

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
9/8/2015

SUBJECT:	SUBMITTED BY:
Bid - Specialty Winter Operations Services	Nan Newlon Director of Public Works

SYNOPSIS

A motion is requested to authorize award of a three-year contract for Specialty Winter Operations Services to Snow Systems of Wheeling, Illinois in the amount of \$332,625.83, which includes a 5% contingency.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Exceptional Municipal Services* and *Continual Innovation*.

FISCAL IMPACT

A portion of the contract will be paid from the FY15 General Fund budget. The proposed FY16 budget will include \$92,000 for contractual snow removal services. The contract amount is based on an assumption of 20 events for snow clearing with salting and 10 salting-only events per winter season.

RECOMMENDATION

Approval on the September 8, 2015 consent agenda.

BACKGROUND

On August 11, 2015, the Village Council awarded a three-year contract for specialty winter operations services to Tovar Snow Professionals of East Dundee, Illinois in the amount of \$297,704.67. Subsequently, Tovar notified the Village that they would not enter into a contract. As a result, Tovar will forfeit its bid bond and staff is recommending awarding a contract to the second low bidder, Snow Systems of Wheeling, Illinois.

The Village is responsible for snow and ice removal services for walkways within the downtown and at the three commuter rail stations. At the Main Street and Fairview Avenue commuter stations the Village is also responsible for clearing the platforms. These services are labor intensive, require specialized equipment that is used for a limited time, and have been subjected to increasing regulation related to safety and working close to the railroad tracks.

This is the second three-year contract for specialty winter operations services. In an effort to continue to provide a high level of service while best utilizing Village resources, this work was outsourced beginning in 2012. This allowed the Village to utilize its experienced equipment operators for the more skilled task of clearing roadways.

The contractor will provide all labor, equipment and materials needed to perform the work described by the contract including all de-icing chemicals. The contractor will be called for service by the on-duty Village Snow Supervisor based upon the forecasted weather conditions. The areas covered by this contract have been prioritized and all work is to be completed within eight hours of the end of each winter event. The contractor will have primary responsibility for maintaining conditions that minimize to the greatest degree possible pedestrian exposure to conditions that could result in slips, falls and associated injuries on icy, snowy or frozen surfaces. Pre-storm anti-icing and minor de-icing of trouble spots at the train stations and in the downtown will continue to be handled in-house. In-house crews will also perform load-outs of snow if needed in these areas. The contract includes an hourly rate for equipment and personnel to haul snow from the downtown area if directed.

The following firms submitted bids:

Service Provider	Bid Amount Per Event		
	2015-16	2016-17	2017-18
Tovar Snow Professionals, East Dundee, Illinois	\$5,830.00	\$5,946.60	\$6,065.53
Snow Systems, Wheeling, Illinois	\$6,345.00	\$6,535.35	\$6,731.41

Snow Systems has been providing snow and ice control services throughout the Chicagoland area for over 36 years. Snow Systems is equipped to handle large snow removal efforts that require multiple pieces of snow moving equipment (wheel loaders, skid steers, etc.). Their specialty is in corporate campuses, healthcare, intermodal, railroad, manufacturing plants, and big box retail over a three state region. They also provided positive references from the City of Highland Park and Northeastern Illinois University.

ATTACHMENTS

Contract Documents
Contractor Evaluation

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager DATE: September 8, 2015
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to award a three-year contract for specialty winter operations services to Snow Systems in an amount not to exceed \$332,625.83, which includes a 5% contingency.



SUMMARY OF ITEM:

Adoption of this motion shall award a three-year contract for specialty winter operations services to Snow Systems in an amount not to exceed \$332,625.83, which includes a 5% contingency.

RECORD OF ACTION TAKEN:

Village of Downers Grove

COPY



CALL FOR BIDS

- I Name of Company Bidding: **SNOW SYSTEMS**
- II. Instructions and Specifications:
- A. Bid No.: CFB-0-41-2015/TT
- B. For: SPECIALTY WINTER OPERATIONS SERVICES
- C. Bid Opening Date/Time: May 26, 2015, 11:00 a.m.
Public Works 5101 Walnut Ave.
Downers Grove, IL. 60515
- D. Pre-Bid Conference Date/Time: **Mandatory Pre-Bid**
May 18, 2015, 11:00 a.m.
Public Works
5101 Walnut Ave.
Downers Grove, IL. 60515
- III. Required of All Bidders:
- A. Bid Deposit: **5%**
- B. Letter of Capability of Acquiring Performance Bond: **Required**
- IV. Required of Awarded Contractor(s)
- A. Performance Bond or Letter of Credit: **Required**
- B. Certificate of Insurance: **Required**

Legal Advertisement Published: May 11 2015

Date Issued: May 11, 2015

This document comprises 35 pages

Return **original** and **two duplicate copies** of Bid and (1) cd or flash drive in a **sealed envelope** marked with the Bid Number as noted above to:

THERESA H. TARKA
PURCHASING ASSISTANT
VILLAGE OF DOWNERS GROVE PUBLIC WORKS
5101 Walnut Ave.
DOWNERS GROVE, IL 60515
PHONE: 630/434-5530
FAX: 630/434-5571
www.downers.us

CALL FOR BIDS

Village of Downers Grove

Bid No.: CFB-0-41-2015/TT

The VILLAGE OF DOWNERS GROVE will receive bids Monday thru Friday, 8:00 A.M. to 5:00 P.M. at the Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515.

SPECIFICATIONS MUST BE MET AT THE TIME THE BID IS DUE.

The Village Council reserves the right to accept or reject any and all Bids, to waive technicalities and to accept or reject any item of any Bid.

The documents constituting component parts of this Contract are the following:

- I. CALL FOR BIDS
- II. TERMS & CONDITIONS
- III. DETAILED SPECIFICATIONS
- IV. BID/CONTRACT FORM

DO NOT DETACH ANY PORTION OF THIS DOCUMENT. INVALIDATION COULD RESULT. Bidders MUST submit an original, and two (2) paper copies of the total Bid. Upon formal award of the Bid, the successful Bidder will receive a copy of the executed contract.

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I. CALL FOR BIDS**1. GENERAL**

- 1.1 Notice is hereby given that the Village of Downers Grove will receive sealed Bids up to **May 26, 2015, 11:00 a.m.**
- 1.2 Bids must be received at the Village of Downers Grove Public Works by the time and date specified. Bids received after the specified time and date will not be accepted and will be returned unopened to the Bidder.
- 1.3 Bid forms shall be sent to the Village of Downers Grove, ATTN: Theresa Tarka, in a sealed envelope marked "SEALED BID". The envelope shall be marked with the name of the project, date, and time set for receipt of Bids.
- 1.4 All Bids must be submitted on the forms supplied by the Village and signed by a proper official of the company submitting the Bid. Telephone, email and fax Bids will not be accepted.
- 1.5 By submitting this Bid, the Bidder certifies under penalty of perjury that he has not acted in collusion with any other Bidder or potential Bidder.

