

**FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is by and between _____ Town of Covert _____ (“Owner”)

And _____ (“Contractor”)

Owner and Contractor hereby agree as follows:

ARTICLE 1 – SCOPE OF WORK

- 1.01 The Contractor must check in and out with the Owner’s Highway Superintendent or his designee, for work to be performed to determine the exact scope of the task required.
- 1.02 The Contractor shall furnish all labor, equipment, tools, and supervision necessary for general roadway and infrastructure construction and repair work as directed by the Superintendent, or his designee. The work will include, but not limited to, replacing/ repairing culverts, ditches, and drains and road reconstruction. Work may be performed on an as-needed basis emergency basis or as planned maintenance.
- 1.03 The Contractor must designate an employee/representative who shall oversee and be responsible for the satisfactory completion of all work. Should this person be unsatisfactory or non-responsive in the determination of the Highway Superintendent he may request that another responsible party be designated, and this request will be granted. The credentials and performance of any designee must be satisfactory to the Highway Superintendent.
- 1.04 Upon receiving a service call from the Highway Superintendent, the Contractor shall respond within twenty-four (24) hours and commence work within three (10) business days for routine services.
- 1.05 The contractor/equipment/operator will be under the direction of the Highway Superintendent, or his designee. Once a piece of equipment is under hire by the Town it shall not be removed from the site without the knowledge and approval of the Highway Superintendent or his designee.
- 1.06 All equipment must be in good working order and the Contractor shall have a sound backup plan in case of equipment failure. Equipment must be available for inspection after bid opening and before bid awarding. Contractors are responsible to ensure that each of their vehicles and equipment are registered, inspected, operated, and insured in accordance with the motor vehicle laws of New York.
- 1.07 Contractor is responsible for the health and safety of their employees and will comply with all Federal, State, and local environmental, health and safety regulations.
- 1.08 Only qualified and licensed equipment operators shall be provided. Any operator not considered qualified by the Highway Superintendent or his designee shall be promptly removed from the job site and a qualified replacement shall be provided. Equipment operators shall be made available within the same timeframe as the equipment itself, and as noted above.

ARTICLE 2 – TERMINATION

- 2.01 If the Contractor fails to furnish and deliver any of said services as required under the terms of this Agreement after the purchase order for same has been given to the Contractor, or mailed to the business address, the Owner may obtain the services ordered from any other source, and the Owner shall give to the Contractor or mail to the business address, a notice, signed by the Owner, stating that the Contractor has failed to carry out the contract to the satisfaction of the Owner and, as required by the terms of said Agreement. Upon such default, the Owner may at Owner's discretion and without further notice, terminate the contract.
- 2.02 The Owner may terminate this Agreement at any time for convenience by providing the Contractor with written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Owner, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Owner. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 3 – TIME TO PERFORM SERVICES

3.01 Time of the Essence

- A. Time shall be of the essence regarding performance of each and every portion of the contracted work. Work schedules approved by the Owner shall be binding on the Contractor, except for reasonable delays due to weather, failure of the Owner in the performance of any of its prerequisite obligations, or site related circumstances beyond the control of the Contractor. Extension of time resulting from such delays are subject to approval by the Owner and may not be unreasonably withheld.
- B. The Owner may issue a formal written notice calling for performance of the contracted work pursuant to a stated schedule, or the establishment of a work schedule. This notice may be conveyed by e-mail, telephone, fax, text, or US Postal Service. Contractor shall respond to the Owner by the timelines specified in paragraph 3.02. Failure to meet these response timelines may be considered a breach of contract. Continued non-compliance with the response times may be cause for termination.
- C. The Contractor shall commence work in a timely manner and shall be required to continue with the work uninterrupted until complete.
- D. The Owner may, upon failure of the Contractor to comply within a timely manner as specified in paragraph 3.02, engage the services of the next low bidder at his price as bid, providing that the Contractor has failed to appear and provide the requested services within twenty-four (24) hours of notice by the Owner. Once this provision is exercised, the Owner may, but shall not be obligated to, resume service by the Contractor at its bid prices.

3.02 Response Times

- A. Non-emergency Repairs: The Contractor shall acknowledge all service calls within twenty-four (24) hours of the call being placed. Repair must commence within three (10) business days of receipt of a work order initiated by the Highway Superintendent, unless otherwise agreed to by the Owner.

3.03 Hours of Work

- A. Work shall not be accomplished on an overtime basis unless prior approval has been obtained from the Highway Superintendent. Standard hours of work shall be Monday-Thursday 7:00 a.m. until 5:00 p.m.

ARTICLE 4 – CONTRACT VALUE

- 4.01 Work to be performed under this contract will be paid as invoiced and approved. Estimated value of contract is not to exceed \$50,000. Contract modifications will be permitted upon mutual agreement of Owner and Contractor(s).

ARTICLE 5 – PAYMENT PROCEDURES

5.01 Submittal and Processing of Payments

- A. The Contractor shall submit, for each job, an invoice listing the equipment used and hours expended, and invoices shall show quantities and unit costs. Equipment shall be invoiced at the contracted hourly rates provided in the Bid Form, Basis of Bid, and shall include only the actual time expended on the job and shall not include travel time. Invoices shall be submitted in duplicate, within fifteen (15) days of completion of services to the Department of Public Works.

