



MISSION TOWNSHIP SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“**Agreement**”) is made and entered into by and between the Mission Township, P.O. Box 126, Merrifield, MN 56465, a Minnesota public corporation (“**Town**”), and Borden Excavating, Inc. (“**Contractor**”). The Town and the Contractor may hereinafter be referred to individually as a “party” or collectively as the “parties.” In consideration of the mutual promises and agreements contained herein, and intending to be legally bound, the Town and the Contractor hereby agree as follows:

1. **Services.** The Contractor shall perform the services as described in the attached Exhibit A and in accordance with the Contractor’s proposal attached as Exhibit B (collectively, the “**Services**”). The Contractor shall provide the Services in a manner consistent with industry standards for similar services and in accordance with the standards, requirements, and timelines set out in Exhibit A and Exhibit B, and below. If there is a material conflict between any of the provisions in the documents that constitute this Agreement, provisions in the following rank order shall take precedence: (1) Exhibit A; (2) this Agreement document; and then (3) Exhibit B. The Contractor shall not assign any portion of this Agreement or subcontract any of the Services without prior written agreement of the Town.
2. **Compensation.** The Town shall compensate the Contractor for the Services as provided in Exhibit B and as may be more specifically defined in Exhibit A. Unless expressly provided otherwise in Exhibit B, the total amount or rate of compensation is an all-inclusive amount that includes all labor, materials, expenses, fees, costs, taxes, and other amounts the Contractor incurs or pays to provide the Services. The Town shall not be responsible for paying any additional amounts than those expressly provided for in Exhibit B, and as may be modified or further detailed in Exhibit A, for the completion of the Services.
3. **Payment.** The Contractor shall submit invoices no more frequently than once a month for the Services, which shall provide a detailed description of the Services provided. The invoice must satisfy the requirements, including the specificity requirements, established in Minnesota Statutes, Sections 471.38, 471.391 and other applicable laws. All invoices are subject to verification by the Town. To be considered for payment at the Town’s monthly Town Board meeting, the invoice must be received by the Town by the final day of the month preceding the next regular meeting. The Town will pay the Contractor promptly in accordance with the prompt payment requirements set forth in Minnesota Statutes, Section 471.425, except to the extent payment is withheld for failure to provide sufficient detail or because of default as provided herein. In such cases, no interest or penalties shall accrue on any withheld amounts.
4. **Term and Termination.** This Agreement shall be effective as of the date of the last party to execute it and it shall continue in effect until the Services are completed, but in no case later than December 31, 2026. This Agreement may be terminated by either party at any time, and for any reason, on 60 days’ written notice of termination provided to the other party. Except that the Town may terminate this Agreement in writing immediately upon the Contractor’s breach of a material term, including failure to promptly correct the performance of the Services or any aspect of the

work. The Town shall only be responsible for paying for Services satisfactorily completed prior to termination.

5. **Independent Contractor.** The Contractor is providing the Services as an independent contractor, not as an employee of the Town. Contractor shall acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and life benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the Town. The Contractor shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of the Town.
6. **Indemnification.** Any and all claims that arise or may arise against the Contractor, its officers, agents, employees or contractors as a consequence of any act or omission on the part of the Contractor or its officers, agents, employees or contractors while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the Town. The Contractor shall indemnify, hold harmless, and defend the Town, its officials, agents, and employees against any and all liabilities, losses, costs, damages, expenses, claims or actions, including attorneys' fees, which the Town, its officials, agents, contractors 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 officers, agents, contractors or employees, in the execution, performance, or failure to adequately perform the Services or any other of the Contractor's obligations under this Agreement.
7. **Liability.** Nothing in this Agreement shall constitute a waiver by the Town of any statutory limits or immunities from liability. Each right, power or remedy conferred upon the Town by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the Town at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Town and shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.
8. **Insurance.** The Contractor shall maintain commercial general liability coverage for all work covered under the Agreement in at least the amounts of \$1,000,000 per occurrence for combined bodily injury and property damage, and \$2,000,000 in the general aggregate, and commercial automobile liability insurance in at least the amount of \$1,000,000 per occurrence for combined bodily injury and property damage covering owned, non-owned, and hired automobiles. The Contractor shall provide the Town with a current certificate of insurance listing the Town as an additional insured with respect to the commercial general liability policy. The Contractor may use a combination of excess and umbrella coverage to satisfy the insurance limit amounts. The Contractor also agrees to keep in force during the entire term of this Agreement statutory workers' compensation insurance.
9. **Audit.** In accordance with Minnesota Statutes, Section 16C.05, subdivision 5, Contractor's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the Town and the Minnesota State Auditor for a minimum of six years from the expiration date of this Agreement.