2. PREPARATION OF BID

- 2.1 It is the responsibility of the Bidder to carefully examine the specifications and bid documents and to be familiar with all of the requirements, stipulations, provisions, and conditions surrounding the proposed services.
- 2.2 No oral or telephone interpretations of specifications shall be binding upon the Village. All requests for interpretations or clarifications shall be made in writing and received by the Village at least five (5) business days prior to the date set for receipt of Bids. The Village shall make all changes or interpretations of the specifications in a written addendum and shall provide an addendum to any Bidder of record. Any and all changes to the specifications/plans are valid only if they are included by written addendum to all Bidders. Each Bidder must acknowledge receipt of any addenda by indicating on the Bid Proposal page. Each Bidder, by acknowledging receipt of any addenda, is responsible for the contents of the addenda and any changes to the Bid therein. Failure to acknowledge any addenda may cause the Bid to be rejected. The Village will not assume responsibility for receipt of any addenda. In all cases, it will be the Bidder's responsibility to obtain all addenda issued. Bidders will provide written acknowledgement of receipt of each addendum issued with the bid submission.
- 2.3 In case of error in the extension of prices in the Bid, the hourly rate or unit price will govern. In case of discrepancy in the price between the written and numerical amounts, the written amount will govern.
- 2.4 All costs incurred in the preparation, submission, and/or presentation of any Bid including

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any Bidder's travel or personal expenses shall be the sole responsibility of the Bidder and will not be reimbursed by the Village.

- 2.5 The Bidder hereby affirms and states that the prices quoted herein constitute the total cost to the Village for all work involved in the respective items and that this cost also includes all insurance, bonds, royalties, transportation charges, use of all tools and equipment, superintendence, overhead expense, all profits and all other work, services and conditions necessarily involved in the work to be done and materials to be furnished in accordance with the requirements of the Contract Documents considered severally and collectively.

3. PRE-BID CONFERENCE

- 3.1 A pre-bid conference may be offered to provide additional information, inspection or review of current facilities or equipment, and to provide an open forum for questions from Bidders. This pre-bid conference is not mandatory (unless stated "Required" on the cover of this document), but attendance by Bidders is strongly advised as this will be the last opportunity to ask questions concerning the Bid.
- 3.2 Questions may be posed in writing to the Village (faxed and emailed questions are acceptable), but must be received by the Village prior to the scheduled time for the pre-bid conference. Questions received will be considered at the conference. An addendum may be issued as a result of the pre-bid conference. Such an addendum is subject to the provisions for issuance of an addendum as set forth in Section 2.2 above.

4. SUBMISSION OF BID

- 4.1 In all cases, an original and duplicate copy of the sealed bids marked as indicated in Section 1 shall be directed to the Purchasing Department.
- 4.2 A bid deposit may be required, the amount of which shall be fixed by the Purchasing Manager but which shall not exceed ten percent (10%) of the estimated cost of the work or material to be furnished, nor be less than the sum of twenty-five dollars (\$25.00). Such bid deposit shall be in the form of a certified check, cash or money order. Checks shall be drawn upon a bank of good standing payable to the order of the Village and said deposit shall be forfeited to the Village in the event the Bidder shall neglect or refuse to enter into a contract and bond when required, with approved sureties, to execute the work or furnish the material for the price mentioned in his/her Bid and according to the plans and specifications in case the contract shall be awarded to him/her. Bids shall be opened at the hour and place mentioned in the notice.

5. MODIFICATION OR WITHDRAWAL OF BID

- 5.1 A Bid that is in the possession of the Village may be altered by a letter bearing the signature or name of the person authorized for submitting a Bid, provided that it is received prior to the time and date set for the Bid opening. Telephone, email or verbal alterations of a Bid will not be accepted.
- 5.2 A Bid that is in the possession of the Village may be withdrawn by the Bidder, up to the time

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set for the Bid opening, by a letter bearing the signature or name of the person authorized for submitting Bids. Bids may not be withdrawn after the Bid opening and shall remain valid for a period of ninety (90) calendar days from the date set for the Bid opening, unless otherwise specified.

- 5.3 Any Bidder who does not submit a Bid is requested to return the enclosed Statement of "No Bid" postcard. Bidders not submitting Bids or "No Bid Statement" may otherwise be removed from the Village's bid mailing list.

6. REJECTION OF BIDS

- 6.1 Bids that contain omissions, erasures, alterations, additions not called for, conditional bids or alternate bids not called for or irregularities of any kind shall be rejected as informal or insufficient bids otherwise acceptable which are not accompanied by the proper bid deposit and/or security shall also be rejected as informal or insufficient. The Village reserves the right to reject any or all Bids and to waive technical errors as may be deemed best for the interest of the Village.

7. COMPETENCY OF BIDDER

- 7.1 No Bid will be accepted from or contract awarded to any person, firm or corporation that is in arrears or is in default upon any debt or contract. The Bidder, if requested, must present evidence to the Purchasing Assistant of ability and possession of necessary facilities, and financial resources to comply with the terms of the attached specifications and proposals. Evidence must be presented within three (3) business days.

8. DISQUALIFICATION OF BIDDERS

- 8.1 Any one or more of the following causes may be considered as sufficient for the disqualification of a Bidder and the rejection of their Bid.
- 8.1.1 More than one Bid for the same Work from an individual, firm partnership, or corporation under the same or different names.
- 8.1.2 Evidence of collusion among Bidders.
- 8.1.3 Unbalanced Proposals in which the prices for some items are substantially out of proportion to the prices for other items.
- 8.1.4 Failure to submit a unit price for each item of Work listed in the Bid Form.
- 8.1.5 Lack of competency as revealed by financial statement or experience questionnaire.
- 8.1.6 Unsatisfactory performance record as shown by past work, judged from the standpoint of workmanship and progress.
- 8.1.7 Uncompleted work which, in the judgment of the Village, might hinder or prevent the prompt completion of this Work.

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8.1.8 Failure to submit a signed Bidder's Certificate stating the following:

- 8.1.8.1 That the Bidder is not barred from bidding on this Contract as a result of a violation of Sections 720 ILCS 5/33-E3 and 720 ILCS 5/33-E4 of the Illinois Compiled Statutes; and
- 8.1.8.2 The Bidder is not delinquent in the payment of any tax administered by the Illinois Department of Revenue and;
- 8.1.8.3 The Bidder will maintain the types and levels of insurance required by the terms of this Contract.
- 8.1.8.4 The Bidder will comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq.*

9. BASIS OF AWARD

- 9.1 The Village reserves the right to accept or reject any and all Bids or to waive technicalities, or to accept or reject any item of any Bid unless the Bidder includes a restrictive limitation.
- 9.2 The Village may award the contract on individual items within a particular group or upon the total group of items. The Village reserves the right to divide the work and award it to more than one Bidder if it determines it is in the best interest of the Village to do so.

10. AWARD OF CONTRACT

- 10.1 The Contract will be awarded to that responsible Bidder(s) whose Bid, conforming to the invitation for Bids, will be most advantageous to the Village, price and other factors considered. (the credentials, financial information, bonding capacity, insurance protection, qualifications of the labor and management of the firm, past experience and ability to complete the project within time frame required - lowest responsible bidder)

11. RETURN OF BID DEPOSIT

- 11.1 The bid deposit of all except the three (3) lowest responsive Bidders on each contract will be returned within fifteen (15) calendar days after the opening of Bids. The remaining bid deposits of each Bidder will be returned within fifteen (15) days after the Village Council has awarded the contract and the required appurtenances to the contract have been received.

