
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
PETER G. MIKHAIL
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA C. WOLFGAM
DEBRA M. NEWEL
CASSANDRA J. BAUSTISTA

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: November 26, 2019
RE: Snow Removal Services Agreement; December 3, 2019 Council Meeting
Agenda Item 8(g)

Section 1. Background. At the October 1, 2019 Council meeting, the Council considered the award of the 2019-2020 snow plowing bid and the Council moved to award a lump sum bid to Executive Contractors Inc., subject to the City Attorney's review and approval of the contract.

Section 2. Agreement with Executive Contractors Inc. The City Attorney has prepared the attached Snow Removal Services Agreement between the City and Executive Contractors Inc. The salient terms of the Agreement are as follows:

- The Agreement is in effect for the 2019-2020 snowplow season. The 2019-2020 snowplow season runs from November 1, 2019 through April 30, 2020. The Agreement also covers snow removal services and ice control performed in October 2019 or May 2020. The Agreement also covers street sweeping services performed in the spring of 2020.
- For the time period from November 1, 2019 through April 30, 2020, City pays the Contractor \$36,000 by six payments of \$6,000 per month for snow removal services and ice control. The first payment of \$6,000 is due in December 2019 and the last payment is due in May 2020.
- Compensation for street sweeping services is included in the compensation of \$36,000 and no additional compensation for street sweeping will be paid to the Contractor.
- With respect to any snow removal services and ice control provided by the Contractor in October 2019 or in May 2020, the City will pay the Contractor based on the per hourly rates set forth on Exhibit E of the Agreement; provided, however, the total amount owed the Contractor for snow removal services and ice control provided in October 2019 or in May 2020 shall not exceed \$1,000 per month irrespective of how many hours of service are provided in October 2019 or in May 2020.

Section 3. Council Action. The Council is asked to ratify and approve the attached Snow Removal Services Agreement, which has already been approved and signed by the Contractor.

If approved by the Council, the Mayor and City Clerk will sign the attached Agreement at the December 3rd Council meeting.

Attachment

CITY OF SUNFISH LAKE SNOW REMOVAL SERVICES AGREEMENT

THIS SNOW REMOVAL SERVICES AGREEMENT (“Agreement”) is entered into and effective the 1st day of November, 2019 by and between Executive Contractors Inc, a Minnesota corporation, (hereinafter “Contractor”) and the City of Sunfish Lake, a Minnesota municipal corporation (hereinafter “City”). Upon the terms and subject to the conditions of this Agreement, and for valuable consideration, the parties agree as follows.

SECTION ONE **RECITALS**

Section 1.01. The City requires services for snow removal on its streets and cul-de-sacs.

Section 1.02. Contractor and or its employees are qualified to perform snow removal services.

Section 1.03. The City desires to enter into an Agreement for snow removal services with Contractor.

Section 1.04. Contractor desires to provide snow removal services to the City.

SECTION TWO **DEFINITIONS**

Section 2.01. **Agreement** shall mean this Agreement, as it may be amended, supplemented or restated from time to time.

Section 2.02. **City** shall mean the City of Sunfish Lake, a Minnesota municipal corporation.

Section 2.03. **Contractor** shall mean Executive Contractors Inc, a Minnesota corporation.

Section 2.04. **Snowplowing Policy** shall mean the City of Sunfish Lake Snowplowing Policy attached hereto as Exhibit A.

Section 2.05. **Contractor’s Term Sheet** shall mean the Snow Removal Term Sheet attached hereto as Exhibit B.

Section 2.06. **Insurance** shall mean the types of insurance and amounts of insurance that the Contractor must maintain as required by the City shown on Exhibit C.

Section 2.07. **Snow Plowing Routes** shall mean the streets and cul-de-sacs identified in the depiction attached hereto as Exhibit D where snow removal services will be performed by the Contractor.

SECTION THREE **AGREEMENT**

Section 3.01. Purposes. The purpose of this Agreement is to define the terms and conditions for the City and Contractor with respect to snow removal services and ice control.

Section 3.02. Term. This Agreement shall be in effect for the 2019-2020 snowplow season. The 2019-2020 snowplow season runs from November 1, 2019 through April 30, 2020. This Agreement also covers snow removal services and ice control performed in October 2019 or May 2020. This Agreement also covers street sweeping services performed in the spring of 2020.

Section 3.03. Snow Removal. Contractor agrees to provide snow removal services and ice control during the term of the Agreement. Snow removal services and ice control shall be performed pursuant to the terms of the Snowplowing Policy and the Contractor's Term Sheet on the streets and cul-de-sacs as depicted on the Snow Plowing Routes.

