

AGENDA REPORT

Regular City Council - 19 Mar 2024



TITLE

Accept Bids and Award Contracts for the 2024 South Metro Joint Powers Agreement for Roadway Maintenance Services (24-504).

ACTION REQUESTED

Accept Bids and award contracts for the 2024 South Metro Joint Powers Agreement for Roadway Maintenance Services (24-504) as follows:

Service	Contractor	Bid Amount	Burnsville's Portion
Bituminous Fog Seal	Allied Blacktop Co.	\$88,264.00	\$0.00
Bituminous Seal Coat	Allied Blacktop Co.	\$2,377,485.52	\$161,325.00
Crack Sealing	Asphalt Surface Tech	\$1,312,090.56	\$227,304.00
Pavement Markings	Sir Lines-A-Lot	\$746,584.00	\$153,800.00

* Action requires simple majority vote of the Council.

BACKGROUND

The South Metro JPA includes the cities of Apple Valley, Bloomington, Burnsville, Eagan, Elko New Market, Empire, Farmington, Hastings, Lakeville, Mendota Heights, Prior Lake, Rosemount, Savage, Shakopee, South St. Paul, Waconia and West St. Paul, along with Scott County and the townships of New Market, Sand Creek and Spring Lake. This is the largest JPA of its type in the state and regularly has some of the larger contracts for this type of work in the state and thus attract competitive pricing.

As the lead organization for the South Metro JPA for Roadway Maintenance Services, the City of Burnsville coordinates the JPA, prepares the contract documents, provides bidding services, awards the contracts and provides general contract administration for the member local governments acting as one contracting organization. The following bids were received:

Service	Contractor	Bid Amount	Burnsville Portion
Bituminous Fog Seal	Allied Blacktop Co.	\$ 88,264.00	\$ 0.00
	Pearson Bros., Inc.	\$ 96,524.00	
	Asphalt Surface Tech	\$ 159,300.00	
Bituminous Seal Coat	Allied Blacktop Co.	\$ 2,377,485.52	\$ 161,325.00
	Pearson Bros., Inc.	\$ 2,394,955.98	
	Asphalt Surface Tech	\$ 2,672,427.58	
Crack Sealing	Asphalt Surface Tech	\$ 1,312,090.56	\$ 227,304.00

	Allied Blacktop Co.	\$ 2,157,002.60	
	Fahrner Asphalt Sealers	\$ 3,172,335.96	
Pavement Markings	Sir Lines-A-Lot	\$ 746,584.00	\$ 153,800.00

Bidding these routine maintenance services with all members of the JPA allows the member local governments to reduce their administration costs and offers economy of scale pricing the members could not get by bidding the work alone. Burnsville is reimbursed by the JPA members for the administrative work we complete on their behalf. An economy of scale pricing benefits all members.

BUDGET IMPACT

Inflation from 6% to 8% over last year's costs continues to be a challenge. Burnsville's portion of the contracts total \$542,429.00 and will come from the Street Maintenance Fund. Staff have reduced the scope of some of the maintenance activities in order to balance available funding with the increased costs.

STAFF RECOMMENDATION

Staff recommends accepting the bids of and awarding the contracts to the low responsible and responsive bidders as detailed above. All low bidders are returning contractors who have completed these contracts successfully in the past.

STRATEGIC PRIORITIES

Infrastructure: Burnsville is committed to responsible stewardship of resources and lands to ensure access and allow our community to thrive

Sustainability: Burnsville is committed to innovation that supports environmental, human and financial vitality for our community and future generations

ATTACHMENTS

[BidWorksheet 8987115 Eval](#)

[24-504 Contract Crack Sealing Astech](#)

[24-504 Contract Fog Seal Allied](#)

[24-504 Contract Pavement Markings SLAL](#)

[24-504 Contract Seal Coat Allied](#)

Staff Contact: Jeff Radick

(24-504) Street Maintenance JPA (#8987115)