12. FAILURE TO ENTER INTO CONTRACT

- 12.1 By submitting a Bid, the Bidder understands and agrees that, if his Bid is accepted, and he fails to enter into a contract forthwith, he shall be liable to the Village for any damages the Village may thereby suffer.

13. SECURITY FOR PERFORMANCE

- 13.1 The awarded contractor, within thirteen (13) calendar days after acceptance of his Bid by the Village, shall furnish security for performance acceptable to the Village when required under

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the documents. Such security shall be either a satisfactory performance bond (bonding company must be licensed to do business in Illinois) or a letter of credit on the form provided by the Village and available from the Village's Purchasing Manager. Said bonds shall guarantee the Bidder's performance under the Contract Documents and shall guarantee payment of all subcontractors and material suppliers. Any bond shall include a provision as will guarantee faithful performance of the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq. **NOTE: As evidence of capability to provide such security for performance, each Bidder shall submit with the Bid either a letter executed by its surety company indicating the Bidder's performance bonding capability, or a letter from a bank or savings and loan within twenty-five miles of the corporate boundaries of the Village indicating its willingness and intent to provide a letter of credit for the Bidder.**

14. TAX EXEMPTION

- 14.1 The Village is exempt from Illinois sales or use tax for direct purchases of materials and supplies. A copy of the Illinois Sales Tax Exemption Form will be issued upon request. The Village's federal identification number will also be provided to the selected vendor.

15. RESERVED RIGHTS

- 15.1 The Village reserves the right to waive irregularities and informalities, sections to this Contract and to accept any Bid and to reject any and all Bids and to disapprove of any and all subcontractors as may be in the best interest of the Village. Time and date requirements for receipt of Bids, however, will not be waived.

16. CATALOGS

- 16.1 Each Bidder shall submit catalogs, descriptive literature, and detailed drawings, where applicable, to fully illustrate and describe the material and/or work he proposes to furnish.

17. TRADE NAMES/SUBSTITUTIONS

- 17.1 Certain materials and equipment are specified by a manufacturer or trade name to establish standards or quality and performance and not for the purpose of limiting competition. Bidders are invited to submit Bids not only on named items but also on items that they propose for substitution of named items. Products of other manufacturers may be substituted, if, in the opinion of the Village, they are equal to those specified in quality, performance, design, and suitability for intended use. If the Bidder proposes to furnish an "equal", the proposed "equal" item must be so indicated in the written Bid. Where two or more items are specified, the selection among those specified is the Contractor's option, or he may submit his Bid on all such items. Detail specification sheets shall be provided by Bidder for all substituted items.

II. TERMS AND CONDITIONS**18. VILLAGE ORDINANCES**

- 18.1 The successful Bidder, now the Contractor, will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

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19. USE OF VILLAGE'S NAME

- 19.1 The Bidder is specifically denied the right of using in any form or medium the name of the Village for public advertising unless the Village grants express permission.

20. INSPECTION

- 20.1 The Village shall have a right to inspect, by its authorized representative, any material, components or workmanship as herein specified. Materials, components or workmanship that have been rejected by the Purchasing Manager as not in accordance with the terms of the contract specifications shall be replaced by the Contractor at no cost to the Village.

21. DELIVERIES

- 21.1 All materials shipped to the Village of Downers Grove must be shipped F.O.B. designated location, Downers Grove, Illinois.

22. SPECIAL HANDLING

- 22.1 Prior to delivery of any product that is caustic, corrosive, flammable or dangerous to handle, the Contractor will provide written directions as to methods of handling such products, as well as the antidote or neutralizing material required for its first aid before delivery. Contractor shall also notify the Village and provide material safety data sheets for all substances used in connection with this Contract which are defined as toxic under the Illinois Toxic Substances Disclosure to Employees Act.

23. COMPLIANCE WITH OSHA STANDARDS

- 23.1 Equipment supplied to the Village must comply with all requirements and standards as specified by the Occupational Safety and Health Act. All guards and protectors as well as appropriate markings will be in place before delivery. Items not meeting any OSHA specifications will be refused.

24. CERCLA INDEMNIFICATION

- 24.1 The Contractor shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless the Village, its officers, employees, agents, and attorneys from and against any and all liability, including without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys' fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C.A. Sec. 9601, et seq., as amended, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Contractor, both before and after its disposal.

25. BUY AMERICA

- 25.1 The Contractor agrees to comply with 49 U.S.C.5323(j), the Federal Transportation Administration's (FTA) Buy America regulations at 49 C.F.R. Part 661, and any amendments thereto, and any implementing guidance issued by the FTA, with respect to this Contract, when financed by Federal funds (through a grant agreement or cooperative

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agreement).

- 25.2 As a condition of responsiveness, the Contractor agrees to submit with its Bid submission, an executed Buy America Certificate, attached hereto.

26. CAMPAIGN DISCLOSURE

- 26.1 Any contractor, proposer, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto.

- 26.2 The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

- 26.3 Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

- 26.4 By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

27. BACKING PRECAUTIONS

- 27.1 Pursuant to Sections 14-139(b) and 14-171.1 of the Downers Grove Municipal Code, any motor vehicle which has an obstructed view to the rear and is to be operated at any time in reverse gear on the public streets of the Village of Downers Grove by the Contractor or any subcontractor shall either be equipped with a reverse signal alarm (backup alarm) audible above and distinguishable from the surrounding noise level, or shall provide an observer to signal that it is safe to back up.

28. OVERWEIGHT, OVERWIDTH AND OVERHEIGHT PERMITS

- 28.1 The Village has and supports an overweight truck enforcement program. Contractors are required to comply with weight requirements and safety requirements as established by Illinois Law or Village Ordinance, for vehicles, vehicle operators and specialty equipment. In some instances, specialty equipment for road repairs or construction projects requires the movement of overweight, overwidth, or overheight loads utilizing a Village of Downers Grove roadway. Such movement will require obtaining a permit and permission from the Downers Grove Police Department.

29. COPYRIGHT/PATENT INFRINGEMENT

- 29.1 The Bidder agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Bidder that constitutes a misuse of any proprietary or trade secret

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information or an infringement of any patent or copyright.

30. INDEMNITY AND HOLD HARMLESS AGREEMENT

- 30.1 To the fullest extent permitted by law, the Bidder shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, strikes, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Bidder, its employees, or its subcontractors, and the Bidder shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the Bidder shall, at its own expense, satisfy and discharge the same. This agreement shall not be construed as requiring the Bidder to indemnify the Village for its own negligence. The Bidder shall indemnify, keep and save harmless the Village only where a loss was caused by the negligent, willful or reckless acts or omissions of the Bidder, its employees, or its subcontractors.

