

PROFESSIONAL SERVICES CONTRACT
ITB # 23-338 Liquid Application of Dust Control on Gravel Surfaces
Wilkinson Solutions

This Contract for Professional Services (the "Contract") is by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the "County"), and **Wilkinson Solutions LLC**, a **Michigan LLC Corporation**, whose principal place of business is located at **8290 N Lapeer Road, Mayville, MI 48744** (the "Contractor") (the County and the Contractor together, the "Parties").

1. Term

1.1 Initial Term

The initial term of this Contract commences on **October 1, 2023** and shall be effective through **September 30, 2024** (the "Initial Term").

1.2 Extension Terms

The County has the option to extend this Contract for up to three (3) additional one-year terms (the "Extension Terms").

2. Scope of Work

The Contractor agrees to perform the services described on Exhibit A (the "Services").

3. Compensation

Unit Rate. The Contractor shall be paid according to the rates identified in the accepted bid submitted for ITB #23-338. The total amount paid to the Contractor shall not exceed **\$35,000.00** per one-year term. The Contractor must provide to the County monthly invoices in a form acceptable to the County, along with any necessary supporting documentation such as time sheets. The County will pay the Contractor within sixty (60) days of the County's acceptance of the invoice and supporting documentation.

4. Taxes. The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales Tax.

5. Contract Administrator

The contract administrator for this Contract is **Patrick Linihan** (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Contract.

The Contractor agrees to provide a copy of all notices related to this Contract to the Contract Administrator.

6. Warranties

The Contractor warrants that:

- 6.1 The Services will be performed in a good and workmanlike manner and in accordance with generally acceptable practices in the industry.
- 6.2 The Contractor will comply with all federal, state, and local laws in the performance of the Services.
- 6.3 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Contract.
- 6.4 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.
- 6.5 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's breach of these warranties.

7. Suspension of Work

7.1 Order to Suspend Performance

Upon written order of the Contract Administrator, the Contractor agrees to immediately suspend performance of the Services. The Contractor shall not be entitled to compensation for any Services performed during any period in which the Contract Administrator has directed that the Services be suspended.

7.2 Necessary Actions Before Suspension

If immediate suspension of the Services would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Contract Administrator of the nature of such harm, injury, or damage, and obtain written authorization from the Contract Administrator to take such necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Contract Administrator pursuant to this paragraph are compensable.

8. Termination

8.1 Termination for Cause

If the Contractor is in breach of any provision of this Contract, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Contract. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

8.2 Immediate Termination

If the County, in its discretion, determines that the Contractor's breach of this Contract constitutes a threat to public health, safety, or welfare, the County may terminate this Contract immediately upon notice to the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

8.3 Termination for Convenience

If the County determines that it is in the County's best interests, the County may terminate this Contract upon thirty (30) days written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

8.4 Termination for Lack of Funding

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

9. Nondiscrimination

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing services covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

10. Freedom of Information Act

This Contract and all attachments, as well as any other information submitted by the Contractor to the County, are subject to disclosure under the provisions of MCL 15.231, *et seq.*, known as the "Freedom of Information Act".

11. Intellectual Property

Any intellectual property created by the Contractor in the performance of the Services shall be considered a work made for hire, and any and all rights in such intellectual property shall belong solely to the County. Upon the County's request, the Contractor agrees to execute any documents necessary to convey ownership of such intellectual property to the County.

12. Audit Rights

12.1 Certification of Accurate Information

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Contract, or any payment or dispute related to this Contract, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

12.2 Inspection

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract and the terms of the applicable grant.

12.3 Audit

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Contract and the terms of the applicable grant.

12.4 Records Retention

The Contractor agrees to maintain any business records related to this Contract or the Contractor's performance under this Contract for a period of at least three (3) years after final payment.

13. Identity Theft Prevention

13.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

13.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth, driver's license number, taxpayer identification number, or routing code.

