

Preble Township

Preble Townhall
18132 Highway 43 South
Preble Township, Minnesota 55954

ROAD REPAIR PROJECT AGREEMENT

Preble Township engages the road construction contractor identified below to provide road repair services to repair the following described public road segment owned and operated by Preble Township.

Contractor's Name: _____ Contractor's FEIN: _____

Contact Person: _____ Office Phone: _____

Address: _____ Field Cell: _____

City, State, Zip: _____

Contractor's Liability Insurance Carrier and Policy Number: _____

Location of Project in Preble Township

Road Name: _____ Section Number: _____

FEMA Project Number: _____ Additional Location Description: _____

Road Repair Work Performed for Preble Township

Description of Work: _____

Equipment to be Used by Contractor: _____

Project Start Date: _____ Estimated Completion Date: _____

Special Project Requirements: _____ Comments: _____

Total Project Charge: _____ Payment Terms: _____

Dated: _____

Contractor's Signature

Preble Township Authorized Signature

Terms and Conditions

1. 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 Township, 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 Township, if any. Township has the right to inspect and may reject any services provided by Contractor under this Agreement that, in the Township's determination, were not completed in a good workmanlike manner or that otherwise failed to satisfy the established specifications or performance standards.

2. Insurance. Contractor shall maintain during the entire term of this Agreement the following insurances with at least the indicated amounts of coverage and provide Township a certificate of insurance showing such coverages before providing any services under this Agreement: (1) Commercial general liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence; (2) Business automobile liability coverage with a total liability limits of at least \$1,000,000; 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.

3. 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 Township. Contractor shall indemnify, hold harmless, and defend the Township, its officers, agents, and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the Township, 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 Township of any statutory limits or immunities from liability.

4. Warranty. Contractor warrants all work performed under this Agreement for a period of one year from the date the work is completed and accepted by Township. The warranty must be secured either by Contractor's performance bond or such other security as is acceptable to Township.

5. 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 Township 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 Township 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.

6. 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 Township may require Contractor to supply proof of payment for such materials or labor.

7. Default. The occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of Township providing Contractor notice of the default, shall allow Township 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 Township; (4) if applicable, failure to provide the required bonds or other security acceptable to Township 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. Township 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, Township 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 Township.

8. Remedies. Default or breach of this Agreement by Contractor shall entitle Township to seek remedies under law and as provided by this Agreement. In the event this Agreement is terminated by reason of default by Contractor, Township 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, Township 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. Township 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. Township 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 Township directives.

Any remedies available to Township are cumulative and not exclusive. The seeking or exercising by Township 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.

9. Time of the Essence. 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 Township 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 Township.

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 Township and Contractor.

11. Termination. Township may terminate this Agreement, with or without cause, upon 5 days 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 Township 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 Township and subject to such conditions and provisions as Township may deem necessary or desirable in its sole discretion. If Township permits the use of subcontractors, no subcontractor may perform any work under this Agreement without first providing Township certificates of insurance showing all of the coverages required in section 2 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 Township.

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.