31. NONDISCRIMINATION

- 31.1 Bidder shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) By submission of this Bid, the Bidder certifies that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this Bid.
- (c) It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Bidder shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq, and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

32. SEXUAL HARASSMENT POLICY

- 32.1 The Bidder or Supplier, as a party to a public contract, shall have a written sexual harassment policy that:

- 32.1.1 Notes the illegality of sexual harassment;
- 32.1.2 Sets forth the State law definition of sexual harassment;
- 32.1.3 Describes sexual harassment utilizing examples;
- 32.1.4 Describes the Bidder's internal complaint process including penalties;
- 32.1.5 Describes the legal recourse, investigative and complaint process available through

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the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and

32.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

33. EQUAL EMPLOYMENT OPPORTUNITY

- 33.1 In the event of the Bidder's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Bidder may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Bidder agrees as follows:
- 33.2 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, sexual identity, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 33.3 That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 33.4 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, or an unfavorable discharge from military services.
- 33.5 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the bidder's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the bidder in its efforts to comply with such Act and Rules and Regulations, the bidder will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 33.6 That it will submit reports as required by the Department's Rules and Regulations, furnish

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all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

- 33.7 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 33.8 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Bidder will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Bidder will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

34. DRUG FREE WORK PLACE

Bidder, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

- 34.1 Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or bidder's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- 34.2 Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Bidder's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
- 34.3 Providing a copy of the statement required by subparagraph .1 above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- 34.4 Notifying the contracting or granting agency within ten (10) days after receiving notice under part (3)(B) of subparagraph .1 above from an employee or otherwise receiving actual notice of such conviction.

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- 34.5 Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.
- 34.6 Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.
- 34.7 Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

35. SUBSTANCE ABUSE PREVENTION ON PUBLIC WORKS PROJECTS ACT

- 35.1 This section does not apply to this contract.

36. PREVAILING WAGE ACT

- 36.1 This contract is not subject to prevailing wages.

37. PATRIOT ACT COMPLIANCE

- 37.1 The Bidder represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Bidder further represents and warrants to the Village that the Bidder and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Contract on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Bidder hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

38. INSURANCE REQUIREMENTS

- 38.1 Prior to starting the work, Contractor and any Subcontractors shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by the Contractor or Subcontractor or any Sub-Sub Contractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below or any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law unless otherwise agreed to by the Village.

Workers Compensation	\$500,000	Statutory
Employers Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit

Village of Downers Grove

	\$1,000,000	Disease Each Employee
Comprehensive General Liability	\$2,000,000	Each Occurrence
	\$2,000,000	Aggregate <i>(Applicable on a Per Project Basis)</i>
Commercial Automobile Liability	\$1,000,000	Each Accident
Professional Errors & Omissions (pursuant to section .9 below)	\$2,000,000 \$2,000,000	Each Claim Annual Aggregate
Umbrella Liability	\$ 5,000,000	

- 38.2 Commercial General Liability Insurance required under this paragraph shall be written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations and other contractual indemnity assumed under the Contract Documents. The limit must be on a "Per Project Basis".
- 38.3 Comprehensive Automobile Liability Insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles.
- 38.4 Workers Compensation coverage shall include a waiver of subrogation against the Village of Downers Grove.
- 38.5 Comprehensive General Liability, Employers Liability and Commercial Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies.
- 38.6 Contractor and all Subcontractors shall have their respective Comprehensive General Liability (including products/completed operations coverage), Employers Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the "Village of Downers, its officers, officials, employees and volunteers" as "additional insureds" with respect to liability arising out of operations performed; claims for bodily injury or death brought against the Village of Downers Grove by any Contractor or Subcontractor employees, or the employees of Subcontractor's subcontractors of any tier, however caused, related to the performance of operations under the Contract Documents. Such insurance afforded to the Village of Downers Grove shall be endorsed to provide that the insurance provided under each policy shall be **Primary and Non-Contributory**.

Village of Downers Grove

- 38.7 Contractor and all Subcontractors shall maintain in effect all insurance coverages required by the Contract Documents at their sole expense and with insurance carriers licensed to do business in the State of Illinois and having a current A. M. Best rating of no less than A- VIII. In the event that the Contractor or any Subcontractor fails to procure or maintain any insurance required by the Contract Documents, the Village of Downers Grove may, at its option, purchase such coverage and deduct the cost thereof from any monies due to the Contractor or Subcontractor, or withhold funds in an amount sufficient to protect the Village of Downers Grove, or terminate this Contract pursuant to its terms.
- 38.8 All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be canceled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village. Renewal certificates shall be provided to the Village not less than five (5) days prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to the Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall not be obligated to review such certificates or other evidence of insurance, or to advise Contractor or Subcontractor of any deficiencies in such documents, and receipt thereof shall not relieve the Contractor or Subcontractor from, nor be deemed a waiver of the right to enforce the terms of the obligations hereunder. The Village shall have the right to examine any policy required and evidenced on the Certificate of Insurance.
- 38.9 If the Work under the Contract Documents includes design, consultation, or any other professional services, Contractor or the Subcontractor shall procure, maintain, and pay for Professional Errors and Omissions insurance with limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. If such insurance is written on a claim made basis, the retrospective date shall be prior to the start of the Work under the Contract Documents. Contractor and all Subcontractors agree to maintain such coverage for three (3) years after final acceptance of the Project by the Village or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.
- 38.10 Any deductibles or self-insured retentions shall be the sole responsibility of the Insured. At the option of the Village, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Village, its officers, officials, employees and volunteers; or the Bidder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

39. SUBLETTING OF CONTRACT

- 39.1 No contract awarded by the Village shall be assigned or any part subcontracted without the written consent of the Village Manager. In no case shall such consent relieve the Contractor from his obligation or change the terms of the Contract.

All approved subcontracts shall contain language which incorporates the terms and conditions of this Contract.

Village of Downers Grove

40. TERM OF CONTRACT

40.1 The term of this Contract will be for three (3) years unless terminated sooner in accordance with paragraph 41.

41. TERMINATION OF CONTRACT

41.1 The Village reserves the right to terminate the whole or any part of this Contract, upon written notice to the Contractor, for any reason and/or in the event that sufficient funds to complete the contract are not appropriated by the Village. In the event of termination, the Village may procure, upon such terms and in such manner as the Purchasing Manager may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable for any excess costs for such similar supplies or services. Any such excess costs incurred by the Village may be set-off against any monies due and owing by the Village to the Contractor.

42. BILLING & PAYMENT PROCEDURES

42.1 Payment will be made upon receipt of an invoice referencing Village of Downers Grove purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village's payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Contractor within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Contractor within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

42.2 The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Contractor requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

42.3 Please send all invoices to the attention of Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60515.

43. RELATIONSHIP BETWEEN THE BIDDER AND THE VILLAGE

43.1 The relationship between the Village and the Bidder is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

44. STANDARD OF CARE

44.1. Any services performed by Bidder under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representations express or implied, and no warranty or guarantee is included or intended in this Contract or in any report, opinions, and documents or otherwise.

Village of Downers Grove

44.2 If the Bidder fails to meet the foregoing standard, Bidder will perform at its own cost, and without reimbursement from the Village, the professional services necessary to correct errors and omissions caused by Bidder's failure to comply with the above standard and reported to Bidder within one (1) year from the completion of Bidder's services for the Project.

44.3 For Professional Service Agreements (i.e. Engineer, Consultant): Project site visits by Bidder during construction or equipment installation or the furnishing of Project representatives shall not make Bidder responsible for: (i) construction means, methods, techniques, sequences or procedures; (ii) for construction safety precautions or programs; (iii) or for any construction contractor(s') failure to perform its work in accordance with contract documents.

