

JOINT SERVICES AGREEMENT FOR THE 2014 SEAL COAT PROJECT

This Agreement is made this ___ day of _____ 2014, by and between Baytown Township (hereinafter referred to as “Baytown”) and the City of Lake Elmo (hereinafter referred to as “Lake Elmo”).

WHEREAS, it is the desire of the parties, and it is the purpose of this Agreement, that certain road-related services be performed or contracted by Lake Elmo on behalf of Baytown for the purpose of sealcoating certain street segments as designated by Baytown;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the above parties hereto agree as follows:

1. Term: The term of this Agreement shall commence upon the date of execution and shall be for the duration of the one year warranty period for the 2014 Seal Coat Project.

2. Services. For the term of this Agreement, Lake Elmo shall provide Baytown with the following services in and on behalf of Baytown and at the direction of Baytown’s Engineer:

- a. Lake Elmo will provide professional engineering services to prepare Plans and Specifications and Contract documents for the 2014 Seal Coat Project. The project will include seal coating of street segments located in Baytown, in addition to the street segments located in Lake Elmo for which Lake Elmo is otherwise contracting.
- b. Prior to March 20, 2014, Baytown will provide Lake Elmo with a plan, designating and depicting the street segments to be seal coated in Baytown, said plan to be suitable for inclusion in the Plan documents, along with a tabulation of the estimated quantities (in square yards) showing the seal coating work to be performed in Baytown as a part of the project.
- c. Lake Elmo will advertise the 2014 Seal Coat Project for contractor bids and may award a contract for seal coating, or a portion thereof, as deemed in the best interests of Lake Elmo. If Lake Elmo awards a contract for the 2014 Seal Coat Project and Baytown agrees, the award shall include that portion of streets within Baytown.
- d. Lake Elmo will provide professional engineering services for the construction administration of the contract.
- e. At its sole cost and expense, Baytown will provide a construction observer to inspect the seal coat work performed on Baytown streets.

3. Payments. Baytown shall make payments to Lake Elmo for services related to the project or directly for services as follows:

- a. Baytown will pay Lake Elmo a fee in the amount of \$3,000 for engineering and administration fees performed by Lake Elmo for the seal coat project. Lake Elmo will invoice this amount to Baytown once the Lake Elmo City Council accepts the bids and awards the construction contract.
- b. Lake Elmo will make Contractor payments for all work completed in accordance with the Contract. Baytown will reimburse Lake Elmo for the work completed and paid to the contractor in accordance with the contract for the actual quantities of work performed on Baytown streets.
- c. Lake Elmo will invoice Baytown for services to be reimbursed by Baytown as outlined above and Baytown will pay all invoices within 30 days after receipt of the invoice. Lake Elmo shall include with its invoices copies of the contractor's claims showing the amount charged for the work performed and materials used in Baytown.

4. Insurance. Lake Elmo shall require its contractor(s) to provide insurance as specified below, and Baytown shall be named as an additional insured on such insurance:

Comprehensive General Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate
Auto Liability	\$1,200,000 per occurrence
Workers compensation	Statutory amount

5. Indemnification. Lake Elmo agrees to defend, indemnify and hold harmless Baytown, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses, including attorneys fees, arising out of or resulting from Lake Elmo's performance of the duties required under this Agreement, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged negligent act, omission, or willful misconduct (including, but not limited to, a claimed breach of contract made by the contractor) of Lake Elmo. Lake Elmo agrees to require, as part of its contract with the contractor used to provide the seal coating, to include Baytown in the contractor's indemnification obligation under the contract. Baytown agrees to defend, indemnify and hold harmless Lake Elmo, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses, including attorneys' fees, arising out of or resulting from Baytown's performance of the duties required of it under this Agreement, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged negligent act or omission or willful misconduct of Baytown. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitations on liability to which they are entitled, under Minnesota Statutes, Chapter 466 or otherwise. Under no circumstances shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits of liability established in Minnesota Statutes, Chapter 466, applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

6. Service Contract. This is a service contract. The parties do not intend to create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise. However, to the extent a court of competent jurisdiction may find such a relationship exists, Lake Elmo and Baytown shall be considered a single governmental entity as provided in Minnesota Statutes, section 471.59, subdivision 1a for the purposes of determining total liability.

The limits of liability for Lake Elmo and Baytown shall not be added together to determine the maximum amount of liability for either party or for any occurrence.

7. Contracting Procedure and Oversight. Lake Elmo shall be solely responsible for letting the contracts for the services to be provided hereunder in accordance with all applicable laws, rules, and regulations. The bonds obtained from the contractor for the work shall include the work to be performed in Baytown. Lake Elmo shall, to the extent reasonably necessary, assist Baytown to draw upon the performance bond as needed to complete or correct any work the contractor fails to perform in Baytown in accordance with the contract. Baytown will be responsible for inspecting the work to be performed in Baytown, but Lake Elmo shall be responsible for generally overseeing the contractor’s performance of services in accordance with the contract.

8. Miscellaneous. This Agreement is solely for the benefit of the parties hereto and no other person shall have any right, claim, or interest in it.

9. Legal Compliance. Both parties agree to comply with all applicable state, federal and local laws, rules and regulations in carrying out their respective obligations under this Agreement.

10. Entire Agreement. This Agreement represents the entire agreement between Lake Elmo and Baytown and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof. No amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have set forth their hands on the day and year first written above.

CITY OF LAKE ELMO

TOWN OF BAYTOWN

By: _____
Its Mayor

By: _____
Its Town Chairperson

Date

Date

By: _____
Its City Administrator

By: _____
Its Town Clerk-Treasurer

Date

Date