14. Insurance Requirements and Indemnification

The Contractor agrees to obtain insurance coverage of the types and amounts required as set forth in the Insurance Checklist attached as Exhibit B and keep such insurance coverage in force throughout the life of this Contract.

14.1 Insurance Certificate and Additional Insured Coverage

The Contractor further agrees to provide certificates of insurance to the County evidencing the coverages specified in the Insurance Checklist, and including the County as an additional insured. Additional insured coverage is to be by proof of blanket additional insured coverage within the general liability policy or as provided by an endorsement specifying the County as an additional insured to the policy. Contractor's agent must provide a copy of the endorsement or language from the policy with the certificate of insurance.

14.2 Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's performance of the Services or presence on the County's property or worksite.

15. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

16. General Provisions

16.1 Entire Contract

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

16.1.1. The Contract – This Professional Services Contract

16.1.2. Exhibit A – The Scope of Work

16.1.3. Exhibit B – The Insurance Checklist

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

16.2 No Assignment

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

16.3 Modification

This Contract may be modified only in writing executed with the same formalities as this Contract.

16.4 Binding Effect

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

16.5 Headings

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

16.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan.

16.7 Subpoena Power

The Contractor acknowledges and understands that the Chairperson of the Genesee County Board of Commissioners, pursuant to MCL 46.3(5), as amended, has the power to administer oaths, issue subpoenas, and compel a person's attendance in the same manner as a court of law. The Contractor agrees to submit to this power with respect to this Contract.

16.8 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

16.9 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

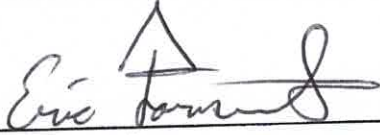
16.10 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

SIGNATURES APPEAR ON NEXT PAGE

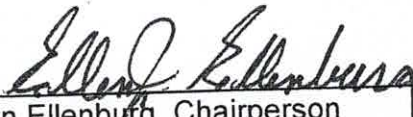
IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents.

WILKINSON SOLUTIONS LLC

By: 
Eric Farnsworth
General Manager

Date: 10-19-23

COUNTY OF GENESEE

By: 
Ellen Ellenburg, Chairperson
Board of County Commissioners

Date: 10-6-23

EXHIBIT A

Description of the Services

The Genesee County Parks maintains approximately 35 miles of gravel roads and 29 acres of gravel parking lots throughout Genesee and Lapeer Counties. The park roadways are a mix of typical 2-lane gravel roads, narrower single width gravel roads and various size gravel parking lots (some with tight turn radius). Smaller, more maneuverable, application trucks are required to service these small parking lots and narrow roadways. The Genesee County Parks has typically used up to 120,000 gallons of Mineral Well Brine each year to maintain adequate dust control on the gravel surfaces within its jurisdiction. Typically, 3 park wide applications are done between the months of May and November. Applications are coordinated by the Park Project Manager and timed with grading operations.

- Application of Mineral Well Brine, 18% Calcium Chloride (Minimum), to gravel road surfaces and parking lots, at a rate of \$0.28 per gallon for any size load.
- Application must be done at rates ranging from 1,600 gal/pas/mile to 2,000 gal/pass/mile, depending on road conditions. Contractor must provide equipment that has the ability to change spread rates immediately at the request of the inspector as required by the job.
- Contractor must be able to provide dust control application to prepared road and parking lot surfaces within 24 hours of being notified.
- Contractor must be able to meet park specific application times to accommodate park operations.
- Contractor must have a 6,000 - 8,000-gallon truck for roadway applications.
- Contractor must have a 2,600 - 3,300-gallon truck for application to smaller areas such as parking lots, service drives and other tight turn radius areas. A 3,000 gallon pup is desirable to make application operations more efficient.
- At intersections and park entrance aprons, it will be required that the liquid be spread around the corners, or radii, and not just square with the intersecting road.
- Each unit shall be equipped with a calibrated pump capable of uniform application of the liquid, at the specified rate. The pump shall be driven either from the truck axle, or another method, to provide a direct relationship between the ground speed of the truck and the rate of pump application.
- Genesee County Parks reserves the right to inspect all application units, prior to award of a Purchase Order, to verify the units are adequate to perform the services outlined in the bid document. If the application units are not adequately described in the bid response or, through inspection, they are found to be inadequate to provide the services outlined in this bid document; it shall be cause for the Genesee County Parks to reject the bid proposal.
- Non-uniform or otherwise unsatisfactory applications shall be re-applied at NO additional charge for the application (chloride will be paid for).
- Contractor must provide for direct communication between the driver of the application truck and the parks staff responsible for grading and preparing gravel surfaces for dust control applications.

