

Street Patching and Rail Maintenance

Project: Street Patching and Rail Maintenance

Date: August 5, 2013

Contractor: Curbco Companies
P.O. Box 70
Swartz Creek, MI 48437

Owner: City of Pontiac
47450 Woodward, Pontiac, MI 48342

WHEREAS, Owner finds that the Contractor is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Owner's business.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

TERMS AND CONDITIONS

City Contract Administrator

DPW Director or designee shall be the City's Contract Administrator. The City's Contract Administrator will approve payments, oversee schedules, and generally be responsible for overseeing the execution of the contract.

Laws and Municipal Ordinances, Permits

Curbco shall be fully informed of all laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the equipment and materials used in the work, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Curbco shall at all times observe and comply with all such existing laws, codes, ordinances, regulations, orders, and decrees. In particular, all work shall be in compliance with the Laws of the State of Michigan, City Ordinances, as well as all other bodies having jurisdictional authority.

The Contractor shall be responsible for obtaining and paying for all permits required for this project and shall be responsible for arranging all required inspections.

Non-Discrimination

Curbco agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans with Disabilities Act of 1990 as amended; the Elliott-Larsen Civil Rights Act, Article 2, Act no. 453, Public Act of 1976 as amended; the Michigan Handicapper's Civil Rights Act, Article 2, Act. No. 220, Public Act of 1976, as amended and all other applicable Federal, State and Local laws and regulations. Specifically, Curbco and subcontractors are required not to discriminate against any employee or applicant for employment with respect to such person's hire, tenure, terms, conditions, or privileges of employment, or any

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matter directly or indirectly related to employment because of such person's height, weight, race, color, religion, national origin, ancestry, age, marital status, sex or disability, as defined by law. Breach of this covenant may be regarded as a material breach of the contract.

Indemnification

To the fullest extent permitted by Laws and Regulations, Curbco shall indemnify and hold harmless the City and its officers, directors, employees, agents and consultants from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work or from the failure to comply with any covenant or term of the contract, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from or (ii) is caused in whole or in part by any act or omission of Curbco, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any act or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

In any and all claims against the City or any consultants, agents, officers, directors or employees of the City by any employee (or the survivor or personal representative of such employee) of Curbco, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Curbco or any such Subcontractor, Supplier or other person or organization under workers' compensation Acts, disability benefit Acts or other employee benefit Acts.

Insurance coverage required of Curbco constitutes the minimum requirements and those requirements shall in no way lessen or limit the liability of Curbco under the terms of the contract. Curbco shall procure and maintain at Curbco's own cost and expense any additional claims or amounts of insurance that, in the judgment of the City, may be necessary for Curbco's proper protection in the prosecution of the work.

Jurisdiction Authority

This contract shall be governed by and construed according to the laws of the State of Michigan and Curbco consents to the jurisdiction and venue of the courts in Oakland County, Michigan and of the United States District Court for the Eastern District, Southern Division.

Severability

Curbco will agree that the Contract is the completed and exclusive statement of the Contract between the parties. A judicial or administrative declaration on the invalidity of any one or more of the provisions of the Contract shall not invalidate the remaining provisions of this agreement.

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Income Taxes

Contractor agrees to contact City of Pontiac Income Tax Division, Audit and Compliance Section, 47450 Woodward, Pontiac, Michigan, 48342, telephone (248) 758-3236, to establish reporting and withholding obligations under the City of Pontiac Income Tax Ordinance. Contractor will require the same of all subcontractors employing labor under this contract.

Contractor is required to withhold City of Pontiac income tax from wages paid to:

- (1) Pontiac resident employees regardless of where they work for the employer; and
- (2) Nonresident employees for work performed in the City.

Contractor is also required to file Pontiac income tax returns reporting and paying income tax on the net profits earned in the City.

COMPENSATION AND PAYMENT

The Contractor agrees to provide all material and labor required to perform the following work for: Street patching and Rail Maintenance as described in the Exhibit A scope of work and the bid proposal prepared by the City of Pontiac, which area incorporated into this agreement by reference.

The Contractor agrees to provide and pay for all materials, tools and equipment required for the prosecution and timely completion of the work. Unless otherwise specified, all materials shall be new and of good quality. Contractor shall invoice the City of Pontiac in accordance with Exhibit B.

In the prosecution of the work, the Contractor shall employ a sufficient number of workers skilled in their trades to suitably perform the work.

