failure to perform any other material provision of this Agreement.

**11.7. Written Notice of Default.** Unless otherwise provided, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default and the cure period.

**11.8. Cure Period.** If the party in default fails to cure the specified circumstances as described by the Notice of Default within ten (10) days or such other time as may be specified under the terms of this Agreement, then this Agreement may be terminated by written notice as stated in this Agreement.

**11.9. Withholding of Payment.** Notwithstanding any other provision of this Agreement, the Town may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is given, until the default is excused, waived in writing, cured, or the Agreement is terminated.

**11.10. Preservation of Other Remedies.** The rights and remedies of Town provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **12. Liquidated Damages.**

**12.1. Duty to Mitigate.** Both parties shall use their best efforts to mitigate any damages that might be suffered by reason of any event giving rise to a remedy hereunder.

**12.2. Cost of Termination.** In the event this Agreement is terminated by reason of default by Contractor, Town may recover the necessary costs of termination, including but not limited to, administrative, attorneys fees and legal costs, from Contractor.

**12.3. Set-Off.** Notwithstanding any other provision of this Agreement to the contrary, upon breach of this Agreement by Contractor Town may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of Town.

**12.4. Damages.** Time is an essential element of this Agreement. If Contractor fails to meet the performance deadline as set forth as part of this Agreement, or fails to supply in accordance with the specification, terms, and conditions of the Agreement documents, for any reason, excepting delays caused by uncontrollable circumstances, Town shall have the right to purchase the services and materials from other sources on the open market or to purchase those items necessary to continue functioning until deliver from Contractor is complete. Town may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of temporary items.

**12.5. Reperformance.** Town may require Contractor, at Contractor's sole expense, to reperform any items of work provided for in this Agreement that do not meet the established specifications, standards, or Town directives.

**12.6. Liquidated Damages.** Time is an essential element of the Agreement. If the Contractor fails for any reason, excepting delays caused by uncontrollable circumstances, to provide services or complete a project before the date as set forth in the Agreement documents, it is hereby agreed that Town shall have the right to deduct as liquidated damages from any money or monies due or coming due to the Contractor an amount equal to \$\_\_\_\_\_ per day for each and every calendar day after the Agreement completion date during which the particular item of the Agreement remains unfulfilled. Any monies deducted are not to be construed as a penalty, but as liquidated damages to compensate for the additional costs and inconvenience incurred by Town.

**12.6.1.** In any lawsuit involving the assessment or recovery of liquidated damages, the reasonableness of the charge therefore shall be presumed.

**12.6.2.** The amount assessed as liquidated shall be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under this Agreement.

**12.7. Remedies Cumulative.** Any remedies available to Town are cumulative and not exclusive. The seeking or exercising by Town of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Agreement.

**12.8. Delays and Extension of Time.** It shall be understood that the Contractor will not undertake to hold the Town responsible in any manner for: (1) any damages for delays by Town; or (2) for damages for delays caused by the Contractor during the Agreement period.

**12.9. Cost of Defense.** In the event Contractor fails to perform the services in compliance with all applicable local, state, and federal laws, permits, rules, and regulations, the Contractor shall reimburse Town for any civil or criminal penalties or costs of defense incurred due to such violations.

**13. Conflict of Interest.** Contractor agrees that it will not, during the term of this Agreement, enter into a contract or otherwise accept employment for the performance of any work or service with any



individual, business, partnership, corporation, government, governmental unit, or any other organization that would create a conflict of interest in the performance of its obligations under this Agreement.

**14. Non-Exclusivity.** This Agreement is not exclusive between Town and Contractor. Town may retain additional Contractors or subcontractors to perform any or all of the services listed in this Agreement.

**15. Subcontracting and Assignment.** Contractor shall not enter into any subcontract for performance of any services contemplated under this Agreement nor assign any interest in the Agreement without the prior written approval of the Town and subject to such conditions and provisions as Town may deem necessary or desirable in its sole discretion. Contractor shall be responsible for the performance of all subcontractors.

**16. Modifications.** Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by the authorized representatives of Town and Contractor.

**17. Termination.** Town may terminate this agreement, with or without cause, upon 30 days written notice to Contractor.

**18. Document Ownership and Privacy.** Any reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of its obligations under this Agreement shall be the exclusive property of Town, and all such documents shall be remitted to Town by Contractor upon completion, termination, or cancellation of this Agreement. Any documents or other materials the Contractor may possess that are subject to the data privacy act as established in Minn. Stat. Chap. 13, shall not be released or used in a way that violates the act.

**19. Legal Compliance.** Contractor shall abide by all federal, state, or local laws, statutes, ordinances, rules, and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs, and staff for which Contractor is responsible.

**19.1. Permits.** Contractor shall procure, at its own expense, all permits, licenses, or other rights required for the provision of the services contemplated by this Agreement. Contractor shall inform Town of any changes in any of the above permits, licenses, or other rights issued within five days of occurrence. If a permit or permission must be obtained by Town before Contractor can perform services under this Agreement, Contractor shall immediately notify Town of this need and shall assist Town as needed to obtain the permit or permission.

**19.2. Violations.** Any violation of federal, state, or local laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license, permit, or certification by Contractor shall constitute a material breach of this Agreement, regardless of the reason and whether or not intentional, and shall entitle Town to terminate this Agreement upon delivery of written notice of termination to Contractor.

Notwithstanding any other provision of this Agreement, such termination shall be effective as of the date of such violation, failure, or loss.

**20. Minnesota Law Governs.** This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota.

**21. Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

**22. Town Obligation.** All covenants, promises, agreements, and obligations of the Town contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Town, and not of any governing body member, officer, agent, servant, or employee of the Town in the individual capacity thereof.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date and year first written above.

**Town**

**Contractor**

**Clear Lake Township**

**By:** \_\_\_\_\_

**Print Name and Title**

**By:** \_\_\_\_\_

\_\_\_\_\_

**Chairperson**

**Signature**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Attest:** \_\_\_\_\_

**Town Clerk**

# EXHIBIT A

## Road Maintenance Schedule of Quotations/Bids

(Strike out those descriptions that do not apply. Add descriptions in blanks as needed.)

1. Mower units for Township Roadside (size 5 ft. blade minimum), make, model and year  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_
2. Crack filling, labor cost per hour, machinery and equipment furnished  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_
3. Tree and brush cutting equipment available  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_
4. Boom/bucket truck make, model and reach  
\$\_\_\_\_\_ per hour \_\_\_\_\_
5. Repair, assembly and installation of Township road signs, price to include necessary labor and will be completed in varied areas of Township  
\$\_\_\_\_\_ per hour
6. Angle sweeper \$\_\_\_\_\_ per hour; Vacuum sweeper \$\_\_\_\_\_ per hour; Truck for hauling sweeping tailing \$\_\_\_\_\_ per hour

This proposal dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Signed: \_\_\_\_\_

By: \_\_\_\_\_ (Corporate Seal)

Title: \_\_\_\_\_

**Clear Lake Township reserves the right to award contracts not solely based on price. But will award contracts taking all aspects of bids into consideration including but not limited to price, equipment and past performance if applicable.**