

## **2013 SEAL COAT PROJECT AGREEMENT FOR JOINT SERVICES**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_ 2013, by and between the West Lakeland Township (hereinafter referred to as "West Lakeland") 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 West Lakeland;

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 2013 Seal Coat Project as specified by the Contract documents, including the 2-Year Warranty Period.

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

- a. Lake Elmo will prepare Plans and Specifications and Contract documents that includes seal coating for streets located in West Lakeland, in addition to the streets within Lake Elmo for which Lake Elmo is otherwise contracting. Prior to March 19, 2013, West Lakeland will provide Lake Elmo with a plan suitable for inclusion in the Plans, along with a tabulation of the estimated quantities (in square yards) showing the seal coating work to be performed in West Lakeland as a part of the project.

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

- a. West Lakeland will pay Lake Elmo a fee in the amount of 6% of the West Lakeland construction cost as tabulated at the time of bid, for engineering and administration fees performed by Lake Elmo for the seal coat project. Lake Elmo will invoice this amount to West Lakeland 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. West Lakeland will reimburse Lake Elmo for the work completed in accordance with the contract for the quantities of work performed on West Lakeland streets.
- c. At its sole cost and expense, West Lakeland will provide a construction observer to inspect the seal coat work performed on West Lakeland streets.
- d. Lake Elmo will invoice West Lakeland for services to be reimbursed by West Lakeland as outlined above and West Lakeland 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 West Lakeland.

4. Insurance. Lake Elmo shall require its contractor(s) to provide insurance as specified below, and West Lakeland 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 West Lakeland, 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 West Lakeland in the contractor's indemnification obligation under the contract. West Lakeland 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 West Lakeland'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 West Lakeland. 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 West Lakeland 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 West Lakeland 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 West Lakeland. Lake Elmo shall, to the extent reasonably necessary, assist West Lakeland to draw upon the performance bond as needed to complete or correct any work the contractor fails to perform in West Lakeland in accordance with the contract. West Lakeland will be responsible for inspecting the work to be performed in West Lakeland, 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 West Lakeland 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**

By: \_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its City Administrator

\_\_\_\_\_  
Date

**TOWN OF WEST LAKELAND**

By: \_\_\_\_\_  
Its Town Chairperson

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its Town Clerk-Treasurer

\_\_\_\_\_  
Date