- Before submitting a bid, the Contractor shall make sure that they are familiar with the facilities of the Genesee County Parks and satisfy itself as to the existing conditions under which they will be obliged to operate, or that in any way affects the work under this bid. No allowance shall be made subsequently in behalf of the Contractor for any negligence on his/her part.
- No sub-contracting is allowed.
- Pricing will be firm until the end of the Calendar year for which the Purchase Order was issued.
- The total delivered quantity may NOT exceed the Purchase Order without prior approval from the Genesee County Parks.
- Safety Data Sheets (SDS) must be submitted with the bid to be considered complete.
- The bid price shall include ALL costs involved in the furnishing, transportation, and applying of the material to the roadways and parking lots in an acceptable and accurate manner.

**EXHIBIT B
INSURANCE CHECKLIST**

GENESEE COUNTY INSURANCE CHECKLIST

Professional Service Contract: ITB: 23-338 – Liquid Application of Dust Control on Gravel Services

Coverage Required	Limits (Figures denote minimums)
X 1. Workers Compensation	Statutory limits of Michigan
X 2. Employers' Liability	\$100,000 accidental/disease \$500,000 policy limit, disease
X 3. General Liability	\$1,000,000 per occurrence with \$2,000,000 aggregate Including Products/Completed Operations and Contractual Liability and Premises/operations
4. Professional Liability	\$1,000,000 per occurrence with \$2,000,000 aggregate Including errors and omissions
5. Medical Malpractice	\$200,000 per occurrence \$800,000 in aggregate
X 6. Automobile liability	\$1,000,000 combined single limit each accident – Owned, Hired, Non-owned
X 7. Umbrella liability/Excess Coverage	\$1,000,000 BI & PD and PI
X 8. A copy of the specific additional insured endorsement naming Genesee County or a blanket additional insured endorsement must be attached to the certificate	
9. Other Insurance Required:	
10. A 30-day notice of cancellation or non-renewal is required for all policies	
11. Builders Risk "All Risk" for all materials and equipment of this contract	
X 12. Best's rating: A VIII or better, or its equivalent (Retention Group Financial Statements)	
X 13. The Certificate must state bid number and title 23-338	
**Additional coverage including excess liability, pollution and errors of omissions may be required Depending on the conditions of the building and processes to be utilized. Each NSP project is to be bid Separately, and each will require evaluation for possible risk exposure and additional insurance requirements	

Insurance Agent's Statement

I have reviewed the requirements with the bidder named below. In addition:

X The above required policies carry the following deductibles:

250 property damage to borrow equipment

Liability policies are

occurrence X

claims made

Guy C Moulthrop

Insurance Agent

Guy C. Moulthrop

Signature

Prospective Contractor's Statement

I understand the insurance requirements and will comply in full if awarded the contract.

Wilkinson Solutions

Contractor

Guy C. Moulthrop

Signature

Required general insurance provisions are provided in the checklist above. These are based on the contract and exposures of the work to be completed under the contract. Modifications to this checklist may occur at any time prior to signing of the contract. Any changes will require approval by the vendor/contractor, the department, and County Risk Manager. To the degree possible, all changes will be made as soon as feasible.