

# SNOW AND ICE CONTROL CONTRACTOR SERVICES AGREEMENT

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

In consideration of the mutual promises and agreements hereinafter set forth, and intending to be legally bound, the parties do hereby agree as follows:

**1. Service(s) Provided.** Contractor agrees to perform the following service(s) according to the following timelines or schedule as described in **Exhibit A, Resolution No. RES-2014-028**.

**2. Performance and Specifications.** Contractor shall perform all services directly or indirectly required under this Agreement in a good workmanlike manner consistent with industry standards and according to the specifications and performance standards established by Town, if any. Contractor warrants that it has the necessary equipment to provide the services required by this Agreement. All materials used or supplied under this Agreement shall be of first quality and meet the specifications established by Town, if any. Town has the right to inspect and may reject any services provided by Contractor under this Agreement that, in the Town's determination, were not completed in a good workmanlike manner or that otherwise failed to satisfy the established specifications or performance standards.

**3. Term.** The service(s) called for by this Agreement shall commence on \_\_\_\_\_, 2017 and shall end on \_\_\_\_\_, 2020.

**4. Insurance.** Contractor shall maintain during the entire term of this Agreement the following insurances with at least the indicated amounts of coverage and provide Town a certificate of insurance showing such coverage's before providing any services under this Agreement:

(1) Commercial general liability insurance coverage with a policy limit of at least \$1,500,000 per occurrence; (2) Business automobile liability coverage with a total liability limits of at least \$1,500,000; and (3) Workers' compensation insurance. If Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance Contractor may provide a written statement of exemption specifying the particular provision of Minn. Stat. § 176.041 that exempts Contractor from having to carry such coverage.

**5. Indemnification, Hold Harmless, and Defend.** 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. Nothing in this Agreement shall constitute a waiver by the Town of any statutory limits or immunities from liability.

**6. Independent Contractor.** Contractor acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between Town and Contractor. No employee related withholdings or deductions shall be made from payments due Contractor. Contractor shall not be entitled to receive any benefits from Town and shall not be eligible for workers' compensation or unemployment benefits. Contractor shall at all times be free to exercise initiative, judgment, and discretion in how best to perform or provide the services identified herein.

**7. Payment.** No claim for payment by Contractor shall be paid unless it is detailed and otherwise in compliance with the claim requirements of Minn. Stat. §§ 471.38; 471.391; and any other applicable law. Before paying a claim that involved the use of materials or labor supplied by someone other than the Contractor, the Town may require Contractor to supply proof of payment for such materials or labor. Payment(s) to Contractor for services provided under this Agreement shall be as described in **Exhibit B, Schedule of Quotations/Bids.**

**8. Default.** The occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of Town providing Contractor notice of the default, shall allow Town to terminate the Agreement: (1) failure to adequately perform or deliver the required services; (2) failure to follow the specifications or standards established by this Agreement; (3) failure to perform or complete the services in a timely fashion as established by the Town; (4) if applicable, failure to provide the required bonds or other security acceptable to Town before starting any work; (5) bankruptcy; (6) making a material misrepresentation; (7) persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; (8) failure to make satisfactory progress towards completion of this Agreement; or (9) failure to perform any other material provision of this Agreement. Town may lawfully terminate the Agreement if, after providing Contractor 10 days notice of the default, Contractor does not correct the situation. Upon default 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.

**9. Remedies.** Default or breach of this Agreement by Contractor shall entitle Town to seek remedies under law and as provided by this Agreement. 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. Except when caused by uncontrollable circumstances, if Contractor fails to meet any performance deadlines established by this Agreement, or fails to perform in accordance with the specification, terms, and conditions of this

Agreement, 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 delivery 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. 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.

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(s) 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.

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.

**10. 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 Town and Contractor.

**11. Termination.** Town may terminate this Agreement, with or without cause, upon 30 days written notice.

**12. 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. Contractor shall procure, at Contractor's expense, all permits, licenses, or other rights required for the provision of the services contemplated by this Agreement. 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 effective as of the date of such violation, failure, or loss.

**13. 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. If Town permits the use of subcontractors, no subcontractor

may perform any work under this Agreement without first providing Town certificates of insurance showing all of the coverage's required in section 4 of this Agreement. Contractor shall be responsible for the performance of all subcontractors. Contractor shall pay the subcontractors for undisputed services provided by them within 10 days of receiving payment from the Town.