Owner: Burnsville MN, City of

Solicitor: Burnsville MN, City of

03/08/2024 11:00 AM CST

					Engineer Estimate		Sir Lines-A-Lot		Pearson Bros, Inc.		Fahrner Asphalt Sealers, LL		Asphalt Surface Technolog		Allied Blacktop Company			
Section	Tit Line Item	Item Code	Item Descr	UofM	Quantity	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	
Bituminous Fog Seal (24-504)							\$0.00			\$0.00		\$96,524.00		\$0.00		\$159,300.00		\$88,264.00
	1	1	Bituminou	GAL	23600			\$0.00	\$0.00	\$4.09	\$96,524.00	\$0.00	\$0.00	\$6.75	\$159,300.00	\$3.74	\$88,264.00	
Bituminous Seal Coat (24-504)							\$0.00			\$0.00		\$2,394,955.98		\$0.00		\$2,672,427.58		\$2,377,485.52
	2	2A	Bituminou	GAL	299805			\$0.00	\$0.00	\$3.03	\$908,409.15	\$0.00	\$0.00	\$2.92	\$875,430.60	\$3.00	\$899,415.00	
	3	2B	Bituminou	GAL	91270			\$0.00	\$0.00	\$2.87	\$261,944.90	\$0.00	\$0.00	\$2.75	\$250,992.50	\$2.75	\$250,992.50	
	4	2C	Furnish &	ISY	1378508			\$0.00	\$0.00	\$0.71	\$978,740.68	\$0.00	\$0.00	\$0.96	\$1,323,367.68	\$0.69	\$951,170.52	
	5	2D	Install Scre	SY	370000			\$0.00	\$0.00	\$0.55	\$203,500.00	\$0.00	\$0.00	\$0.54	\$199,800.00	\$0.63	\$233,100.00	
	6	2E	Furnish &	ISY	9523			\$0.00	\$0.00	\$3.75	\$35,711.25	\$0.00	\$0.00	\$1.60	\$15,236.80	\$2.50	\$23,807.50	
	7	2G	Screen Sal	Tons	950			\$0.00	\$0.00	\$7.00	\$6,650.00	\$0.00	\$0.00	\$8.00	\$7,600.00	\$20.00	\$19,000.00	
Crack Sealing (24-504)							\$0.00			\$0.00		\$0.00		\$3,172,335.96		\$1,312,090.56		\$2,157,002.60
	8	3A	Crack Seali	LF	839998			\$0.00	\$0.00	\$0.00	\$0.00	\$1.77	\$1,486,796.46	\$0.72	\$604,798.56	\$1.20	\$1,007,997.60	
	9	3B	Crack Seali	LF	393500			\$0.00	\$0.00	\$0.00	\$0.00	\$1.65	\$649,275.00	\$0.72	\$283,320.00	\$1.00	\$393,500.00	
	10	3C	Crack Seali	LF	538850			\$0.00	\$0.00	\$0.00	\$0.00	\$1.77	\$953,764.50	\$0.72	\$387,972.00	\$1.30	\$700,505.00	
	11	3D	Crack Seali	LF	50000			\$0.00	\$0.00	\$0.00	\$0.00	\$1.65	\$82,500.00	\$0.72	\$36,000.00	\$1.10	\$55,000.00	
Pavement Markings (24-504)							\$0.00			\$746,584.00		\$0.00		\$0.00		\$0.00		\$0.00
	12	4A	Long Line	' GAL	13849			\$32.00	\$443,168.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	13	4B	Symbol M	: GAL	1982			\$148.00	\$293,336.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	14	4C	Parking Lo	: GAL	84			\$120.00	\$10,080.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Base Bid Total:							\$0.00			\$746,584.00		\$2,491,479.98		\$3,172,335.96		\$4,143,818.14		\$4,622,752.12

CITY OF BURNSVILLE
Burnsville, Minnesota



CONSTRUCTION CONTRACT

**2024 Street Maintenance JPA – Crack Sealing
City Project No. 24-504**

THIS CONSTRUCTION CONTRACT (“Contract”) is made this 19th day of March, 2024, by and between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation (“City”) and Asphalt Surface Technologies Corporation, a Minnesota corporation (“Contractor”). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. Contract Documents. The following documents shall be referred to as the “Contract Documents,” all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Contract.
- B. Specifications dated February 23, 2024
- C. Plan Sheets dated February 23, 2024
- D. Burnsville’s General Conditions as amended by City of Burnsville Supplementary General Conditions.
- E. Contractor’s Bid dated March 7, 2024
- F. Performance Bond, Payment Bond, Certificate of Insurance.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts, with Contract Document “A” having the first priority and Contract Document “F” having the last priority.

