

# TOWN OF ROCKLAND

Brown County, Wisconsin

## AGREEMENT FOR 2015-16 SNOW AND ICE REMOVAL SERVICES

**THIS SNOW AND ICE REMOVAL AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **TOWN OF ROCKLAND**, a body corporate and politic, maintaining its principal offices at 1712 Bob-Bea-Jan Road, De Pere, WI 54115 (hereinafter referred to as **TOWN**), and \_\_\_\_\_ (hereinafter referred to as **CONTRACTOR**).

### WITNESSETH:

**WHEREAS**, the Town Board of Rockland is responsible for the care and supervision of all roads under the **TOWN'S** jurisdiction, including keeping the roadways passable at all times; and

**WHEREAS**, the Town Board has determined that engaging a private contractor to remove snow and ice from **TOWN** roads will promote the health, safety, welfare and convenience of the residents and property owners of the **TOWN**.

**NOW, THEREFORE**, in consideration of the terms contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the **TOWN** and **CONTRACTOR** do hereby agree as follows:

1. **Snow and Ice Removal.**

- a. **Snow Removal.** **CONTRACTOR** shall scrape or remove snow and ice from all **TOWN** roads identified on Exhibit A, which is incorporated herein by reference, as the weather requires in the determination of **CONTRACTOR**, or upon call of the **TOWN**, regardless of the time or day of night. The **CONTRACTOR** may be required to move snow and ice accumulations further away from the paved surface in the event unusually heavy accumulations begin to narrow the traveled portion of any road.
- b. **Road Salting and Sanding Operations.** **CONTRACTOR** shall salt and/or sand the **TOWN** roads identified on Exhibit A as soon as icing begins, regardless of the time or day of night.
- c. **Authority.** The Chairperson or his or her designee is authorized to provide **CONTRACTOR** additional direction or information as needed.
- d. **Timeframe for Completion.** All **TOWN** roads shall be plowed in a reasonable and timely fashion, but in any event, not later than twelve (12) hours from the date and time snowplowing operations commence, unless weather conditions render compliance beyond the control of **CONTRACTOR**. Salting and/or sanding operations shall be performed within a reasonable and timely manner, but when conducted independently of snow removal, not later than two (2) hours from the date and time directed by the Chairperson or his or her designee, unless weather conditions render compliance beyond the control of **CONTRACTOR**.

2. **Emergency and On-Call Service.** **CONTRACTOR** shall have personnel available at all times, including, but not limited to, after-hours, weekends, and holidays, to respond to all emergency snow and ice removal requests made by Chairperson or his or her designee or the Brown County Sheriff's Department. In the event **CONTRACTOR** fails to respond to an emergency call within a reasonable period of time, and in the event the **TOWN** is required to retain another entity to cover an emergency call, **CONTRACTOR** shall be responsible for any and all costs incurred by the **TOWN** to provide the emergency snow and ice removal service. **CONTRACTOR** does hereby authorize the **TOWN** to deduct any such charges from any outstanding or remaining balances owed to **CONTRACTOR** pursuant to this Agreement. If there is no balance owed to **CONTRACTOR**, then

**CONTRACTOR'S** payment and reimbursement to the **TOWN** for said charges shall be due and payable within thirty (30) days from the date of **TOWN** invoice.