Section 3.04. Payment. City agrees to pay Contractor for the snow removal services and ice control performed under this Agreement based upon the amounts listed in the Contractor's Term Sheet.

For the time period from November 1, 2019 through April 30, 2020, City shall pay the Contractor \$36,000 by six payments of \$6,000 per month for snow removal services and ice control. Payment shall be made at or about the time of the Council meeting in the month of payment following the month the services were provided. The first payment of \$6,000 is due in December 2019 and the last payment is due in May 2020.

Contractor shall provide street sweeping services in the spring of 2020. Compensation for such street services is included in the compensation of \$36,000 recited in the preceding paragraph and no additional compensation for street sweeping will be paid to the Contractor.

With respect to any snow removal services and ice control provided by the Contractor in October 2019 or in May 2020, the City will pay the Contractor based on the per hourly rates set forth on Exhibit E; provided, however, the total amount owed the Contractor for snow removal services and ice control provided in October 2019 or in May 2020 shall not exceed \$1,000 per month irrespective of how many hours of service are provided in October 2019 or in May 2020.

Section 3.05. Insurance. Contractor must maintain the types of Insurance and the amounts of Insurance shown on Exhibit C. Contractor must name the City and WSB & Associates, Inc. as additional insureds.

Section 3.06. Indemnification of City. Contractor shall indemnify, defend and hold the City, its officials, agents, employees, consultants, attorneys and representatives harmless against and in respect of an and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of or result from:

- (a) breach by Contractor of the Contractor warranties;
- (b) failure of Contractor to perform services in a timely manner;
- (c) failure by Contractor to observe or perform any condition, obligation or agreement on its part to be observed or performed under this Agreement;
- (d) failure by Contractor to pay laborers;
- (e) failure to obtain the necessary permits and authorizations to carry out the terms of this Agreement;
- (f) the negligent performance of snow plowing services and ice control provided by Contractor, its employees, or agents.

Contractor expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as provided herein.

Nothing herein shall be deemed a waiver of by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought against the City shall be subject to the liability limits provided in Minnesota Statutes Chapter 466.

Section 3.07. Law Obedience & Property Damage. Contractor shall be responsible for its actions and compliance with all regulatory laws and ordinances governing the operation of equipment while performing snow removal services and ice control under this Agreement. Contractor shall further be responsible for any and all damage to private property (including public utilities) caused by the negligent performance of snow plowing services and ice control provided by Contractor, its employees, or agents.

Section 3.08. Non-assignment. This Agreement cannot be assigned by Contractor without the prior consent of the City.

Section 3.09. Independent Contractor. Contractor agrees it is an independent contractor and that nothing in this Agreement shall be construed to make Contractor an employee of the City. Neither Contractor nor the City shall have the right or authority to bind the other.

Section 3.10. Default. If, in the opinion of the City, Contractor has defaulted or breached any of the terms of this Agreement, or if the City is dissatisfied with Contractor's performance of any of the duties of this Agreement, or for any other reason, the City may terminate this Agreement by giving Contractor thirty (30) days advance written notice.

Section 3.11. Law. This Agreement shall be governed by the laws of the State of Minnesota.

Section 3.12. Severability. If any provision of this Agreement is held by any court to be illegal, invalid or unenforceable, such provision shall be construed and enforced as if it had been more narrowly drawn so as to be legal, valid or enforceable. Such illegality, invalidity or unenforceability shall not affect or impair the enforceability of any other provision of this Agreement.

Section 3.13. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding of the subject matter of this Agreement. This Agreement may be amended only by written agreement of the City and Contractor.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

EXECUTIVE CONTRACTORS INC

By: _____

Craig Kromrey

Its: _____

Chief Executive Officer

CITY OF SUNFISH LAKE

By: _____

Dan O'Leary

Its: _____

Mayor

ATTEST:

Catherine Iago, City Clerk

EXHIBIT A
SNOWPLOWING POLICY

SUNFISH LAKE SNOWPLOWING POLICY

1. Introduction

The City of Sunfish Lake believes it is in the best interest of the residents for the City to assume basic responsibility for control of snow and ice and removal of debris or fallen trees prohibiting vehicular travel on city streets. Reasonable ice and snow control and debris removal is necessary for routine travel and emergency services. The City will provide such control in a safe and cost effective manner, keeping in mind safety, budget, personnel, and environmental concerns. The City will use private contractors to provide this service.

