

SNOWPLOWING SERVICES CONTRACT

Watab Township, Benton County, Minnesota, a Minnesota public corporation, with an address of _____ (the "Town") and _____, with an address of _____ (the "Contractor") make this Snowplowing Services Contract (this "Agreement") effective as of _____, 2006 (the "Effective Date").

RECITALS

- A. The Town, as road authority, is responsible for providing for maintenance of the Town's roads, including snowplowing, sanding and snow and ice control.
- B. After undertaking the appropriate contracting procedures, the Town's Board of Supervisors (the "Board") has determined that the Contractor appears to have sufficient equipment, facilities, skill and experience to provide snowplowing, sanding, snow and ice control services, and storage of all sand, salt and other materials used or supplied by the Contractor (the "Services").
- C. The Contractor desires to perform the Services, and the Town desires to contract with the Contractor for such Services.

In consideration of the parties' mutual promises and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Snowplowing Services.** The Contractor agrees to perform the Services on the Town's roads according to the specific terms, conditions and provisions of the Town's Snowplowing Policy established by Resolution 2006-2, a copy of which is attached as **Exhibit A** ("Snowplowing Policy"), and as otherwise directed by the Board.
2. **Materials Storage.** The Contractor agrees to store all sand, salt and other such materials (the "Materials") used or supplied by the Contractor under this Agreement on the Contractor's property, whether or not the Town purchases such Materials directly from the Contractor or another source. If the Town purchases the Materials from someone other than the Contractor, the Town will pay Contractor \$ _____ per year for storage of the Materials on the Contractor's property. The Contractor shall use due care in the storage and handling of the Materials, and such storage shall be subject to this Agreement's requirements, including without limitation, the requirements of Sections 6 and 7 of this Agreement.
3. **Performance and Specifications.** The 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, performance standards and schedule set out in the Snowplowing Policy or as otherwise directed by the Board. The Contractor warrants that it has the necessary equipment to provide the Services. All Materials used or supplied by the Contractor under this Agreement shall be of good quality and meet the

specifications established by the Town. The Town has the right to inspect and may reject any Services or Materials provided by the 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.

4. **Term.** This Agreement's term shall be from November 2, 2006, through November 1, 2008, unless terminated earlier by law or this Agreement's provisions.

5. **Payment.** The Town agrees to pay Contractor for the Services performed under this Agreement based upon the rates set forth in the attached **Exhibit B** (the "Rate Schedule"). The Contractor must submit detailed claims for payment in compliance with the requirements of Minnesota Statutes Sections 471.38 and 471.391, and other applicable law, to the Board in order to be eligible to receive payment from the Town for Services performed. All claims must provide a description of the type, location and dates of the actual work performed, the number of hours for each type of equipment used to complete the work, and the actual tons of sand and salt purchased. Before paying a claim that involved the use of materials or labor supplied by someone other than the Contractor, the Town may require the Contractor to supply proof of payment for such materials or labor. The Town will pay undisputed claims promptly submitted under this Agreement's terms on a monthly basis.

6. **Insurance.** The Contractor, and all subcontractors, shall maintain during this Agreement's entire term the following insurances with at least the indicated amounts of coverage and shall provide the Board with certificates of insurance showing such coverages before providing any Services under this Agreement, on an annual basis thereafter and otherwise as requested by the Board:

- a. Commercial general liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence providing coverage on an "occurrence" basis naming the Town as an additional insured;
- b. Business automobile liability coverage with a total liability limit of at least \$1,000,000 per accident 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 the Contractor in connection with its performance under this Agreement, and naming the Town as an additional insured;
- c. Workers' compensation insurance required by law. If the Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance, the Contractor will provide a written statement of exemption specifying the particular provision of Minn. Stat. 176.041 that exempts the Contractor from having to carry such coverage.

7. **Indemnification.** Any and all claims that arise or may arise against the 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. The Contractor shall defend, indemnify, and hold harmless 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 the Contractor, its agents, servants or employee, in the execution, performance, or failure to adequately perform the 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.

8. **Warranty.** The Contractor warrants and guarantees all Services performed and materials provided under this Agreement against defects and faulty workmanship. The Contractor at Contractor's expense shall replace all materials which the Board finds defective, and shall re-perform at Contractor's expense any labor or Services which the Board finds defective, faulty or not in compliance with this Agreement's terms. The Contractor's warranty must be secured either by the Contractor's performance bond or such other security as is acceptable to Town.

9. **Independent Contractor.** The Contractor acknowledges and agrees that it is an independent contractor and that nothing in this Agreement shall be construed to create the relationship of employer and employee between the Town and the Contractor. No employee related withholdings or deductions shall be made from payments due the Contractor and the Contractor shall be responsible to comply with all applicable provisions of state and federal laws. The Contractor shall not be entitled to receive any benefits from the Town and shall not be eligible for workers' compensation or unemployment benefits. The Contractor shall at all times be free to exercise initiative, judgment, and discretion in how best to perform or provide the Services.