3. **Invoicing.** The **TOWN** shall pay the **CONTRACTOR** monthly for all reasonable and necessary snow and ice removal operations on an hourly rate basis. The **CONTRACTOR** shall submit to the Town Clerk an itemized statement of all hourly charges incurred pursuant to this Agreement not later than the 12<sup>th</sup> of each month. The **TOWN** shall remit its payment within thirty (30) days of each statement. The hourly rates and charges for snow and ice removal operations shall be as set forth on Exhibit B, incorporated herein by reference. Rates may be renegotiated on a year by year basis and shall be done so by the parties by June 1st of each successive year of the agreement.
4. **Equipment.**
  - a. Minimum equipment requirements shall be one (1) 5-yard truck equipped with wing, plow, and salt/sand spreader, one motor grader equipped with wing, plow, and belly mount blade, a four-wheel-drive front-end loader, and a skidsteer. **CONTRACTOR** shall be responsible for acquiring and maintaining equipment sufficient to complete the snow and ice removal operations within the time limits set forth herein which shall include having back-up equipment available in case of equipment breakdown.
  - b. The **CONTRACTOR** shall maintain a complete list of vehicles to be used in servicing this contract. The **TOWN** reserves the right to request descriptive literature or specification sheets for each vehicle. At all times with reasonable notice, the **TOWN** shall be free to inspect any of the vehicles used to service the contract. The contractor shall notify the **TOWN** of any changes in the number or type of vehicles being used.
  - c. All vehicles shall be kept in good working order and appearance at all times during the term of this contract. All vehicles shall display the name of the **CONTRACTOR**, a local phone number and a vehicle identification number that is clearly visible on both sides.
5. **Insurance Required.**
  - a. For the protection of the **TOWN** and **CONTRACTOR**, **CONTRACTOR** shall maintain the following insurance during the term of this Agreement:
    - 1) Workers compensation coverage as required by Wisconsin law covering all employees engaged in connection with the snow and ice removal and salting and sanding operations contemplated by this Agreement.
    - 2) Commercial general liability coverage with a limit of not less than \$1,000,000 per occurrence and a \$2,000,000 aggregate; and
    - 3) Commercial automobile liability coverage with a limit of not less than \$2,000,000 for each accident.
  - b. The required insurance policies shall contain covenants by the issuing company that the policies shall not be cancelled without ten (10) days prior written notice of cancellation. **TOWN** shall be named as an additional insured. **CONTRACTOR** shall provide to the **TOWN**, within ten (10) days from the execution of this Agreement, a Certificate of Insurance evidencing not less than the minimum coverages required by this Agreement.
6. **Indemnity.**
  - a. **CONTRACTOR** shall indemnify, defend, save, and hold harmless the **TOWN**, its officers and employees from any and all liability, losses, costs, expenses, demands, taxes, claims, damages, lawsuits, proceedings, or causes of action, including workers' compensation claims, of any kind or nature whatsoever, including reasonable attorney's fees and costs of defense, that the **TOWN** may suffer, incur, sustain, or become liable for, on account of any injury to or death of its employees, or injury or death to any other person, or damage to or injury to real estate or personal property in any way resulting from, arising out of, in connection with or pursuant to the operations of **CONTRACTOR**, its agents, retailers, employees, or any subcontractors in performance of the services to be conducted, including ownership, maintenance, use, operation, or control of any vehicle owned, operated, maintained, or controlled by **CONTRACTOR** or subcontractor.

- a. **CONTRACTOR** shall, at its own expense, appear, defend, and pay all reasonable fees of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgments shall be rendered against the **TOWN** in any such action, **CONTRACTOR** shall, at its own expense, satisfy and discharge same.
  - b. **CONTRACTOR** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by **CONTRACTOR** shall in no way limit the responsibility to indemnify, keep, and hold harmless and defend the **TOWN**, and to pay expenses and damages as herein provided.
  - c. **CONTRACTOR** shall not be liable for any claims of liability resulting solely from the negligence or willful misconduct of the **TOWN**, its agents, or employees.
  - d. This clause shall survive termination of the Agreement.
7. **Limited Agent.** Snow and ice removal and salting and sanding pursuant to this Agreement are essential governmental functions that involve the exercise of discretion by **CONTRACTOR**. **CONTRACTOR** shall be an agent of the **TOWN**, but only while, and for the purpose of, fulfilling **TOWN** governmental functions pursuant to this Agreement. **CONTRACTOR** shall not be an insured under **TOWN** insurance policies and the **TOWN** shall have no obligation to indemnify **CONTRACTOR** for liability attributed to **CONTRACTOR**.
8. **Term.** This Agreement shall commence on June 1, 2015, and shall continue through May 31, 2018. The initial term of this contract may be extended through May 31, 2020, under the same terms and conditions as this, the initial contract, or with negotiated terms at the Town's option, provided each party has received from the other a written expression of consent no less than ninety (90) days prior to the expiration of the initial term.
9. **Non-Performance; Default.**
- a. If the **CONTRACTOR** fails to perform the services as required by this agreement or otherwise defaults under this agreement, **TOWN** may, at its sole discretion, and in addition to any other rights at law or equity:
    - (1) Send notice of default to the **CONTRACTOR** and demand strict performance of the terms of this agreement;
    - (2) Cancel this agreement by ten (10) days written notice to the **CONTRACTOR**; or
    - (3) Cure the default, without notice to the **CONTRACTOR** and deduct the cost to cure and any direct and consequential damages from any payment due the **CONTRACTOR** at the time of default or coming due thereafter; provided, if no further payments are due to the **CONTRACTOR**, then the **CONTRACTOR** shall, immediately upon presentation of **TOWN**'s invoice, reimburse **TOWN** for cost of curing the default and such direct or consequential damages.
10. **Notice.**
- a. Any written notice by the **CONTRACTOR** shall be delivered in person or by first-class mail to **TOWN** at its principal offices at 1712 Bob-Bea-Jan Road, De Pere, Wisconsin 54115.
  - b. The date upon which notice is actually received by the other party shall be the date of service for such notice.
  - c. **CONTRACTOR** may terminate this contract without cause at the end of current season with a 30 day written notice signed by the **CONTRACTOR** due by May 31st of said year.
11. **Miscellaneous.**
- a. **Component Parts of the Contract Documents.** The Contract Documents shall include the following documents, all of which are as fully a part of this Agreement as if herein set out verbatim, or if not attached, as if hereto attached.
    - 1) The Request for Proposal (excluding the cover page, inside cover, Table of Contents, Background, and General Instructions.)
    - 2) Any forms or schedules attached hereto.