2. When will the City start snow or ice control operations?

The Mayor or City Engineer will decide when to begin snow or ice control operations. The criteria for that decision are:

- a. Snow accumulation of 2 inches or more;
- b. Drifting of snow that causes problems for travel;
- c. Icy conditions which seriously affect travel; and
- d. Time of snowfall in relationship to heavy use of streets.

Snow and ice control operations are expensive and involve the use of limited personnel and equipment. Consequently, snowplowing operations will not generally be conducted for snowfall of less than 2 inches.

Debris or tree removal prohibiting vehicular travel will commence as soon as work forces can be mobilized after reports of the incident and passing of the storm.

3. How snow will be plowed

Snow will be plowed in a manner so as to minimize any traffic obstructions. The center of the roadway will be plowed first. The snow shall then be pushed from left to right. The discharge shall go onto the boulevard area of the street. When a plow goes on a bridge, the driver shall slow down so that snow does not go over the bridge if possible. In times of extreme snowfall, streets will not always immediately be able to be completely cleared of snow.

City streets must be passable to allow normal traffic flow and emergency vehicles to respond to all areas within the City. The City; however, does not guarantee bare, dry pavement after each snowfall or that streets will be totally free of ice and snow or driving hazards common to Minnesota winter weather.

City streets will generally be plowed within 24 hours from the start of a 2" or more snowfall. This requires 6-8 hours of operations for a normal snowfall of two to six

inches. Delays may occur due to equipment breakdowns and or extreme weather conditions.

4. Snow removal

The City Engineer will determine when snow will be removed by truck from the area. Such snow removal will occur in areas where there is no room on the boulevard for snow storage and in areas where accumulated piles of snow create a hazardous condition. Snow removal operations will not commence until other snowplowing operations have been completed. Snow removal operations may also be delayed, depending on weather conditions, contractor availability and budget availability. The snow will be removed and hauled to a snow storage area. The snow storage area will be located so as to minimize environmental problems.

5. Priorities and schedule for which streets will be plowed

The City has classified city streets based on street function, traffic volume, and importance to the welfare of the community. The following streets will be plowed first or have debris removed first. These are high volume routes, which connect major sections of the City and provide access for emergency fire, police, and medical services.

- Salem Church Road
- Charlton Road

Second priority streets are low volume residential streets.

- | | |
|--------------------------------|--------------------|
| • Angell Road | • Roanoke Road |
| • Sunny Side Lane | • Grieve Glen Lane |
| • Windy Hill Road | • Acorn Drive |
| • Windy Hill Court | • Zehnder Road |
| • 55 th Street West | |

6. Work schedule for snowplow operators

Snowplow operators will be expected to work 8 hour shifts. In severe snow emergencies, operators sometimes have to work in excess of 8 hour shifts. However, because of budget and safety concerns no operator shall work more than a 12 hour shift in any 24 hour period. Operators will take a 15 minute break every 2 hours, with a half hour break after 4 hours. After a 12 hour day, operators will be replaced if additional qualified personnel are available.

7. Weather conditions

Snow and ice control operations will be conducted only when weather conditions do not endanger the safety of the operators and equipment. Factors that may delay snow and ice control operations include severe cold, significant winds, and limited visibility.

8. Use of sand, salt, and other chemicals

The City is concerned about the effect of sand and salt on the environment and will limit its use for that reason. Therefore, it is the policy of the City to utilize a sand and salt mixture in the ratio of approximately 3 parts sand and 1 part salt. This provides for

traction, but is not intended to provide for bare pavement during winter driving conditions. Application of the sand and salt mixture is generally limited to priority "A" routes, steep grades, and high volume intersections. Application is limited on lower volume streets and cul-de-sacs. The City cannot be responsible for damage to grass caused by the sand and salt mixture and therefore will not make repairs or compensate residents for salt damage to turf, plantings, or trees in the street right-of-way.

9. Mail delivery

The snow plow operators make every effort to remove snow as close as practical to provide access to mailboxes for the mail delivery. However, it is not possible to provide perfect conditions and minimize damage to mailboxes with the size and type of equipment that is utilized for snow removal. Therefore, the final cleaning adjacent to mailboxes is the responsibility of each resident.

Residents are encouraged to check with the Postmaster on how to correctly install mailboxes.

10. Garbage/Recycling

Efficient snow plowing requires that garbage and recycling containers be accessible for pickup and placed off street to allow snow removal. The container(s) may have to be placed in the driveway to meet both of these requirements. It is the responsibility of the resident to see that the container(s) is not in the way of the snowplow and is also in a spot accessible to the garbage and recycling truck(s).