45. SUCCESSORS AND ASSIGNS

45.1 The terms of this Contract will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Contract in whole or in part without the prior written approval of the other. The Bidder will provide a list of key staff, titles, responsibilities, and contact information to include all expected subcontractors.

46. WAIVER OF CONTRACT BREACH

46.1 The waiver by one party of any breach of this Contract or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Contract and will not be construed to be a waiver of any provision except for the particular instance.

47. CHANGE ORDERS

47.1 The contract price is a "not-to-exceed" cost. At any time additional work is necessary or requested, and the not-to-exceed price is increased thereby, all parties must agree to any change, addition or price increase in writing.

47.2 Change orders for public works projects which authorize an increase in the contract price that is 50% or more of the original contract price or that authorize or necessitate any increase in the price of a subcontract under the contract that is 50% or more of the original subcontract price must be resubmitted for bidding in the same manner by which the original contract was bid. (50 ILCS 525/1)

48. SEVERABILITY OF INVALID PROVISIONS

48.1 If any provisions of this Contract are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Contract, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

49. GOVERNING LAW

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49.1 This Contract will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage for state cases or the Northern District of Illinois for federal cases.

50. NOTICE

50.1 Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to the Village as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515**

And to the Bidder as specified on the Contract Form.

51. AMENDMENT

50.1 This Contract will not be subject to amendment unless made in writing and signed by all parties.

52. COOPERATION WITH FOIA COMPLIANCE

52.1 Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor or a subcontractor. Contractor and all of its subcontractors shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et. seq.

III. DETAILED SPECIFICATIONS

SPECIALTY WINTER OPERATIONS SERVICES

Scope of Work

These terms and specifications are for snow and ice removal services for pedestrian walkways and other areas within the Village of Downers Grove. Services are to be performed in accordance with these specifications, under the direction of the Village of Downers Grove, Department of Public Works.

Award of Bid

Award of all or part: It is the Village's intent to award this bid to a single, responsive, responsible bidder with the lowest Total Base Bid. The Village reserves the right to make an award on all locations, or on any of the locations according to the best interests of the Village. Bidder may restrict his/her bid to consideration in the aggregate by so stating, but must name a specific "service unit price" for each site location. The Village reserves the right to accept or reject any bid in which the bidder names a total price for all the locations without quoting a price on each and every location. The Village also reserves the right to split the bid among more than one bidder based on price and the Contractor's ability to provide the services outlined. If that awarded Contractor is not capable of providing the specified services, the Village reserves the right to either revoke the contract, or award it to the next lowest qualified bidder for the remainder of the contract term.

General Information and Objective

Work to be performed under this contract includes services for removal of snow and ice resulting from winter weather from pedestrian walkways and other areas at certain specific locations in the Village of Downers Grove. Work will be performed at the locations specified elsewhere in this document. The facility owner is the Village of Downers Grove, Department of Public Works, hereinafter referred to as the "Village" whose address is 5101 Walnut Ave., Downers Grove, IL 60515.

The Contractor will be responsible for prevention and removal of accumulated ice and snow, hereinafter referred to as "winter operations" at various Village of Downers Grove areas. These include three commuter rail stations and the downtown Downers Grove Central Business District (CBD). Specific descriptions of areas where services are to be provided are outlined further in this document and provided on service location maps. **The Contractor will provide all labor, equipment and materials needed to perform this work including all deicing chemicals.**

In general, the Contractor will provide the following services:

- Removal of snow and ice from sidewalks and other paved walking surfaces.
- Application of deicing chemicals as required by weather conditions to remove residual ice and snow and/or to prevent accumulations of ice and snow.

These services will be provided at the following locations:

Village of Downers Grove

- Main Street Metra rail station. This location includes the north and south train platforms, kiss and ride areas, and sidewalks on Mochel Drive, and other areas shown on the maps.
- Fairview Metra rail station. This location includes the north and south train platforms, pedestrian ramps, sidewalks on Fairview Avenue from Maple Avenue to Burlington Avenue, and other areas shown on the maps.
- Belmont Metra rail station. This location includes the pedestrian walkways located between the north train platform and Burlington/Warren Avenue, and other pedestrian walkways shown on the maps. It does not include the platform itself.
- Downtown Downers Grove Central Business District (CBD) as defined by the boundaries shown on the maps.

Maps detailing all service locations are attached.

Service Details**Pedestrian walkway winter operations:**

In the CBD snow and ice must be completely cleared from pedestrian walking surfaces. There shall be no windrows or other unreasonable impediments to the movements of downtown shoppers, visitors, and employees. When required, snow will be piled at locations indicated on the attached maps and as indicated by the Village.

At the Main Street and Fairview Metra stations snow and ice must be completely cleared from all pedestrian areas indicated on the service maps. Work at these locations includes areas under canopies, and other related locations. There shall be no windrows or other unreasonable impediments to the movements of commuters and station users. Winter operations activities on the train platforms must be performed in accordance with Burlington Northern Santa Fe (BNSF) railroad and Federal Railway Administration safety policies. It will be the Contractor's responsibility to provide the required employee training and to obtain the required permits and certifications. Information on securing a temporary occupancy permit from the BNSF can be found here, <http://www.bnsf.com/communities/faqs/permits-real-estate/>. Other BNSF requirements can be found in Attachment #1. Following heavy snow events snow must not be pushed onto the tracks. When required, snow will be piled at locations indicated on the attached maps and as indicated by the Village.

At the Belmont Metra rail station snow and ice must be completely cleared from all pedestrian areas indicated on the service maps. There shall be no windrows or other unreasonable impediments to the movements of commuters. Winter operations on the train platforms at this facility are not part of this contract. When required, snow will be piled at locations indicated on the attached maps and as indicated by the Village.

Contractor Qualifications

To be considered qualified to perform this work the Contractor must be able to demonstrate having provided specialty winter operations services to similar municipal, commercial, or institutional customers for at least five (5) years. These references will include the customer name, location description and size of the facilities where services have been provided, description of the services that were provided, and a current telephone number and e-mail address for customer contact person.

Village of Downers Grove

In general, "similar" should be construed to mean customers/clients with high service expectations who are responsible for facilities with high volumes of pedestrian and vehicle traffic which would lead to significant liability exposure resulting from the quality of the walking and driving surfaces that are present. The ultimate determination of whether a client reference is similar will lie with the Village.

"Zero-Tolerance"

The Contractor will be responsible for maintaining conditions that minimize to the greatest degree possible pedestrian exposure to conditions that could result in slips, falls, and associated injuries on icy, snowy, or frozen surfaces. Zero tolerance will apply to all areas.

Supervision and Communication

The Contractor shall provide the Village with the name and phone number of the supervisor for this contract. The Contractor's supervisor shall be in the employ of the Contractor, and be familiar with all activities pertaining to work performed under this contract. The Supervisor must be fluent in English and be authorized by the Contractor to accept and act upon all directives issued by the Village. The supervisor or an equivalent designee will be on-site during every winter operations event. This responsible person will be available in the Village's designated work areas at all times the Contractor's employees are present. The responsible person will not be assigned to other clients.

The Contractor shall provide twenty-four (24) hour communications and response services throughout the entire snow removal season. Messages or pages left by the Village must be responded to within one-half (1/2) hour of the time of placement (notification). Failure to respond to calls may result in the penalties or nullification of the Contract between the Village and Contractor.