The Contract Documents contain the entire contract between the parties as to the matters contained therein. All provisions of the Contract Documents shall be strictly complied with and conformed to by the **CONTRACTOR**.

- b. Waiver. Any delay or omission by any of the parties hereto, or their heirs, personal representatives, successors and/or assigns, to exercise any right or power shall not be construed to be a waiver thereof. A waiver by any of the parties hereto, or their heirs, personal representatives, successors and/or assigns, of any of the covenants, conditions or agreements hereof to be performed by another shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.
- c. Heirs, Successors and/or Assigns. This Agreement and each and all of the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and/or assigns, and no third party, other than such heirs, personal representatives, successors and/or assigns, shall be entitled to enforce any term, covenant, or conditions of the Agreement or have any rights hereunder.
- d. Headings. The headings appearing in this Agreement are for convenience and reference only, and in no way define or limit the scope and content of the Agreement or in any way affect its provisions.
- e. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin, both as to interpretation and performance. Any references to a specific law in this Agreement shall be considered a reference to any amendment or modification of such law. In addition, any provision required by law shall be deemed to be incorporated herein. The parties consent to the jurisdiction of the Circuit Court in Brown County, Wisconsin, with respect to any proceeding arising out of this agreement and agree that any action relating to this Agreement shall be instituted and prosecuted in the Brown County Circuit Court.
- f. Severability. The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- g. Modification. To be effective, any agreement to add to, change, modify, waive or discharge this Agreement, in whole or in part, must be in writing and signed by the parties to be bound, which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided in such amendment. Any oral representations or modifications concerning this contract shall be of no force and effect.
- h. Notices. Any notice, demand, statement and request required or permitted to be given under this Agreement, except for those contemplated under paragraphs 1, 2 and 3 hereof, shall be in writing and be deemed to have been properly given or served when personally delivered to the other party, dispatched via overnight courier, transmitted by facsimile, or after deposit with the United States Postal Service, postage prepaid, and addressed to the address set forth below:

If to the TOWN:

TOWN OF ROCKLAND  
Attention: Town Clerk  
1712 Bob-Bea-Jan Road  
De Pere, WI 54115  
Telephone: (920) 336-2814  
Fax: (920) 336-5565

If to the CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

- i. Change of Address. Any party hereto may change the address to which notices to such party shall be sent, by providing written notice to the other parties given in accordance with this section. At such time as a party transfers its interest under this Agreement so as to create a new party in interest, the previous party in interest or such new party in interest shall send notice to the other parties of the name and address to which notice to the new party shall be sent or delivered. Until such time as such notice is given, the previous party in interest shall be deemed to be the agent for such new party in interest for purpose of receipt of services of notices.

**IN WITNESS THEREOF**, the undersigned have signed this **Snow and Ice Removal Agreement** at Town of Rockland, Brown County, Wisconsin, on the day and year indicated next to each signature.

**TOWN OF ROCKLAND**

By \_\_\_\_\_  
Dennis Cashman, Chairperson

Date Signed \_\_\_\_\_

By \_\_\_\_\_  
Jann Charette, Town Clerk

Date Signed \_\_\_\_\_

**CONTRACTOR**

Name \_\_\_\_\_

By \_\_\_\_\_  
Owner:

Date Signed \_\_\_\_\_