All invoices submitted against the contract must identify the work performed in detail. Items not properly invoiced will not be paid. It is the vendor's responsibility to ensure delivery of invoice(s) to the proper City Dept/Div/Personnel. Invoices must meet the following conditions for payment:

- a. Price on invoice must correspond to the pricing listed on purchase order and/or contract.
- b. Contractor must submit price lists in accordance with bid requirements.
- c. Net Thirty (30) Terms
- d. Contractor will bill based on agreed upon milestones.

Original invoice must be submitted to the appropriate City of Pontiac Account's Payable Section and signed by DPW Director or designee.

Copy of invoice must be submitted to DPW Director or designee; they will be responsible for processing payment. If a department contact person is not listed on the purchase order, the vendor shall request in writing from the Purchasing Division the name and phone number of the contact person responsible for processing payment.

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PROTECTION OF PUBLIC:

The Contractor must utilize necessary rolling closure devices to protect employees and public per industry standard.

TERMINATION FOR LACK OF FUNDING OR AUTHORITY:

The City may terminate this contract effective upon delivery of written notice to the contractor, or on any later date stated in the notice, under any of the following conditions:

- a) If funding from federal, state, county, city, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- b) If federal, state or local laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- c) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.


TERMINATION FOR CAUSE:

The City by written notice of default to the contractor may terminate the whole or any part of this contract:

- a. Fails to begin the work within the time specified in the Contract;
- b. Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- c. Fails to perform the work in accordance with contract requirements or refuses to remove and replace rejected materials or unacceptable work;
- d. Discontinues the work;
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so;
- f. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
- g. Allows any final judgment to remain unsatisfied for a period of Ten (10) days;
- i. Is a party to fraud; or
- j. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

INSURANCE:

Receipt of insurance is part of the process of determining which Curbcos may be recommended for award to the Emergency Manager. If cause is found to change the recommendation that your company be awarded the contract, or if the Emergency Manager does not approve the recommendation, the City shall not be liable for any costs incurred by you in the bid process, including the cost of acquiring bonds and/or insurance.

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The contractor, and any and all of their subcontractors, shall not commence work under this contract until they have obtained the insurance required under this paragraph. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to City of Pontiac. The limits required below do not limit the liability of the Contractor. All deductibles and SIRs are the responsibility of the Contractor.

1. **Workers' Compensation Insurance:** The Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

2. **Commercial General Liability Insurance:** The Contractor shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence BCurbcos" with limits of liability not less than \$ 2,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included.

3. **Motor Vehicle Liability:** The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability not less than \$ 2,000,000 per occurrence combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

4. **Additional Insured:** Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be ***Additional Insureds:*** The City of Pontiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Pontiac as additional insured, coverage afforded is considered to be primary and any other insurance the City of Pontiac may have in effect shall be considered secondary and/or excess.

5. **Cancellation Notice:** Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as described above, shall be endorsed to state the following: "It is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: Garland Doyle, City of Pontiac, 47450 Woodward Avenue, Pontiac, MI 48342."

6. **Proof of Insurance Coverage:** The Contractor shall provide the City of Pontiac at the time the contracts are returned by him/her for execution, certificates and policies as listed below:

- a. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
- b. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

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- c. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- d. If so requested, Certified Copies of all policies mentioned above will be furnished.

If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and/or policies to City of Pontiac at least ten (10) days prior to the expiration date.

BONDS:

- a. **Performance Bond:** Curbco is required to execute surety bonds, with sureties acceptable to the City. One such bond may be a Performance Bond in the amount of \$250,000.

MATERIALS:

- a) Materials will be provided by the contractor at materials cost plus Ten Percent (10) markup. Contractor will need to provide material invoice with the bill.
- b) The City of Pontiac reserves the rights to approve any and all material suppliers or direct the purchase if it's in the best interest of the City.
- c) Contractor must use all remaining materials that the City of Pontiac has in inventory at no cost to the City. Contractor shall inspect City owned materials and warehouse all useable materials and use as needed.

LENGTH OF AGREEMENT:

Agreement is for Three (3) years (commencing on date set forth on Page 1 hereof) with a City option for year Four and Five. The City of Pontiac shall inform the contractor a minimum of Thirty (30) days prior to expiration of agreement to enact optional years.

If the City is operating under the supervision of a Transition Advisory Board or other form of monitoring by the State of Michigan, contract termination if initiated by the City shall not be effective until such termination is confirmed by the Transition Advisory Board or State of Michigan.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date set forth on Page 1 hereof.