**14. 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.

**15. 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.

**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

## Resolution No. RES-2014-028

### RESOLUTION ESTABLISHING A SNOW AND ICE CONTROL POLICY FOR THE TOWN OF CLEAR LAKE

**WHEREAS**, the Town Board (“Board”) of Clear Lake Township (“Town”) is the road authority and provides maintenance for approximately 32 miles of road in the Town;

**WHEREAS**, the Board, as the road authority, provides for snow and ice control on the town roads it has designated to receive winter maintenance;

**WHEREAS**, the Board secures its snow and ice control services through contract with an independent contractor (“Contractor”);

**WHEREAS**, the Board determines it is in the best interest of the Town to develop a policy to set out how snow and ice control activities will be conducted on town roads considering the Town’s limited resources;

**NOW, THEREFORE, BE IT RESOLVED**, the Board hereby adopts the following as the snow and ice control policy for the Town;

**BE IT FURTHER RESOLVED**, that any Contractor performing snow or ice control services for the Town shall follow this policy.

## **I. POLICY CONSIDERATIONS**

In developing this policy for how to best undertake snow and ice control activities in the Town, the Board has to balance a number of factors including, but not limited to public safety, the cost effective allocation of resources, maintaining an efficient transportation system, facilitating the delivery of emergency services, protecting the environment and minimizing damage to real and personal property.

## **II. TOWN ROADS THAT ARE SNOWPLOWED**

Unless closed because of a snow emergency, or unless subsequently identified as a town road that will be closed during the winter months or when such roads are reasonably impassible, all town roads will normally be snowplowed by the Town.

## **III. TOWN ROAD SNOWPLOWING PRIORITIES**

The Contractor hired by the Town to plow the town roads shall have the authority to determine, in said Contractor's sole discretion, the order in which the town roads will be plowed, and will determine such order and priority in such a manner as to provide for the most efficient and effective snowplowing as possible, in order to preserve the Town's limited resources. This priority order of plowing may vary from time to time, as determined to be appropriate by the Contractor.

## **IV. EMERGENCY RESPONSE VEHICLE ASSISTANCE**

If emergency services agencies request snow removal to assist response to an emergency situation, reasonable efforts will be made to accommodate the request.

## **V. WHEN SNOWPLOWING BEGINS**

Snowplowing operations will generally commence within 12 hours of the accumulation of snow or ice, as determined by the Contractor, in his sole discretion, taking into consideration the following criteria:

- An evaluation of the immediate and anticipated weather conditions.
- The likely effectiveness of operations.
- Safety of employees.
- The likelihood of unreasonable risk of damage to equipment.

- Severe ice or snow conditions that seriously affect travel.
- Time of snowfall in relation to heavy use of the roads.

Snow and ice control operations are expensive and involve the use of limited resources. Consequently, operations will normally not begin until the snow has stopped falling or until such a volume of snow has accumulated as the Contractor determines must be plowed.

## **VI. WHEN SNOWPLOWING WILL BE DELAYED OR SUSPENDED**

Snow and ice control operations will be conducted only when weather conditions do not endanger the safety of operators or pose an unreasonable risk of damaging equipment. Once initiated, operations will be suspended if conditions deteriorate to the point that operations become unsafe for operators because of factors including, but not limited to, severe cold, significant winds, limited visibility, accumulation of ice, or rapid accumulation of snow. Operations will also be delayed or suspended if existing or anticipated conditions indicate the operations will not be effective.

Except in emergencies, snowplow operators shall not work more than twelve hour shifts and shall not operate equipment for more than ten hours during a shift.

## **VII. HOW SNOW WILL BE PLOWED**

Snow will be plowed in a manner which is the most efficient for the Contractor and the least costly to the Town. The Contractor will endeavor to plow in a manner as to minimize traffic obstructions. Snow will normally be plowed from the center of the road first. Then snow will be pushed from left to right until at least the main traveled portion of the road has been cleared. On narrow roads, snow may be plowed from one side to the other. Snow will normally be discharged to the sides of the road unless it is determined that the snow should be hauled to another location for storage. Because of limited resources and restrictions on the use of salt, blacktopped roads will not usually be cleared down to bare blacktop.

In the event of equipment failure, extreme snowfall, or other unanticipated events including the availability or need to rest snowplow crews, deviation from these standards may be appropriate.

Snow will be plowed as close as practicable to mailboxes located in the road right-of-way. It shall be the responsibility of property owners to clear snow from and around their mailboxes to enable mail delivery.

Snowplowing unavoidably results in snow being deposited on driveways and

approaches. Because the Town does not have the resources available for it to clear the ends of driveways and approaches, it is the responsibility of land owners to remove snow from their driveways and approaches. It is unlawful for property owners to plow snow across or deposit snow upon public rights-of-way. Minn. Stat. §§ 160.2715; 169.42, subd. 1.