Work scheduling and completion

Scheduling and completion of work should be based on the following priorities:

General Priority

Winter operations will be completed within eight (8) hours of the end of a winter weather event.

Priority 1

Completion of winter operations at the commuter rail stations by 4:30 a.m. for overnight winter events and by 4:30 p.m. for daytime events.

Priority 2

Clearing of CBD sidewalks by 6:00 a.m. at locations adjacent to early morning businesses such as bakeries, coffee shops, and breakfast restaurants, and by 8:00 a.m. at all other locations.

The Contractor's employees shall be required to be on-site within one (1) hour of responding to notification from the Village. Failure of the Contractor to have employees on-site within this time frame may result in penalties or nullification of the contract between the Village and Contractor.

Work cycles

Work will be paid for based on one cycle through each of the designated work areas. Each cycle will consist of one complete pass through a designated area as required to remove fallen snow or to apply the appropriate winter chemical on all of the surfaces in the area. Application of winter chemicals will be included as an integral element of the snow removal process. Application of chemicals not

Village of Downers Grove

associated with snow removal, such as for treatment of black ice, freezing rain, or anti-icing are listed as separate services.

It is understood that multiple cycles may be needed to deal with some winter events. The Contractor's responsible person will contact a Village supervisor prior to dispatching any crews to deal with a winter event to obtain authorization to proceed. Authorization from a Village supervisor will be received prior to the commencement of subsequent work cycles.

The Contractor will be responsible for documenting all contacts with Village supervision. The date and time of each contact as well as the names of the parties involved and the work authorization that was agreed upon will be logged. At the end of each event, the Contractor's contact and authorization forms will be signed by a Village Supervisor acknowledging agreement on the services that were provided. Copies of these forms will accompany each pay request.

Blizzard Conditions

For snow events that result in more than twelve (12) inches of snow, the Contractor will be required to complete the work under this contract using an hourly rate. The Contractor must provide an hourly rate for equipment such as Trackless tractors, skid steers and front end loaders, including an Operator that may be needed to handle large snow fall amounts. The Contractor must also provide an hourly rate for shovelers.

Deicing and anti-icing chemicals

All chemicals and their application rates will be approved by the Village prior to their use. Generally, the use of chloride chemicals will be discouraged. Chlorides may be allowed on certain brick paver, asphalt, and well aged concrete surfaces. Chlorides cannot be applied to any concrete surfaces that are less than five (5) years old and without prior authorization from the Village.

Pre-Season meeting

The Contractor who is awarded this bid will meet with the Village's representatives at a mutually agreeable date and time between October 25 and November 10 each year, prior to the start of winter operations season. At that time, the Village and Contractor will discuss work activities for the upcoming winter and review all work areas to identify and review any conditions that would be of concern to either party. These concerns will be documented by the Contractor along with the resolution agreed upon with the Village. A copy of that document will be furnished to the Village by November 20 of that year.

Bid pricing/Payment for services

Bidders will provide separate pricing for each of the following services:

1. Main Street Metra station snow removal and chemical application
2. Main Street Metra station winter chemical application only without snow removal
3. Fairview Metra station snow removal and chemical application
4. Fairview Metra station winter chemical application only without snow removal
5. Belmont Metra station snow removal and chemical application
6. Belmont Metra station winter chemical application only without snow removal
7. Downtown CBD snow removal and chemical application

Village of Downers Grove

8. Downtown CBD winter chemical application only without snow removal

Contract award will be based on the Village's established budget.

As stated previously, it is understood that some winter events will require multiple cycles through each area in order to achieve the desired surface conditions. Payment for services will be based on the number of service cycles provided by the Contractor as agreed upon with the Village. For example, a given winter event may begin with the application of deicing agents in all specified service areas followed by three snow removal cycles through the CBD, two snow removal cycles at the rail stations, and additional winter service cycles provided.

Site inspection and Bidders' responsibilities

Contractors who desire to bid on this work should thoroughly investigate the attached maps detailing where the work is to take place. Site investigation is the responsibility of the Contractor.

Each Contractor will be responsible for determining the quantities of work that need to be performed and the resources needed to do that work. A bidder's inability or failure to accurately estimate the quantities of work or resources required does not relieve him of any responsibility detailed herein, nor will he be allowed any additional compensation for his failure to be informed, errors in his interpretation, or conclusions drawn regarding actual site conditions.

Performance and Payment Bonds

Prior to execution of the contract, the awarded Contractor shall be required to obtain Performance and Payment Bonds as per Section 13 in the General Terms and Conditions.

Storage of Equipment and Materials

If the Contractor desires to store its equipment and materials used to perform work on behalf of the Village within Downers Grove, and has no place of its own, or under lease agreement, the Village may provide said space on its property located at 700 Curtiss Street, with the proviso that the Contractor must hold the Village harmless for any loss or damages that may be associated with the privilege of storing said equipment and materials on Village property. Under these circumstances, the Village will not be responsible for assuring security of the designated site, and the Contractor will be responsible for abiding by rules set forth by the Village. This privilege may be immediately rescinded by the Village if, in the sole determination of the Village, the Village finds that the Contractor has failed to abide by the Village's regulations.

Questions

All questions concerning the Bid shall be submitted in writing at least **five business** days prior to the Bid due date via fax (630-434-5571) to the attention of Terri Tarka, or email ttarka@downers.us. A written response in the form of an addendum may be issued as appropriate. No contact with the Downers Grove Department of Public Works shall be made during the Bid process.

Village of Downers Grove

IV. BID/CONTRACT FORM

*****THIS BID WHEN ACCEPTED AND SIGNED BY AN AUTHORIZED SIGNATORY OF THE VILLAGE OF DOWNERS GROVE SHALL BECOME A CONTRACT BINDING UPON BOTH PARTIES.**

Entire Block Must Be Completed When A Submitted Bid Is To Be Considered For Award

BIDDER:

SNOW SYSTEMS

Company Name

Date: **May 19, 2015**

600 N. Wolf Court

Street Address of Company

stacey@snowsystems.com

Email Address

Wheeling, IL 60090

City, State, Zip

Stacey Hinson

Contact Name (Print)

847-947-1502

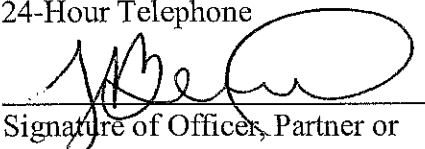
Business Phone

847-947-1499

24-Hour Telephone

847-808-7887

Fax


Signature of Officer, Partner or
Sole Proprietor

J. Biebrach, President/CEO

Print Name & Title

ATTEST: If a Corporation


Signature of Corporation Secretary

VILLAGE OF DOWNERS GROVE:

Authorized Signature

Title

Date

ATTEST:

Signature of Village Clerk

Date

In compliance with the specifications, the above-signed offers and agrees, if this Bid is accepted within **90** calendar days from the date of opening, to furnish any or all of the services upon which prices are quoted, at the price set opposite each item, delivered at the designated point within the time specified above.

Village of Downers Grove

IV. BID/CONTRACT FORM (Continued)

The undersigned, having examined the specifications and all conditions affecting the specified project, offer to furnish all services, labor, and incidentals for the price below.