2. Obligations of Contractor. Contractor shall provide the goods, services, and perform the Work, in accordance with the Contract Documents and in compliance with federal, state and local laws. This Contract may be terminated by the City at any time upon discovery by the City that Contractor or any of its subcontractors has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minnesota Statutes § 16C.285, subd. 3, the Responsible Contractor statute.

3. Obligations of the City. The City agrees to pay and Contractor agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth to those in the accepted Contractor's Bid, the aggregate of which prices, based on the approximate schedule of quantities, is estimated to be \$1,312,090.56.

4. Payment Procedures.

4.1 *Applications for Payment.* Contractor shall submit Applications for Payment. Applications for Payment will be processed by City as provided in the General Conditions.

4.2 *Progress Payments; Retainage.* City shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work or Contractor shall have the options regarding retaining in accordance with Minnesota Statutes §§ 15.71 and 15.74.

4.3 *Payments to Subcontractor.*

A. Prompt Payment to Subcontractors. Pursuant to Minnesota Statutes § 471.425, subd. 4a, Contractor must pay any subcontractor within ten (10) days of Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. Contractor must pay interest of 1.5 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor.

B. Form IC-134 required from general contractor. Minnesota Statutes § 290.92 requires that the City of Burnsville obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

4.4 *Final Payment.* Upon final completion of the Work, City shall pay the remainder of the Contract Price as recommended by City.

5. Time of Performance.

5.1 The Work must be completed according to the amount of working days specified in the Section 1010 of the General Requirements of the project specifications (the "Completion Date").

5.2 Contractor and City recognize that time is of the essence of this Contract and that City will suffer financial loss if the Work is not completed on or before the Completion Date, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City the amount described in the Paragraph 33 of the General Conditions of the project specifications for each calendar day that expires after the Completion Date until the Work is complete.

6. Contractor's Representations. Contractor represents and warrants the following:

6.1 Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.

6.2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

6.3 Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

6.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

6.5 Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work, or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

6.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.7 Contractor is aware of the general nature of other work to be performed by City or others at the Site that relates to the Work as indicated in the Contract Documents.

6.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.9 Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.

6.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.11 *Subcontracts.*

A. Unless otherwise specified in the Contract Documents, Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the City the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the City.

B. Contractor is responsible to the City for the acts and omissions of Contractor's subcontractors, and of their direct and indirect employees, to the same extent as Contractor is responsible for the acts and omissions of Contractor's employees.

C. The Contract Documents shall not be construed as creating any contractual relationship between the City and any subcontractor.

D. Contractor shall bind every subcontractor by the terms of the Contract Documents.

7. **Worker's Compensation.** Pursuant to Minnesota Statutes § 176.182, Contractor must provide acceptable evidence of compliance with the state Workers' Compensation insurance requirements for all of its employees and, in case any part of the Work is subcontracted, Contractor will require its subcontractors to provide Workers' Compensation insurance or acceptable evidence of compliance in accordance with the statutory requirements of the State of Minnesota.

8. **Commercial General Liability.** Contractor shall obtain the following minimum insurance coverage by a single policy or combination of policies (including umbrella policies) and maintain it at all times throughout the life of the Contract, with the City of Burnsville endorsed as an additional insured. Contractor shall obtain any further insurance requirements stated elsewhere in the project specifications. Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury:	\$2,000,000 each occurrence \$2,000,000 aggregate products and completed operations
Property Damage:	\$2,000,000 each occurrence \$2,000,000 aggregate

The Additional Insured coverage must be primary and non-contributory. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after final payment and Contractor shall continue to provide evidence of such coverage to City on an annual basis during

the aforementioned period; or if any reason Contractor's work ceases before final payment, for a minimum period of three (3) years from the date Contractor ceases work. Coverages must be equivalent to that provided by ISO Forms CG 20 10 04 13 and CG 20 37 04 13.

Property Damage Liability Insurance shall include coverage for the following hazards:

X (Explosion)
C (Collapse)
U (Underground)

For any contract involving the repair, maintenance or construction of property that involves the provision of equipment, supplies or materials to the City for projects greater than \$100,000, Contractor shall obtain and maintain Builder's Risk insurance in an amount not less than the project or contract cost.