10. **Default.** The occurrence of any of the following shall constitute an event of default by the Contractor and, if not corrected within ten (10) days of the Town providing the Contractor written notice of the default, shall allow the Town to terminate this Agreement:

- a. The Contractor fails to adequately perform or deliver the Services;
- b. The Contractor fails to follow the specifications or standards established by this Agreement;
- c. The Contractor fails to perform or complete the Services in a timely fashion as established by the Town and this Agreement;
- d. The Contractor fails to provide any required bonds or other security acceptable to Town before starting any work;
- e. The Contractor's bankruptcy, assignment to a trustee, receiver or similar fiduciary;
- f. The Contractor makes a material misrepresentation;

- g. The Contractor persistently disregards laws, ordinances, rules, regulations or orders of the Town or any public authority having jurisdiction;
- h. The Contractor fails to make satisfactory progress towards completion of this Agreement; or
- i. The Contractor fails to perform any other material provision of this Agreement.

The Town may lawfully terminate the Agreement if, after providing Contractor ten (10) days written notice of the default, the Contractor does not correct the situation. Upon the Contractor's default of this Agreement, the Town may withhold any payment due the Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute the Town's default or failure to perform.

11. **Remedies.** The Contractor's default or breach of this Agreement shall entitle the Town to seek remedies under law and as provided by this Agreement. If the Town terminates this Agreement because of the Contractor's default, the Town may recover the necessary termination costs, including but not limited to, administrative, attorneys fees and legal costs, from the Contractor. Except when caused by uncontrollable circumstances, if the Contractor fails to meet any performance deadlines established by this Agreement, or fails to perform in accordance with this Agreement's specifications, terms, and conditions, the 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 the Contractor is complete. The Town may deduct as damages from any money due or coming due to the Contractor the differences between the Contractor's price and the higher price or the costs of temporary Services or materials. The Town may require the Contractor, at the Contractor's sole expense, to reperform any items of work or replace any materials 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 provide materials as set forth in this Agreement, the 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 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 the Town.

Any remedies available to the Town are cumulative and not exclusive. The Town's seeking or exercising 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. **Modifications.** Any alterations, variations, modifications, or waivers of this Agreement's provisions shall only be valid when they have been reduced to writing, and signed by the Town and the Contractor.

13. **Termination.** The Town may terminate this Agreement, with or without cause, upon thirty (30) days written notice to the Contractor.

14. **Legal Compliance.** The 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 the Contractor is responsible. The Contractor shall procure, at the Contractor's sole 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 the Contractor shall constitute a material breach of this Agreement, regardless of the reason and whether or not intentional, and shall entitle the Town to terminate this Agreement effective as of the date of such violation, failure, or loss.

15. **Subcontracting and Assignment.** The Contractor shall not enter into any subcontract for performance of any Services or providing of any materials contemplated under this Agreement nor assign any interest in the Agreement, which shall include the sale or transfer of any the Contractor's stock, without the prior written approval of the Town and subject to such conditions and provisions as the Town may deem necessary or desirable in its sole discretion. If the Town permits the use of subcontractors, no subcontractor may perform any work under this Agreement without first providing the Town with (a) a copy of the Contractor's subcontracting agreement, which incorporates this Agreement and includes an acknowledgment by the subcontractor to adhere to this Agreement in its entirety; and (b) certificates of insurance showing all of the coverages required by this Agreement. The Contractor shall be responsible for the performance of all subcontractors. The Contractor shall pay the subcontractors for undisputed Services provided by them within ten (10) days of receiving payment from the Town.

16. **Conflict of Interest.** The Contractor agrees that it will not during this Agreement's term enter into a contract or otherwise accept employment for the performance of any work or service with any individual, business, partnership, corporation, company, governmental entity or any other organization that would create a conflict of interest in the performance of its obligations under this Agreement.

17. **Non-Exclusivity.** This Agreement is not exclusive between the Town and the Contractor. The Town may retain additional contractors to perform any or all of the Services.

18. **Minnesota Law Governs.** Minnesota law shall govern this Agreement. All proceedings related to this Agreement shall be venued in Benton County, Minnesota.

19. **Severability.** This Agreement's provisions 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.

The parties have executed this Agreement as of the Effective Date.

TOWN:

Watab Township

By _____
Chairperson

Attest: _____
Town Clerk

CONTRACTOR:

By _____
Its _____

EXHIBIT A

Resolution 2006-2

(see attached)

EXHIBIT B

Rate Schedule

(see attached)