10. **Compliance with Laws.** The Contractor shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances in performance of Contractor's duties hereunder, such laws including but not limited to those relating to non-discrimination in hiring or labor practices. The Contractor shall be responsible for obtaining all permits that may be required to provide the Services at its own cost, unless expressly provided otherwise in Exhibit A.
11. **Assignment.** The Contractor shall not enter into any subcontract for performance of any services contemplated under this Agreement, nor assign any interest in this Agreement, 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. The Contractor shall be responsible for the performance of all subcontractors and no such subcontractor shall have any rights or claims against the Town. No subcontractor shall be allowed to perform any Services under this Agreement unless they carry all of the insurances required of the Contractor. The Town may expressly waive or alter the insurance requirement with respect to a particular subcontractor.
12. **Prompt Payment of Subcontractors.** To the extent the use of subcontractors is authorized under this Agreement, the Contractor shall comply with the prompt payment to subcontractor requirements of Minnesota Statutes, section 471.425, subdivision 4a.
13. **Non-Exclusivity.** This Agreement is not exclusive between the Town and the Contractor. The Town, in its sole discretion and without limitation, may retain additional contractors or subcontractors to perform any or all of the Services to be provided under this Agreement. Such services shall be provided independently from this Agreement and under such terms and conditions as the Town and the other contractors or subcontractors may agree to. Nothing in this Agreement shall be construed as limiting the Town's right to retain the services of other contractors or the Town's right to perform the Services.
14. **Entire Agreement.** This Agreement, together with the attached exhibits and any attachments thereto, constitutes the entire agreement between the parties and supersedes any and all agreements, written or oral, express or implied, pertaining to the subject matter and no modifications of its terms shall be valid unless reduced to writing and signed by both parties.
15. **No Personal Liability.** No officer, agent or employee of the Town shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the Town on any obligation or term of this Agreement.
16. **No Agency.** The Contractor acknowledges that nothing contained in this Agreement nor any act by the Town or the Contractor shall be deemed or construed by the Contractor or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the Town and the Contractor.
17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
18. **Applicable Law.** The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this

Agreement will be in and under those courts located within the County of Crow Wing, State of Minnesota, regardless of the place of business, residence, or incorporation of Contractor.

- 19. **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.
- 20. **Third Parties.** This Agreement does not confer any rights upon any third parties or parties who are not signatories to this Agreement.
- 21. **Authority.** Each of the undersigned parties warrants it has the full authority to execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date of the last party to execute it.

MISSION TOWNSHIP

BORDEN EXCAVATING INC.

Jon Auge, Town Board Chair

Contractor

Matt Borden
(Print Name)

Anna Anderson, Town Clerk

Borden Excavating, Inc.
Company Name

11-13-2023
Date

Date

EXHIBIT A
Special Provisions and Standards

1. **Special Provisions.** The following special provisions, if any, shall control over any materially different provisions in the text of the Agreement or the proposal in Exhibit B.
 1. Contract with Borden Excavating Inc. for the use of their equipment and labor to plow Mission town roads in the event of equipment failure rendering the town unable to plow the town roads, or in the event of an emergency. Such services will be requested by verbal notice to Borden Excavating Inc. by the designated roads supervisor or another officer of the town. Sufficient notice shall be provided by the town to allow the contractor to mobilize for the requested plowing.

Payment(s) to Contractor for services provided under this Agreement shall be as follows:

1. Payment will be in the amount of \$250.00 per hour, all inclusive of labor and equipment.
2. **Standards.** The Services provided by the Contractor under this Agreement shall be in accordance with the following:
 - a. Town roads to be plowed full width, inclusive of Pelican Township roads (Canthook Drive and Lakeview Lane). The town is responsible for providing a map of the roads requiring plowing.
 - b. The contractor is expected to follow industry standards in completing the contracted work.

EXHIBIT B
Contractor's Proposal

[attached hereto]