Contractual Liability (identifying the contract):

Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:
\$2,000,000 aggregate

Business Automobile Liability (owned, non-owned, hired):

Bodily Injury &
Property Damage: \$2,000,000 each occurrence
\$2,000,000 each accident
OR
\$2,000,000 Combined single limit

Contractor shall submit a Certificate of Insurance to the City showing proof of the above-required insurance prior to doing any work.

The City retains the right to revise the insurance requirements depending on the size and risk of the project.

9. Performance And Payment Bonds. Prior to commencement of work, Contractor shall furnish the City performance and payment bonds satisfying the requirements of Minnesota Statutes § 574.26 each in the amount of the contract price.

10. Warranty. Contractor guarantees that all new equipment warranties as specified within the bid shall be in full force and transferred to the City upon payment by the City. Contractor shall be held responsible for any and all defects in workmanship, materials, and

equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

11. Defense Obligation. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the City and its officials, employees, and agents, against claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, other than the Work itself, but only to the extent caused by the negligent or wrongful acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12. Non-Discrimination. Contractor shall comply with Minnesota Statutes § 181.59.

12.1 Contractor specifically agrees that in its hiring of employees under this Contract, Contractor will not, on the basis of race, creed, or color, discriminate against any person who is a citizen of the United States or any person is a resident alien who is qualified and available to perform work under this Contract or any subcontract made pursuant to it. Contractor further agrees that it will not, on the basis of race, color, or creed, discriminate against, or intimidate, or prevent the employment of any such persons; and once such persons are hired, Contractor will not, on the basis of race, creed, or color, prevent, or conspire to prevent, such persons from performing the work under this Contract or any subcontract made pursuant to it.

12.2 Contractor shall ensure compliance with this Section 12 by any of its subcontractors.

12.3 Contractor acknowledges that it understands that a violation of this Section 12 is a misdemeanor criminal offense. Contractor further acknowledges that this Contract may be cancelled or terminated by the City, with possible forfeiture of any money due or to become due for a second or subsequent violation of this Section 12.

13. Miscellaneous.

13.1. Terms, including but not limited to "Work" and "Site", used in this Contract have the meanings stated in the General Conditions.

13.2 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

13.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

13.4 *Data Practices/Records.* All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy. All books, records, documents, and accounting procedures and practices of Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.

13.5 *Software License.* If the equipment provided by Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, Contractor shall pay all software licensing fees. Contractor shall also pay for all software updating fees for a period of one year following cutover. Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.

13.6 *Assignment.* Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

13.7 *Waiver.* In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.

13.8 *Governing Law; Venue.* The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Dakota County.

13.9 *Entire Agreement.* This Contract represents the entire agreement of the parties and is a final, complete, and all-inclusive statement of the terms agreed upon, and supersedes and terminates any prior agreement(s), understanding(s), or written or verbal representation(s) made between the parties.

13.10 *Permits and Licenses; Rights-of-Way and Easements.* Contractor shall procure all permits and licenses, pay all charges and fees for such permits and licenses, and shall give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

13.11 *Notices.* Any notice required by this Contract to be delivered to the other party shall be in writing, and shall be either hand delivered to the other party; deposited in the United States Mail, to be delivered by certified or registered mail, return receipt requests; or deposited

with an overnight courier to be delivered to the other party. Notices shall be delivered to the following address for each party:

If to the City:

City of Burnsville
ATTN: City Manager
100 Civic Center Parkway
Burnsville, MN 55337

If to Contractor:

Asphalt Surface Technologies Corporation
ATTN: _____
8348 Ridgewood Rd.
Saint Joseph, MN 56374

Each party may designate a new or alternate address by providing the same to the other party in writing.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Contract to be effective as of the date of the last signature affixed below.

CITY OF BURNSVILLE

**ASPHALT SURFACE TECHNOLOGIES
CORPORATION**

BY: _____
Elizabeth B. Kautz, Mayor

BY: _____
NAME
Its: TITLE

BY: _____
Gregg M. Lindberg, City Manager

Date: _____

Date: _____

City of Burnsville _____

Construction Contract - 9

CITY OF BURNSVILLE
Burnsville, Minnesota



CONSTRUCTION CONTRACT

**2024 Street Maintenance JPA – Bituminous Fog Seal
City Project No. 24-504**

THIS CONSTRUCTION CONTRACT (“Contract”) is made this 19th day of March, 2024, by and between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation (“City”) and Allied Blacktop , a Minnesota corporation (“Contractor”). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

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6.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

6.5 Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work, or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

6.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.7 Contractor is aware of the general nature of other work to be performed by City or others at the Site that relates to the Work as indicated in the Contract Documents.