OWNER

Louis H. Schmel
Authorized Signature

Emergency Manager
Print Name and Title

CONTRACTOR

[Signature]
Authorized Signature

Kirk Cowley Supervisor / Agent
Print Name and Title

EXHIBIT A

SCOPE OF SERVICES:

1. Patch all City of Pontiac Streets—as directed by the Highway Maintenance Foreman.
2. Materials—as directed by the Director of Public Works.
 - a. Asphalt
 - i. Hot patch (1100T)
 - ii. Cold patch (U.P.M.)
3. Repair/Replace Highway Side Rails—as directed by the Director of Public Works.
 - a. Remove loose debris, put material (patch) in and tamp flat, no binder or sealer required. In other words patch in accordance with industry standards.
4. Equipment.
 - a. List equipment intended to perform scope of work
5. Requirements.
 - a. Licenses
 - b. CDL
 - c. Monthly activity report
6. Service and Response Time.
 - a. Twenty-four hour emergency response time
7. Safety Standards.
 - a. Adhere to Federal, State, and Local safety standards.
 - b. Adhere to MDOT standards
8. Length of Contract
 - a. Agreement would be for three years with a City option for years four and five.
 - b. The City of Pontiac would inform the contractor a minimum of Thirty (30) days prior to expiration to enact optional years two and or three.
9. Subcontracting
 - a. Please indicate if you will be subcontracting and if so what part of the project
 - b. All subcontracting will require approval from the City prior to work.

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EXHIBIT B

City of Pontiac

June 26, 2013

Thank you for the opportunity to provide you with a proposal for pothole patching services for the City of Pontiac. Curbcoc Inc. strives to help its municipal customers control costs while still maintaining excellent service to its visitors, businesses and residential communities. All Curbcoc vehicles and team mates are uniform in their appearance and attend monthly safety meetings along with daily toolbox talks to insure we always have our, and the communities' safety in mind.

It will be the intent of Curbcoc Inc. to provide equipment and experienced trade labor to perform pothole patching on roadways located within the City of Pontiac. All services will be performed in a timely and professional manner, typically being a (10) Ten week cycle in the spring of the year and managed throughout the year for areas of concern. All emergency service will be responded to within (24) Twenty four hours of being notified in a manner agreed upon by both parties.

Materials to be provided by the City of Pontiac from a location of their choice and transported by Curbcoc Inc., with all associated costs being the sole responsibility of the City of Pontiac. Copies of all material invoices will be provided with an itemized list of all areas of service on a weekly basis.

This service agreement would be for a term of (3) Three years with the City having an option for (2) Two, One year extensions that are agreed upon by both parties involved. The City of Pontiac will inform Curbcoc Inc. with the matter of intent no less than (30) Thirty days prior to the expiration of the contract.

Invoices will be submitted bi-weekly against the contract identifying the work performed in detail. Upon approval of acceptable service invoices are to be paid no less than (15) Fifteen days upon receipt of said invoice.

Local major roads will be serviced at the rate of \$2400.00 per day/ per crew. (Figures are based on (10) Ten hour day using, (1) Dump truck W/ Hotbox, (1) Associated truck W/ Arrow board and (3) Men.)

Residential roads will be serviced at the rate of \$1750.00 per day/ per crew. (Figures are based on (10) Ten hour day using (1) Dump truck W/ Hotbox and (2) Men.)

While performing cold patching services the hotbox will not be needed and will reduce the rate of service by \$250.00 per day.

Rates of service can and will be prorated on partial service days. Emergency call out and partial service days will be billed out with a minimum rate no less than \$875.00.

Anticipated scope of work and estimated cost of service agreement is listed as follows:

March 15th – June 1st (10 weeks)

- (1) Crew per day, (5) days per week = (50) Service days
- (50) Service days at no less than \$1875.00 per day = \$93,750.00

June 2nd – November 15th

- (2) Services per month with (1) Crew = (10) Service days
- (10) Service days at no less than \$1625.00 per day = \$16,250.00

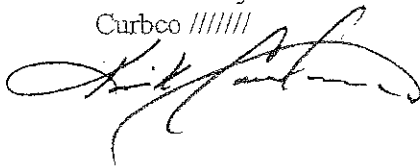
November 15th – March 31st

- City to request for serviceable needs in areas as they arise = \$???????
- Budget to be controlled by City of Pontiac official

All above stated prices are estimated in cost and serviceable days and may not reflect the true cost of contract. Serviceable budget and frequency to be controlled by the City of Pontiac.

Please review all information provided in this document, and feel free to contact myself or Keith Kirby if you have any questions that may arise. Curbcoc Inc. and its staff are willing and available to attend any and all round table sessions in assisting the City of Pontiac and its officials in developing a true budget, while building a lasting relationship.