11. Complaints

Complaints regarding snow and ice control or damage shall be taken during normal working hours and handled in accordance with the City's normal operation procedures. Complaints involving access to property or problems requiring immediate attention shall be handled on a priority basis. Response time should not exceed twenty-four (24) hours for most complaints. It should be understood that complaint responses are to ensure that the provisions of this policy have been fulfilled and that all residents of the City have been treated uniformly. It is the City's intention to log all complaints and upgrade this policy as necessary in consideration of the constraints of our resources.

EXHIBIT B
CONTRACTOR'S TERM SHEET

Snow Removal Term Sheet

Below is an outline of pricing agreed to by the City of Sunfish Lake (the City) and Executive Contractors Inc (the Contractor) for snow removal services and ice control provided for the 2019-2020 season. All services will be performed by the Contractor and will be paid for by the City.

Service	Unit	# of Units	Unit Price
In-season Snow Removal and Salting / Ice Control Services (11/01/2019-04/30/2020)	Monthly Basis	6	\$6,000.00
Out-of-season Snow Removal and Salting / Ice Control Services (in October 2019 or in May 2020)	Per Hour Basis	N/A	Hourly rate set forth below and in Exhibit E
Spring, 2020 Street Sweeping	Each	1	Included in Snow Removal Services

For the time period from November 1, 2019 through April 30, 2020, City shall pay the Contractor \$36,000 by six payments of \$6,000 per month for snow removal services and ice control. Payment shall be made at or about the time of the Council meeting in the month of payment following the month the services were provided. The first payment of \$6,000 is due in December 2019 and the last payment is due in May 2020.

Contractor shall provide street sweeping services in the spring of 2020. Compensation for such street services is included in the compensation of \$36,000 recited in the preceding paragraph and no additional compensation for street sweeping will be paid to the Contractor.

With respect to any snow removal services and ice control provided by the Contractor in October 2019 or in May 2020, the City will pay the Contractor based on the per hourly rates set forth on Exhibit E; provided, however, the total amount owed the Contractor for snow removal services and ice control provided in October 2019 or in May 2020 shall not exceed \$1,000 per month irrespective of how many hours of service are provided in October 2019 or in May 2020.

EXHIBIT C **INSURANCE**

INSURANCE

The limits of liability for the insurance required by the Contractor's Liability Insurance shall provide the following coverages for not less than the following amounts or greater where required by State laws and regulations:

Worker's Compensation

(1)	State	Statutory
(2)	Applicable Federal (e.g. Longshoreman's):	Statutory
(3)	Employer's Liability:	\$2,000,000

Contractor's Liability Insurance including completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

(1)	General Aggregate (Except Products - Completed Operations)	\$2,000,000
(2)	Products - Completed (Operations Aggregate)	\$2,000,000
(3)	Personal and Advertising Injury (Per Person/Organization)	\$2,000,000
(4)	Each Occurrence (Bodily Injury and Property Damage)	\$2,000,000
(5)	Property Damage Liability Insurance will provide explosion, collapse and underground coverages where applicable.	\$2,000,000
(6)	Excess Liability	
	General Aggregate	\$2,000,000
	Each Occurrence	\$2,000,000