6.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.9 Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.

6.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.11 *Subcontracts.*

A. Unless otherwise specified in the Contract Documents, Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the City the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the City.

B. Contractor is responsible to the City for the acts and omissions of Contractor's subcontractors, and of their direct and indirect employees, to the same extent as Contractor is responsible for the acts and omissions of Contractor's employees.

C. The Contract Documents shall not be construed as creating any contractual relationship between the City and any subcontractor.

D. Contractor shall bind every subcontractor by the terms of the Contract Documents.

7. **Worker's Compensation.** Pursuant to Minnesota Statutes § 176.182, Contractor must provide acceptable evidence of compliance with the state Workers' Compensation insurance requirements for all of its employees and, in case any part of the Work is subcontracted, Contractor will require its subcontractors to provide Workers' Compensation insurance or acceptable evidence of compliance in accordance with the statutory requirements of the State of Minnesota.

8. **Commercial General Liability.** Contractor shall obtain the following minimum insurance coverage by a single policy or combination of policies (including umbrella policies) and maintain it at all times throughout the life of the Contract, with the City of Burnsville endorsed as an additional insured. Contractor shall obtain any further insurance requirements stated elsewhere in the project specifications. Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury:	\$2,000,000 each occurrence \$2,000,000 aggregate products and completed operations
Property Damage:	\$2,000,000 each occurrence \$2,000,000 aggregate

The Additional Insured coverage must be primary and non-contributory. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after final payment and Contractor shall continue to provide evidence of such coverage to City on an annual basis during

the aforementioned period; or if any reason Contractor's work ceases before final payment, for a minimum period of three (3) years from the date Contractor ceases work. Coverages must be equivalent to that provided by ISO Forms CG 20 10 04 13 and CG 20 37 04 13.

Property Damage Liability Insurance shall include coverage for the following hazards:

X (Explosion)
C (Collapse)
U (Underground)

For any contract involving the repair, maintenance or construction of property that involves the provision of equipment, supplies or materials to the City for projects greater than \$100,000, Contractor shall obtain and maintain Builder's Risk insurance in an amount not less than the project or contract cost.

Contractual Liability (identifying the contract):

Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:
\$2,000,000 aggregate

Business Automobile Liability (owned, non-owned, hired):

Bodily Injury &
Property Damage: \$2,000,000 each occurrence
\$2,000,000 each accident
OR
\$2,000,000 Combined single limit

Contractor shall submit a Certificate of Insurance to the City showing proof of the above-required insurance prior to doing any work.

The City retains the right to revise the insurance requirements depending on the size and risk of the project.

9. Performance And Payment Bonds. Prior to commencement of work, Contractor shall furnish the City performance and payment bonds satisfying the requirements of Minnesota Statutes § 574.26 each in the amount of the contract price.

10. Warranty. Contractor guarantees that all new equipment warranties as specified within the bid shall be in full force and transferred to the City upon payment by the City. Contractor shall be held responsible for any and all defects in workmanship, materials, and

equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

11. Defense Obligation. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the City and its officials, employees, and agents, against claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, other than the Work itself, but only to the extent caused by the negligent or wrongful acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12. Non-Discrimination. Contractor shall comply with Minnesota Statutes § 181.59.

12.1 Contractor specifically agrees that in its hiring of employees under this Contract, Contractor will not, on the basis of race, creed, or color, discriminate against any person who is a citizen of the United States or any person is a resident alien who is qualified and available to perform work under this Contract or any subcontract made pursuant to it. Contractor further agrees that it will not, on the basis of race, color, or creed, discriminate against, or intimidate, or prevent the employment of any such persons; and once such persons are hired, Contractor will not, on the basis of race, creed, or color, prevent, or conspire to prevent, such persons from performing the work under this Contract or any subcontract made pursuant to it.

12.2 Contractor shall ensure compliance with this Section 12 by any of its subcontractors.

12.3 Contractor acknowledges that it understands that a violation of this Section 12 is a misdemeanor criminal offense. Contractor further acknowledges that this Contract may be cancelled or terminated by the City, with possible forfeiture of any money due or to become due for a second or subsequent violation of this Section 12.

