

## AGREEMENT FOR ROADWAY CRACK SEALING SERVICES

This Agreement (“Agreement”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Baxter, 13190 Memorywood Drive, Baxter, Minnesota 56425, hereinafter referred to as the “City” and \_\_\_\_\_, with address \_\_\_\_\_ hereinafter referred to as the “Contractor”, who agree as follows:

1. The Contractor hereby covenants and agrees to perform and execute all the provisions in this Contract and all its attachments which are incorporated herein, which in total comprise the 2024 City of Baxter Crack Sealing City Streets Project, hereinafter referred to as the “Project”. In performing its services, Contractor will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. The Agreement will expire on August 31, 2024 absent a written agreement by the Parties for an extension.
2. Contractor agrees to perform the work outlined in the City’s Quote Invitation Bid Specifications (“Services”) which is attached hereto as **Exhibit A**. Contractor agrees the Services shall be fully and satisfactorily completed during the term of this Agreement.
3. Work shall not take place during the dates of May 24, 2024 through May 27, 2024. Weekend work will not be permitted during this contract unless the City of Baxter has prior knowledge and has agreed to the work.
4. The Contractor shall abide by the City of Baxter Noise Ordinance, a copy of which is attached hereto as **Exhibit B**. No crack sealing shall occur between the hours of 10:00 P.M. and 7:00 A.M. The exception to this is the Contractor shall have the ability to perform Services in the commercial and industrial districts during these quiet hours.
5. The City, upon accepting all work done by the Contractor, shall pay Contractor in accordance with the price as indicated in the Contractor’s Quote, attached hereto as **Exhibit C**, the cost per foot of \$ \_\_\_\_\_ for route & seal and cost per foot of \$ \_\_\_\_\_ for blow & go for 2023. The lineal feet is estimated at \_\_\_\_\_ lineal feet of route & seal and \_\_\_\_\_ lineal feet of blow & go is the responsibility of the Contractor to verify estimated quantities before submitting quote to the City. If there is additional work the City reserves the right to negotiate with the contractor about additional fees. All materials and workmanship will be subject to inspection, examination, and testing by the City, who will have the right to reject defective material and workmanship or require its correction prior to payment to Contractor.
6. Upon mutual agreement of the Parties, the crack sealing locations may be altered or changed from what is shown in the City of Baxter Crack Sealing Map which is attached hereto as **Exhibit D**.

7. The contractor shall have 15 consecutive working days (Monday – Friday, excluding Federal Holidays) to complete the entire project. Failure to do so will result in a penalty provision of \$750.00 per calendar day.
8. Contractor shall indemnify and hold harmless the City from loss, liability, cost or expense, including reasonable attorney’s fees, for bodily injury, death and property damage, but only to the extent same are caused by the negligence, misconduct or other fault of Contractor, its agents or employees, which arise out of work performed under this Project. The foregoing provision shall only benefit the City if the City notifies the Contractor in writing of such claim within thirty days of same being reported to the City or its representative.
9. Contractor shall not be liable for delay in Project completion, loss or damage caused by warfare, riots, strikes, boycotts, criminal acts, acts or omissions of others, fire, natural calamity or causes beyond Contractor’s control.
10. The contractor agrees to maintain in effect throughout the entire Project insurance for Workers’ Compensation in an amount matching or exceeding statutory limits, and personal injury and property damage insurance coverages with \$2,000,000 combined single limit liability per occurrence. The City shall be named as an additional insured on the personal injury and property damage insurance policy. The contractor shall furnish to the City a Certificate of Insurance evidencing such coverages and specifying that thirty days prior notice of cancellation of said policies shall be sent to the City, and is attached as **Exhibit E** – Certificate of Insurance.
11. The Contractor is an independent contractor, and all persons employed to furnish Services hereunder are employees of Contractor and not of the City.
12. This Agreement shall inure to, and bind the successors, assigns, agents, and representatives of the parties. Contractor shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of the City, unless specifically provided for in the exhibits.
13. Contractor warrants and guarantees that title to all work, materials, and equipment covered by any invoice, will pass to City no later than the completion date. Contractor warrants that all work will be free from defects and that all materials will be new and of first quality. If within 1 year after final payment any work or material is found to be defective, Contractor shall promptly, without cost to the City, correct such defect.
14. Termination and Remedies.
  - a. Termination for Convenience. This Agreement may be terminated by either party upon 30 days’ written notice delivered to the other party. Upon termination under this provision, if there is no default by the Contractor, Contractor shall be paid for services rendered and reimbursable expenses through the effective date of termination.

- b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have 15 calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
- c. Remedies. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by the Contractor. The City may, in such event:
  - i. Withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined.
  - ii. Perform the services covered by this Agreement, in which case, the Contractor shall within 30 days after written billing by the City, reimburse the City for any costs and expenses incurred by the City.

The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

- d. Upon termination of this Agreement, the Contractor shall furnish to the City copies or duplicate originals of all documents or memoranda prepared for the City not previously furnished.
15. This agreement contains the entire Agreement between the parties. All prior negotiations between the parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated herein. This Agreement may not be modified, except by written instrument signed by both parties. In the event of conflict between any of the foregoing provisions of this Agreement and the attached specifications, the former shall be controlling.
16. This Agreement shall consist of the following attachments:
- a. Exhibit A – City of Baxter Quote Invitation
  - b. Exhibit B – City of Baxter Noise Ordinance, Ordinance No.5-4-2
  - c. Exhibit C - Contractor’s Quote
  - d. Exhibit D - City of Baxter Crack Sealing Map
  - e. Exhibit E - Certificate of Insurance
  - f. Exhibit F - City Quote Invitation Cover Letter

CONTRACTOR:

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

Its: \_\_\_\_\_

CITY OF BAXTER:

By: \_\_\_\_\_  
Darrel Olson

Its: Mayor

ATTEST

By: \_\_\_\_\_  
Kelly Steele

Its: Assistant City Administrator / City Clerk