## **VIII. SANDING AND SALTING**

The Town must consider the cost, environmental impact, public safety, and availability of staff and equipment when deciding if, when, and to what extent to apply sand and salt. Furthermore, the state legislature has imposed the following limitations on the use of salt by road authorities:

“In order to: (1) minimize the harmful or corrosive effects of salt or other chemicals upon vehicles, roadways, and vegetation; (2) reduce the pollution of waters; and (3) reduce the driving hazards resulting from chemicals on windshields; road authorities, including road authorities of cities, responsible for the maintenance of highways or streets during periods when snow and ice are prevalent, shall utilize such salt or other chemicals only at such places as upon hills, at intersections, or upon high speed or arterial roadways where vehicle traction is particularly critical, and only if, in the opinion of the road authorities, removal of snow and ice or reduction of hazardous conditions by blading, plowing, sanding, including chemicals needed for free flow of sand, or natural elements cannot be accomplished within a reasonable time.” Minn. Stat. § 160.215.

To the extent sand and salt is applied, priority will be given to the following areas in the order listed: 1.) Hills, controlled intersections, bridges, and curves; 2.) Major arterial and collector streets; 3.) School zones; 4.) Bus routes; 5.) Commercial areas; 6.) Residential areas; and 7.) Rural areas.

## **IX. SNOW STORAGE**

Collecting, hauling, and storing snow is expensive, requires special equipment, is labor intensive, and interferes with traffic while it is being performed. As such, snow will only be hauled and stored elsewhere when it is necessary to keep a road reasonably open and passable. If snow is hauled, it will only be stored on public land or on private property with the expressed written permission of the owners. To the extent possible, when snow containing salt is hauled it will be stored away from public waters.

## **X. SNOWPLOWING OF PRIVATE PROPERTY**

The Town will not provide for the snowplowing or sanding of private property except when requested to do so by law enforcement to provide access for emergency



vehicles responding to an emergency. If private property is used with the written permission of the owner to turn around equipment or to store snow, the Town may snowplow the private property as needed to accommodate the Town's use of the land.

## **XI. OBJECTS WITHIN TOWN ROAD RIGHTS-OF-WAY**

Town road rights-of-way are governed under the authority of the Town, and for the benefit of the public. It is the policy of the Town to place the highest priority upon keeping the roadways reasonably clear of snow and ice, and to hold property owners primarily responsible for placing their private property out of harm's way. The Town's snow and ice control operations are performed by independent contractors upon the rights-of-way in furtherance of the public's interest in maintaining clear roads for travel. It is unlawful for any person to place within the right-of-way any personal property that may obstruct the Town's snow removal efforts. It is the responsibility of owners to keep the road rights-of-way clear of vehicles, trailers, trash cans and other items of personal property in order to facilitate the proper snow and ice control operations. **No vehicles, trailers or other items of personal property shall be parked or stored in a public right-of-way from November 1 through May 1.** If an owner fails to keep the road clear of personal property, the Board or the Contractor may have the item towed or removed from the right-of-way at the owner's expense. Neither the Town nor the Contractor shall be responsible for damage to any personal property that is left in the right-of-way during snow removal operations. Nor shall the Town or the Contractor be responsible for damage resulting from snow removal operations to any lawn, landscaping, sod, plantings, buildings or other real property improvements that are located in the right-of-way. While reasonable efforts will be made to avoid damaging private property, snow and ice control operations may result in damage to the property of others.

If a property owner's mailbox is damaged as a result of snowplowing equipment, such damages will only be considered for compensation if the mailbox was physically struck by the snowplowing equipment, and if the mailbox was properly installed and was of a type in conformity with the standards specified by the United States Postal Services.

## **XII. COMPLAINTS AND REQUESTS FOR FURTHER SERVICES**

Complaints and requests for further services regarding snow and ice control may be addressed to the Town Clerk. Complaints and requests for further services should be directed to the Town Clerk. If the Contractor is aware of complaints or requests for additional services, it shall forward such complaints or requests to the Town Board for consideration.

**XIII. REVIEW OF POLICY**

The Board may periodically review and amend this policy, taking into consideration any changed conditions, new circumstances and any complaints or comments received.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE TOWN BOARD

\_\_\_\_\_  
Town Board Chair

Attest: \_\_\_\_\_  
Town Clerk

# EXHIBIT B

## Snow and Ice Control Schedule of Quotations/Bids

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

1. Snow plowing of all Township roads (listing of equipment)  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Sanding  
\$\_\_\_\_\_ per ton applied
3. Trucks per snow hauling 14 cubic yard capacity  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Loaders available size and type  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ per hour \_\_\_\_\_
5. Motor grader make, model and horsepower  
\$\_\_\_\_\_ per hour \_\_\_\_\_
6. Backhoe make and model  
\$\_\_\_\_\_ per hour \_\_\_\_\_  
\$\_\_\_\_\_ 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.**