13. Miscellaneous.

13.1. Terms, including but not limited to "Work" and "Site", used in this Contract have the meanings stated in the General Conditions.

13.2 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

13.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

13.4 *Data Practices/Records.* All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy. All books, records, documents, and accounting procedures and practices of Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.

13.5 *Software License.* If the equipment provided by Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, Contractor shall pay all software licensing fees. Contractor shall also pay for all software updating fees for a period of one year following cutover. Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.

13.6 *Assignment.* Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

13.7 *Waiver.* In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.

13.8 *Governing Law; Venue.* The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Dakota County.

13.9 *Entire Agreement.* This Contract represents the entire agreement of the parties and is a final, complete, and all-inclusive statement of the terms agreed upon, and supersedes and terminates any prior agreement(s), understanding(s), or written or verbal representation(s) made between the parties.

13.10 *Permits and Licenses; Rights-of-Way and Easements.* Contractor shall procure all permits and licenses, pay all charges and fees for such permits and licenses, and shall give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

13.11 *Notices.* Any notice required by this Contract to be delivered to the other party shall be in writing, and shall be either hand delivered to the other party; deposited in the United States Mail, to be delivered by certified or registered mail, return receipt requests; or deposited

with an overnight courier to be delivered to the other party. Notices shall be delivered to the following address for each party:

If to the City:

City of Burnsville
ATTN: City Manager
100 Civic Center Parkway
Burnsville, MN 55337

If to Contractor:

Allied Blacktop Co.
ATTN: _____
10503 89th Ave. N
Maple Grove, MN 55369

Each party may designate a new or alternate address by providing the same to the other party in writing.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Contract to be effective as of the date of the last signature affixed below.

CITY OF BURNSVILLE

ALLIED BLACKTOP CO.

BY: _____
Elizabeth B. Kautz, Mayor

BY: _____
NAME
Its: TITLE

BY: _____
Gregg M. Lindberg, City Manager

Date: _____

Date: _____

City of Burnsville _____

Construction Contract - 9

CITY OF BURNSVILLE
Burnsville, Minnesota



CONSTRUCTION CONTRACT

2024 Street Maintenance JPA – Pavement Markings
City Project No. 24-504

THIS CONSTRUCTION CONTRACT (“Contract”) is made this 19th day of March, 2024, by and between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation (“City”) and Sir Lines-A-Lot , a Minnesota LLC (“Contractor”). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. Contract Documents. The following documents shall be referred to as the “Contract Documents,” all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Contract.
- B. Specifications dated February 23, 2024
- C. Plan Sheets dated February 23, 2024
- D. Burnsville’s General Conditions as amended by City of Burnsville Supplementary General Conditions.
- E. Contractor’s Bid dated March 7, 2024
- F. Performance Bond, Payment Bond, Certificate of Insurance.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts, with Contract Document “A” having the first priority and Contract Document “F” having the last priority.

2. Obligations of Contractor. Contractor shall provide the goods, services, and perform the Work, in accordance with the Contract Documents and in compliance with federal, state and local laws. This Contract may be terminated by the City at any time upon discovery by the City that Contractor or any of its subcontractors has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minnesota Statutes § 16C.285, subd. 3, the Responsible Contractor statute.

3. Obligations of the City. The City agrees to pay and Contractor agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth to those in the accepted Contractor's Bid, the aggregate of which prices, based on the approximate schedule of quantities, is estimated to be \$746,584.00.

4. Payment Procedures.

4.1 *Applications for Payment.* Contractor shall submit Applications for Payment. Applications for Payment will be processed by City as provided in the General Conditions.

4.2 *Progress Payments; Retainage.* City shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work or Contractor shall have the options regarding retaining in accordance with Minnesota Statutes §§ 15.71 and 15.74.

4.3 *Payments to Subcontractor.*

A. Prompt Payment to Subcontractors. Pursuant to Minnesota Statutes § 471.425, subd. 4a, Contractor must pay any subcontractor within ten (10) days of Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. Contractor must pay interest of 1.5 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor.

B. Form IC-134 required from general contractor. Minnesota Statutes § 290.92 requires that the City of Burnsville obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

4.4 *Final Payment.* Upon final completion of the Work, City shall pay the remainder of the Contract Price as recommended by City.