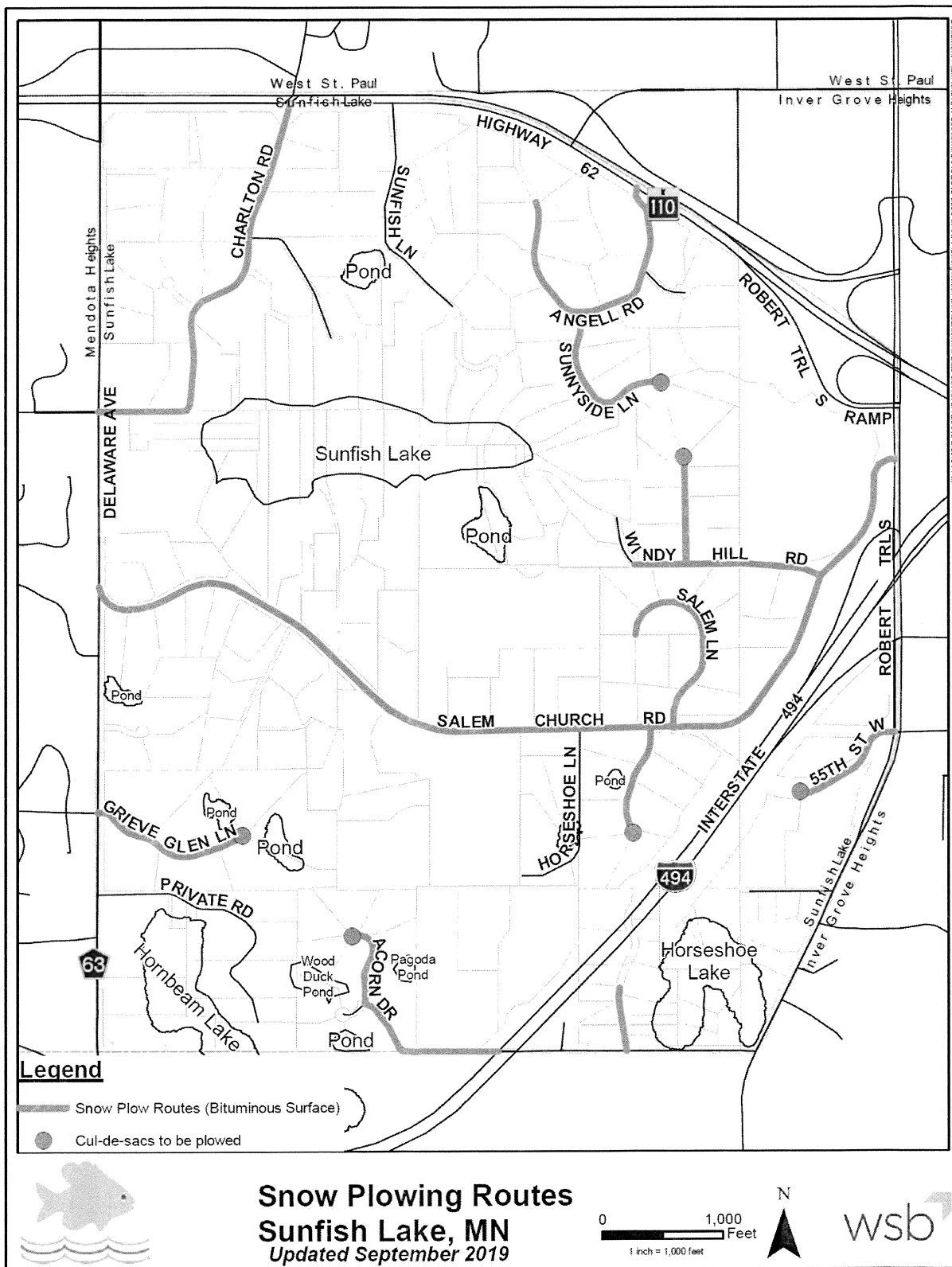
Additional insureds for Contractor's liability and property insurance:

1. City of Sunfish Lake, Minnesota
2. WSB & Associates, Inc., Minnesota

Automobile Liability:

(1)	Bodily Injury:	
	\$2,000,000	Each Person
	\$2,000,000	Each Accident
	Property Damage:	
	\$2,000,000	Each Accident
	or	
(2)	Combined Single Limit (Bodily Injury and Property Damage)	
	\$2,000,000	Each Accident

EXHIBIT D **SNOW PLOWING ROUTES**



Document Path: K:\0101-0000\01010001\01010001-0001 Snow Plowing Routes\MapData.mxd Date Saved: 9/12/2019 2:20:04 PM

EXHIBIT E
CONTRACTOR HOURLY RATES

OPTION # 1 PRICING

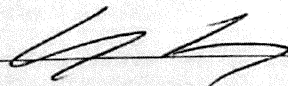
2019 - 2020 SNOW PLOW SEASON
QUOTE FOR SUNFISH LAKE

ITEM	2019-2020	
	Unit	Price
EQUIPMENT & LABOR		
Front-End Loader & Operator	hour	85. ⁰⁰
Motorgrader & Operator	hour	85. ⁰⁰
Motorgrader (with wing) & Operator	hour	85. ⁰⁰
Plow Truck & Driver w/ Sander	hour	85. ⁰⁰
Sanding Truck & Driver	hour	75. ⁰⁰
12 CY Dump Truck & Driver	hour	85. ⁰⁰
Single Axel Dump Truck w/ Wing & Driver	hour	85. ⁰⁰
Bobcat Loader & Operator	hour	85. ⁰⁰
MATERIAL COSTS		
Sand/Salt Mixture 80-20 mix (plus tax)	ton	70. ⁰⁰

24 HOUR CONTACT NAME Craig Kromrey

24 HOUR CONTACT TELEPHONE NUMBER (651) 248-1350

Snow plowing to be completed on city streets according to the City's
Street Maintenance Policy - Snow Plowing.

Signature: 

Company Name: Executive Contractors Inc.

Address: P.O. Box 2473
Inver Grove Heights, MN 55076

Telephone Number: 651-248-1350