5.02 Progress Payments

- A. The Contractor will be paid per approved invoice (monthly). An invoice will be presented for the services performed. This invoice shall, as a minimum, identify the work that was done, where it was done, when it was done, who authorized it and the applicable work order. Additionally, it will detail the unit cost and extended cost for each equipment category, and other approved items.
- B. Payment for equipment rental (inclusive of operators) shall be based on the actual time the equipment is productively used or required to be at the construction site. No payment shall be made for mobilization or demobilization of equipment, and not for any “down time” of any equipment.
- C. Payment for labor (exclusive of operators) shall be based on the actual number of hours that the particular labor class was productively engaged at the construction site as determined by the Highway Superintendent or his designee.

ARTICLE 6 – CONTRACT DURATION

- 6.01 The Contract shall cover the one-year period from August 1, 2020 to July 31, 2021.
- 6.02 The Owner, at their sole discretion, may extend the Agreement for up to three (3) additional one (1) calendar year periods. Extensions will be for the following time periods only: August 1, 2021 to July 31, 2022; August 1, 2022 to July 31, 2023 and August 1, 2023 to July 31, 2024.
- A. Extensions are subject to the availability of funds appropriated to perform the contracted work and do not constitute a commitment by the Owner to engage the Contractor’s services.
- B. If extensions are authorized, the unit prices will be adjusted upward by three (3) percent beginning on the first day of each one-year extension.

ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. The Contractor shall have been licensed as an operating business in the state of New York.
- B. The Contractor must have been regularly and actively engaged in the roadway and infrastructure construction business, operating under the same business name and business organization structure; and performing the type of work described in Article 1.

- C. Contractor shall have adequate experience in providing the following services: municipal storm sewer construction, repair, and maintenance including culverts, ditches, installing manholes and catch basins and road repairs.
- D. The Contractor must own or lease sufficient equipment that is well maintained, mechanically sound, and in good/excellent operating conditions to complete the tasks as described in a timely and efficient manner. If the Contractor does not own sufficient equipment to provide backup services in the case of equipment breakdown, the Owner reserves the right to use another available equipment rental bidder, if necessary, to complete the work.
- E. The Contractor's operators must be fully qualified and experienced in the operation of their assigned equipment. These equipment operators shall hold valid NYDOT CDL licenses with proper grades for the equipment they operate.
- F. The Contractor shall carry the required amount of insurance as shown by the insurance requirements enclosed herewith. Certification of insurance shall be provided to the Owner prior to commencement of work and not later than fifteen (15) calendar days from notice of contract award. Insurance shall remain in force during the full term of the contractual agreement and/or until work is completed and accepted by the Owner, whichever is later.

ARTICLE 8 – INSPECTION AND WARRANTY OF WORKMANSHIP

8.01 *Inspection*

- A. The Owner reserves the right to inspect any and all work in progress or completed. Any omission or failure on the part of the Owner to disapprove or reject inferior or defective work or materials shall not be construed to be an acceptance of such work or material. If any defective work or material is found during inspection, the Contractor shall remove or repair, at his/her own expense, such defective work or material rejected and shall rebuild and/or replace same without extra charge.
- B. If the laws, ordinances, or regulations of any public authority require any work to be tested or approved, Contractor shall give the Highway Superintendent timely notice of its readiness for inspection by the proper authorities. If any such work shall be covered up without approval or consent, it must, if required by the Owner or other proper authorities, be uncovered for examination at Contractor's expense.

8.02 *Workmanship*

- A. The Contractor warrants all workmanship shall be first class and in accordance with industry standards and shall be performed by skilled persons qualified in their respective trades.
- B. The Owner will reject any unsatisfactory services.

ARTICLE 9 – INSURANCE

9.01 *Insurance*

A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

a. Workers’ Compensation:

State:	<u>Statutory</u>
Employer’s Liability:	
Bodily Injury, each Accident	\$ <u>100,000</u>
Bodily Injury By Disease, each Employee	\$ <u>100,000</u>
Bodily Injury/Disease Aggregate	\$ <u>500,000</u>

b. Commercial General Liability:

General Aggregate	\$ <u>3,000,000</u>
Products - Completed Operations Aggregate	\$ <u>3,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

c. Automobile Liability herein:

Combined Single Limit of:	\$ <u>1,000,000</u>
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d. Excess or Umbrella Liability:

Per Occurrence	\$ <u>3,000,000</u>
General Aggregate	\$ <u>6,000,000</u>

e. Contractor’s Pollution Liability:

Each Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
 - 1. Products and completed operations coverage maintained for three years after final payment.
 - 2. Blanket contractual liability coverage to the extent permitted by law.
 - 3. Broad form property damage coverage; and
 - 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
 - 1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 2.

ARTICLE 10 – INDEMNIFICATION

- 10.01 The Contractor shall indemnify and save harmless the Owner and all its officers, agents, and employees for any suits, causes of action, claims, judgments, or other liability that may arise as a result of Contractor’s action or failure to act.
- 10.02 The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Owner for any purpose.

ARTICLE 11 – MISCELLANEOUS

11.01 *Subcontracting*

- A. The Contractor shall not subcontract or sublet any portion of the work without the written consent of the Highway Superintendent.

11.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

11.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.

11.04 *Severability*

- A. Any provision or part of the Agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor.

This Agreement will be effective on _____, 2020 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

Town of Covert _____

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

8469 South Main Street, PO Box 265 _____

Interlaken, New York _____

14847 _____

Tax ID No.: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

(Where applicable)

Agent for service of process:

END OF FORM OF AGREEMENT