I (We) propose to complete the following project as more fully described in the specifications for the following:

UNIT PRICE WORKSHEET

Line Item	Description	Unit Price
1	Main Street Metra station snow removal With Chemical Application	\$780.00
2	Main Street Metra station winter chemical application. No Snow Removal	\$475.00
3	Fairview Metra station snow removal With Chemical Application	\$430.00
4	Fairview Metra station winter chemical application. No Snow Removal	\$290.00
5	Belmont Metra station snow removal With Chemical Application	\$750.00
6	Belmont Metra station winter chemical application. No Snow Removal	\$390.00
7	Downtown CBD snow removal With Chemical Application	\$2,150.00
8	Downtown CBD winter chemical application. No Snow Removal	\$1,080.00

TOTAL BASE BID: \$6,345.00
(Lines 1-8)

Contract Term: Three Years

Increase Year 2: 0%

Increase Year 3: 3%

Contract Expiration Date: July 1, 2018

Village of Downers Grove

IV. BID/CONTRACT FORM (Continued)

The undersigned, having examined the specifications and all conditions affecting the specified project, offer to furnish all services, labor, and incidentals for the price below.

I (We) propose to complete the following project as more fully described in the specifications for the following:

TIME AND MATERIAL RATES

Line Item	Service or Equipment Item	Unit Price (per Hour)
1	4x4 Pickup Truck w/8' Plow	\$105.00
2	3-4 Yard Rubber Tire Loader	\$175.00
3	Skid Steer	\$95.00
4	Hand Laborer w/ Snow Blower	\$38.00
5	Hand Laborer/Shovelers	\$38.00
6	Trackless Tractor w/Plow	\$145.00
7	10-12' Snow Pusher	\$30.00
8	14-20' Snow Pusher	\$30.00
9	Tractor Mounted Snow Blower	\$165.00 (skidsteer)
10	Snow Melter	\$1,600.00
11	18-Cubic Yard Dump Truck	\$145.00

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MUNICIPAL REFERENCE LIST

Municipality: Village of Downers Grove
Address: 5101 Walnut Ave Downers Grove, IL
Telephone # 630-434-5474
Contact Name: Stan Balicki

Municipality City of Highland Park
Address: 1150 Half Day Road Highland Park, IL 60035
Telephone # 847-926-1147
Contact Name: Nick Day

Municipality: NEIU
Address: 5500 N. St. Louis Chicago, IL
Telephone # 847-331-7848
Contact Name: James Jagiello

Municipality: _____
Address: _____
Telephone # _____
Contact Name _____

Municipality _____
Address: _____
Telephone # _____
Contact Name _____

Village of Downers Grove

BIDDER'S CERTIFICATION (page 1 of 3)

With regard to **Specialty Snow Removal**, Bidder **Snow Systems** hereby certifies
(Name of Project) (Name of Bidder)

the following:

1. Bidder is not barred from bidding this contract as a result of violations of Section 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33E-4 (Bid-Rotating);
2. Bidder certifies that it has a written sexual harassment policy in place and full compliance with 775 ILCS 5/2-105(A)(4);
3. Bidder certifies that it is in full compliance with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 C.F.R. Parts 40 and 382 and that all employee drivers are currently participating in a drug and alcohol testing program pursuant to the Rules;
4. Bidder further certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue, or that Bidder is contesting its liability for the tax delinquency or the amount of a tax delinquency in accordance with the procedures established by the appropriate Revenue Act. Bidder further certifies that if it owes any tax payment(s) to the Department of Revenue, Bidder has entered into an agreement with the Department of Revenue for the payment of all such taxes that are due, and Bidder is in compliance with the agreement.

BY: _____

[Handwritten Signature]
Bidder's Authorized Agent

3	6	-	3	7	6	9	3	1	8
---	---	---	---	---	---	---	---	---	---

FEDERAL TAXPAYER IDENTIFICATION NUMBER

or _____
Social Security Number

Subscribed and sworn to before me

this 19 day of May,

2015

[Handwritten Signature: Stacey Hinson]

Notary Public



Village of Downers Grove

BIDDER'S CERTIFICATION (page 2 of 3)

(Fill Out Applicable Paragraph Below)

(a) Corporation

The Bidder is a corporation organized and existing under the laws of the State of **Illinois**, which operates under the Legal name of **Snow Systems**, and the full names of its Officers are as follows:

President: **Jim Biebrach**

Secretary: **Jim Biebrach**

Treasurer: _____

and it does have a corporate seal. (In the event that this Bid is executed by other than the President, attach hereto a certified copy of that section of Corporate By-Laws or other authorization by the Corporation which permits the person to execute the offer for the corporation.)

(b) Partnership

Signatures and Addresses of All Members of Partnership:

N/A

The partnership does business under the legal name of: N/A

which name is registered with the office of _____ in the state of _____

(c) Sole Proprietor

The Bidder or Supplier is a Sole Proprietor whose full name is: N/A

and if operating under a trade name, said trade name is: _____

which name is registered with the office of _____ in the state of _____

Village of Downers Grove

BIDDER'S CERTIFICATION (page 3 of 3)

5. Are you willing to comply with the Village's preceding insurance requirements within 13 days of the award of the contract? **YES**

INSURER'S NAME **Snow Systems**

AGENT **Oak Lane Insurance**

Street Address **333 Route 83 Suite 200**

City, State, Zip Code **60060**

Telephone Number **847-393-7922**

I/We hereby affirm that the above certifications are true and accurate and that I/we have read and understand them.

Print Name of Company: **Snow Systems**

Print Name and Title of Authorizing Signature: **J. Biebrach**

Signature: _____

Date: **5/19/2015**

Village of Downers Grove

Apprenticeship and Training Certification

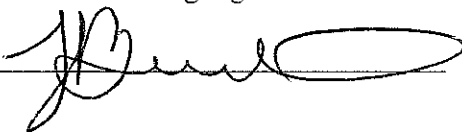
(Does not apply to federal aid projects. Applicable only to maintenance and construction projects that use Motor Fuel Tax funds or state grant monies.)

Name of Bidder: **Snow Systems**

In accordance with the provisions of Section 30-22 (6) of the Illinois Procurement Code, the Bidder certifies that it is a participant, either as an individual or as part of a group program, in the approved apprenticeship and training programs applicable to each type of work or craft that the Bidder will perform with its own forces. The Bidder further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either (a) is, at the time of such bid, participating in an approved, applicable apprenticeship and training program; or (b) will, prior to commencement of performance of work pursuant to this Contract, begin participation in an approved apprenticeship and training program applicable to the work of the subcontract. The Illinois Department of Labor, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. Applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor. The Bidder shall list in the space below, the official name of the program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the Bidder is a participant and that will be performed with the Bidder's forces. Types of work or craft work that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category that does not have an applicable apprenticeship or training program. **The Bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed. Return this with the Bid.**

The requirements of this certification and disclosure are a material part of the Contract, and the contractor shall require this certification provision to be included in all approved subcontracts. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training or employment during the performance of the work of this Contract.

Print Name and Title of Authorizing Signature: **J. Biebrach, President/CEO**

Signature: 

Date: **5/19/2015**

BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products when Federal funds (Grant Agreement or Cooperative Agreement) are used.