Thank you,
Kirk Cowley
Curbcoc // // // //



City of Pontiac

It will be the intent of Curbco Inc. to provide equipment and experienced trade labor to perform Guard rail maintenance services for the City of Pontiac. All service calls will be responded to within (72) hours of notification. Emergency repair will be responded to within (24) hours of notice.

Service Call: \$250.00 (includes inspection and minor repairs)

Cost Per Linear Foot, Repair/Replace (rail only): \$37.50 per lin. ft.

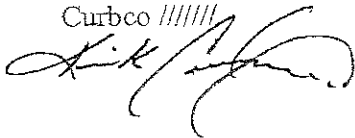
Cost Per Linear Foot, Repair/Replace (rail and post): \$50.00 per lin. ft.

Minimum Service for Rail Repair/Replace will be equal to the service of (12) linear feet of rail.

Above pricing is for labor only, all material will be billed at material cost plus 10%. Service will be invoiced upon the completion of requested repairs and approval of satisfactory workmanship. Invoices are to be paid no more than (15) days after receipt.

Please review all information provided in this document and feel free to contact myself or David Wurtz if you have any questions regarding these services as they have been described.

Thank you,
Kirk Cowley
Curbco //////////////



City of Pontiac
PROFESSIONAL SERVICES AGREEMENT
Addendum A
Amendments to Professional Services Agreement between
the City of Pontiac and Curbco Companies

The following recitals and representations are entered into this 15 day of August, 2013, by and between the City of Pontiac, a municipal corporation, whose address is 47450 Woodward Avenue, Pontiac, Michigan, 48342, (City), and Curbco Companies, a Michigan corporation, licensed to do business in the State of Michigan, whose address is P.O. Box 70, Swartz Creek, Michigan, 48342 (Contractor), and are intended to amend and Agreement for Professional Services (Agreement) originally executed by the City and Contractor on August 15, 2013.

Recitals and Representations

WHEREAS, the City and Contractor entered into an Agreement on the 15th of January 2013; and

WHEREAS, the Contractor has demonstrated its ability to faithfully execute the terms of the Agreement; and,

WHEREAS, the City desires to engage the Contractor and provide changes to, and additional terms to the services described in the Agreement.

NOW, THEREFORE, the City and the Contractor agree to amend the original Agreement, as follows:

1. Amend Agreement to now read:

The City has the right, within its sole discretion, to terminate this contract without cause, by giving notice to the Consultant of such termination, specifying the effective date thereof, at least ninety (90) days prior to the effective date of such termination. This contract shall terminate in all respects as if such date were the date originally given for the expiration of this contract.

In the event of the City's exercise of the right of unilateral termination as provided in this section:

- a. If the City is operating under the supervision of a Transition Advisory Board or other form of monitoring by the State of Michigan, contract termination shall not be effective until such termination is confirmed by the Transition Advisory Board or State of Michigan.
- b. Unless directed to continue performing work during the ninety (90) day period prior to termination or unless otherwise provided in any notice of termination, contractor shall provide no further Services in connection with this Agreement after receipt of a notice of termination.

2. Amend Agreement to now read:

Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to Contractor's receipt of notice of termination and for any services provided authorized to be performed by the notice of termination. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.

3. Add to the Agreement:

Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:

Transition Advisory Board
City of Pontiac
47450 Woodward Avenue
Pontiac, MI 48392

If to Contractor:

Curbco Companies
P.O. Box 70
Swartz Creek, MI 48342

With Copy to:

Giamarco, Mullings & Horton, P.C.
101 W. Big Beaver Rd, 10th floor
Troy, MI 48084-5280

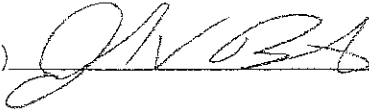
4. Amend the Agreement to now read:

This agreement/contact is expressly contingent upon and shall not be binding upon the parties until such time as the Transition Advisory Board or other form of monitoring by the State of Michigan, of Pontiac, Michigan authorizes the appropriate representatives of the municipality to enter into the agreement/contact on behalf of the City.

ADDENDUM A TO THE AS-NEEDED PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PONTIAC AND CURBCO COMPANIES
FOR PROFESSIONAL SERVICES AGREEMENT
DATED August 15, 2013

is executed and made effective as provided above.

Witnesses:

1) 

By: 

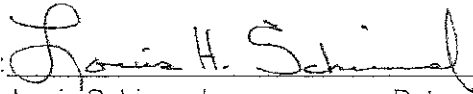
Curbco Companies

P.O. Box 70

Swartz Creek, Michigan 48342

2) _____

CITY OF PONTIAC

By:  8-15-13
Louis Schimmel Date

Its: Emergency Financial Manager