5. Time of Performance.

5.1 The Work must be completed according to the amount of working days specified in the Section 1010 of the General Requirements of the project specifications (the "Completion Date").

5.2 Contractor and City recognize that time is of the essence of this Contract and that City will suffer financial loss if the Work is not completed on or before the Completion Date, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City the amount described in the Paragraph 33 of the General Conditions of the project specifications for each calendar day that expires after the Completion Date until the Work is complete.

6. Contractor's Representations. Contractor represents and warrants the following:

6.1 Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.

6.2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

6.3 Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

6.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

6.5 Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work, or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

6.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.7 Contractor is aware of the general nature of other work to be performed by City or others at the Site that relates to the Work as indicated in the Contract Documents.

6.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.9 Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.

6.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.11 *Subcontracts.*

A. Unless otherwise specified in the Contract Documents, Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the City the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the City.

B. Contractor is responsible to the City for the acts and omissions of Contractor's subcontractors, and of their direct and indirect employees, to the same extent as Contractor is responsible for the acts and omissions of Contractor's employees.

C. The Contract Documents shall not be construed as creating any contractual relationship between the City and any subcontractor.

D. Contractor shall bind every subcontractor by the terms of the Contract Documents.

7. **Worker's Compensation.** Pursuant to Minnesota Statutes § 176.182, Contractor must provide acceptable evidence of compliance with the state Workers' Compensation insurance requirements for all of its employees and, in case any part of the Work is subcontracted, Contractor will require its subcontractors to provide Workers' Compensation insurance or acceptable evidence of compliance in accordance with the statutory requirements of the State of Minnesota.

8. **Commercial General Liability.** Contractor shall obtain the following minimum insurance coverage by a single policy or combination of policies (including umbrella policies) and maintain it at all times throughout the life of the Contract, with the City of Burnsville endorsed as an additional insured. Contractor shall obtain any further insurance requirements stated elsewhere in the project specifications. Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury:	\$2,000,000 each occurrence \$2,000,000 aggregate products and completed operations
Property Damage:	\$2,000,000 each occurrence \$2,000,000 aggregate

The Additional Insured coverage must be primary and non-contributory. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after final payment and Contractor shall continue to provide evidence of such coverage to City on an annual basis during

the aforementioned period; or if any reason Contractor's work ceases before final payment, for a minimum period of three (3) years from the date Contractor ceases work. Coverages must be equivalent to that provided by ISO Forms CG 20 10 04 13 and CG 20 37 04 13.

Property Damage Liability Insurance shall include coverage for the following hazards:

X (Explosion)
C (Collapse)
U (Underground)

For any contract involving the repair, maintenance or construction of property that involves the provision of equipment, supplies or materials to the City for projects greater than \$100,000, Contractor shall obtain and maintain Builder's Risk insurance in an amount not less than the project or contract cost.

Contractual Liability (identifying the contract):

Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:
\$2,000,000 aggregate

Business Automobile Liability (owned, non-owned, hired):

Bodily Injury &
Property Damage: \$2,000,000 each occurrence
\$2,000,000 each accident
OR
\$2,000,000 Combined single limit

Contractor shall submit a Certificate of Insurance to the City showing proof of the above-required insurance prior to doing any work.

The City retains the right to revise the insurance requirements depending on the size and risk of the project.

9. Performance And Payment Bonds. Prior to commencement of work, Contractor shall furnish the City performance and payment bonds satisfying the requirements of Minnesota Statutes § 574.26 each in the amount of the contract price.

10. Warranty. Contractor guarantees that all new equipment warranties as specified within the bid shall be in full force and transferred to the City upon payment by the City. Contractor shall be held responsible for any and all defects in workmanship, materials, and

equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

11. Defense Obligation. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the City and its officials, employees, and agents, against claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, other than the Work itself, but only to the extent caused by the negligent or wrongful acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12. Non-Discrimination. Contractor shall comply with Minnesota Statutes § 181.59.