Instructions:

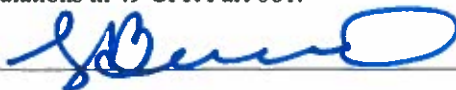
Bidder to complete the Buy America Certification listed below. Bidder shall certify EITHER COMPLIANCE OR NON-COMPLIANCE (not both). This Certification MUST BE submitted with the Bidder's bid response.

Special Note: Make sure you have signed only one of the above statements – either Compliance OR Non-Compliance (not both).

Certificate of Compliance

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1), as amended, and the applicable regulations in 49 CFR Part 661.

Signature _____



Company Name Snow Systems

Title President/CEO

Date 5/19/2015

Certificate of Non-Compliance

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), as amended, and 49 C.F.R. 661, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Signature _____

Company Name

Title

Date

AFTER THIS CERTIFICATE HAS BEEN EXECUTED, A BIDDER MAY NOT SEEK A WAIVER.

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy America requirement.

Village of Downers Grove

Suspension or Debarment Certificate

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$100,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, the Bidder certifies to the best of its knowledge and belief, that the company and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal, state or local governmental entity, department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, or convicted of or had a civil judgment against them for a violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification: and
4. Have not within a three-year period preceding this application/proposal/contract had one or more public transactions (Federal, State or local) terminated for cause or default.

If the Bidder is unable to certify to any of the statements in this certification, Bidder shall attach an explanation to this certification.

Company Name: **Snow Systems**

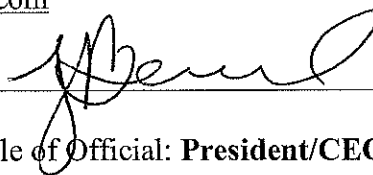
Address: **600 N. Wolf Court**

City: **Wheeling** Zip Code: **60090**

Telephone: **847-808-7800 x 226** Fax Number: **847-808-7887**

E-mail Address: stacey@snowsystems.com

Authorized Company Signature: _____



Print Signature Name: **J. Biebrach** Title of Official: **President/CEO**

Date: **5/19/2015**

CAMPAIGN DISCLOSURE CERTIFICATE

Any contractor, proposer, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate.

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare: _____

Bidder/vendor has not contributed to any elected Village position within the last five (5) years.



 Signature

J. Biebrach, President/CEO
 Print Name

Bidder/vendor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

 Signature

 Print Name

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of _____.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Marinicz at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify (**Agency**) at _____ and Railway's Manager Public Projects, telephone number () _____ at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The

Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer _____ at (_____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
[Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the (Agency) and must not be undertaken until approved in writing by the Railway, and until the (Agency) has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by (Agency) for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

[Note to Drafter: when appropriate insert e-RailSafe language as follows:

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.e-railsafe.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone _____) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by (Agency).

The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will

be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (_____). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or

other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____

County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ SSN (required): _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:

- First Aid Only _____
- Required Medical Treatment _____
- Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

EXHIBIT "C-1"

**Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: _____
Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated May 19, 2015, [***Drafter's Note: insert the date of the contract between the Agency and the Contractor here] with [Drafter's Note: insert the name of the Agency here] for the performance of certain work in connection with the following project: Snow Removal. Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for insert Agency name here (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR**

OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of ~~\$2,000,000~~ each occurrence and an aggregate limit of at least ~~\$6,000,000~~ but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Railway* employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.

- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least ~~\$2,000,000~~ per occurrence and ~~\$6,000,000~~ in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further

waives its right of recovery, and its insurers also waive their right of subrogation against *Railway* for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of *Railway*. If granted by *Railway*, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all *Railway* liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to *Railway* an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify *Railway* in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to *Railway* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this *Agreement* has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this *Agreement*.

Not more frequently than once every five years, *Railway* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming *Railway* as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify *Railway* to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify *Railway* herein.

Failure to provide evidence as required by this section shall entitle, but not require, *Railway* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railway* shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving *Railway* arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, *Railway* means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability

to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (_____) _____ () weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. ~~Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.~~

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

Snow Systems
Contractor

BNSF Railway Company

By: [Signature]

By: _____

Printed Name: J. Bledrach

Name: _____
Manager Public Projects

Title: PRESIDENT / CEO

Contact Person: STACEY HINSON

Accepted and effective this _____ day of 20__.

Address: 600 N. WALF CT.

City: Wheeling

State: IL Zip: 60090

Fax: 847-808-7887

Phone: 847-947-1502

E-mail: STACEY@SNOWSYSTEMS.COM



OAKLANE INSURANCE AGENCY

333 Route 83, Suite 200

Mundelein, IL 60060

T 847-393-7922

F 847-393-7798

www.oaklaneins.com

05/21/2015

To whom it may concern

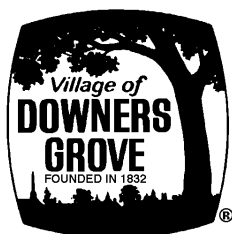
Snow Systems Inc is bonded through Cincinnati Insurance Company with capacity of \$350,000 per job/
\$350,000 aggregate.

Sincerely,

Jim Kulp
Senior Account Executive
Oaklane Insurance Agency

NOTEPAD: HOLDER CODE BNSFRAI SNOW-C1 PAGE 2
INSURED'S NAME Snow Systems Inc OP ID: JK Date 10/22/2014

BNSF RAILWAY COMPANY & JONES LANG LASALLE ARE ADDITIONAL INSURED IN REGARD TO GENERAL LIABILITY AND AUTO LIABILITY ON A PRIMARY NON CONTRIBUTORY BASIS AS REQUIRED BY CONTRACT. NO LIABILITY EXCLUSION FOR SNOW REMOVAL WITHIN 50 FT OF RAILWAY EXISTS. A WAIVER OF SUBROGATION IN FAVOR OF ADDITIONAL INSUREDS IN REGARD TO GENERAL LIABILITY, AUTO LIABILITY AND WORKERS COMPENATION APPLIES AS REQUIRED BY CONTRACT. 30 DAY NOTICE OF CANCELLATION APPLIES TO ADDITIONAL INSUREDS



Village of Downers Grove Contractor Evaluation

Contractor: Snow Systems

Project: Specialty Winter Operations Services

Primary Contact: Stacey Hinson Phone: 847-947-1502

Time Period: November, 2012 to March, 2015

On Schedule (allowing for uncontrollable circumstances) Yes No

Provide details if early or late completion: _____

Change Orders (attach information if needed):

Winter Season	Season Conditions	Budget Impacts	
2012/2013	Average conditions	Within budget	
2013/2014	225% of seasonal average snow	In excess of budget	C.O. issued to complete season, \$14,754.12
2014/2015	139% of seasonal average snow	In excess of budget	C.O. issued to fund 3 rd year of 3-year contract, \$115,068.38. C.O. issued to close out contract, \$9,891.62.

Difficulties / Positives:

Interaction with public:

Excellent Good Average Poor

(Attach information on any complaints or compliments)

General Level of Satisfaction with work:

Well Satisfied Satisfied Not Satisfied

Reviewer: Stan Balicki, Assistant Director of Public Works – Operations

Date: September, 2015