12.1 Contractor specifically agrees that in its hiring of employees under this Contract, Contractor will not, on the basis of race, creed, or color, discriminate against any person who is a citizen of the United States or any person is a resident alien who is qualified and available to perform work under this Contract or any subcontract made pursuant to it. Contractor further agrees that it will not, on the basis of race, color, or creed, discriminate against, or intimidate, or prevent the employment of any such persons; and once such persons are hired, Contractor will not, on the basis of race, creed, or color, prevent, or conspire to prevent, such persons from performing the work under this Contract or any subcontract made pursuant to it.

12.2 Contractor shall ensure compliance with this Section 12 by any of its subcontractors.

12.3 Contractor acknowledges that it understands that a violation of this Section 12 is a misdemeanor criminal offense. Contractor further acknowledges that this Contract may be cancelled or terminated by the City, with possible forfeiture of any money due or to become due for a second or subsequent violation of this Section 12.

13. Miscellaneous.

13.1. Terms, including but not limited to "Work" and "Site", used in this Contract have the meanings stated in the General Conditions.

13.2 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

13.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

13.4 *Data Practices/Records.* All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy. All books, records, documents, and accounting procedures and practices of Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.

13.5 *Software License.* If the equipment provided by Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, Contractor shall pay all software licensing fees. Contractor shall also pay for all software updating fees for a period of one year following cutover. Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.

13.6 *Assignment.* Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

13.7 *Waiver.* In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.

13.8 *Governing Law; Venue.* The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Dakota County.

13.9 *Entire Agreement.* This Contract represents the entire agreement of the parties and is a final, complete, and all-inclusive statement of the terms agreed upon, and supersedes and terminates any prior agreement(s), understanding(s), or written or verbal representation(s) made between the parties.

13.10 *Permits and Licenses; Rights-of-Way and Easements.* Contractor shall procure all permits and licenses, pay all charges and fees for such permits and licenses, and shall give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

13.11 *Notices.* Any notice required by this Contract to be delivered to the other party shall be in writing, and shall be either hand delivered to the other party; deposited in the United States Mail, to be delivered by certified or registered mail, return receipt requests; or deposited

with an overnight courier to be delivered to the other party. Notices shall be delivered to the following address for each party:

If to the City:

City of Burnsville
ATTN: City Manager
100 Civic Center Parkway
Burnsville, MN 55337

If to Contractor:

Sir Lines-A-Lot
ATTN: _____
7175 Cahill Road
Edina, MN 55439

Each party may designate a new or alternate address by providing the same to the other party in writing.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Contract to be effective as of the date of the last signature affixed below.

CITY OF BURNSVILLE

SIR LINES-A-LOT

BY: _____
Elizabeth B. Kautz, Mayor

BY: _____
NAME
Its: TITLE

BY: _____
Gregg M. Lindberg, City Manager

Date: _____

Date: _____

City of Burnsville

Construction Contract - 9

CITY OF BURNSVILLE
Burnsville, Minnesota



CONSTRUCTION CONTRACT

2024 Street Maintenance JPA – Bituminous Seal Coat
City Project No. 24-504

THIS CONSTRUCTION CONTRACT (“Contract”) is made this 19th day of March, 2024, by and between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation (“City”) and Allied Blacktop, a Minnesota corporation (“Contractor”). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. Contract Documents. The following documents shall be referred to as the “Contract Documents,” all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Contract.
- B. Specifications dated February 23, 2024
- C. Plan Sheets dated February 23, 2024
- D. Burnsville’s General Conditions as amended by City of Burnsville Supplementary General Conditions.
- E. Contractor’s Bid dated March 7, 2024
- F. Performance Bond, Payment Bond, Certificate of Insurance.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts, with Contract Document “A” having the first priority and Contract Document “F” having the last priority.

2. Obligations of Contractor. Contractor shall provide the goods, services, and perform the Work, in accordance with the Contract Documents and in compliance with federal, state and local laws. This Contract may be terminated by the City at any time upon discovery by the City that Contractor or any of its subcontractors has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minnesota Statutes § 16C.285, subd. 3, the Responsible Contractor statute.

3. Obligations of the City. The City agrees to pay and Contractor agrees to receive and accept payment in accordance with the prices bid for the unit or lump sum items as set forth to those in the accepted Contractor's Bid, the aggregate of which prices, based on the approximate schedule of quantities, is estimated to be \$2,377,485.52.

4. Payment Procedures.

4.1 *Applications for Payment.* Contractor shall submit Applications for Payment. Applications for Payment will be processed by City as provided in the General Conditions.

4.2 *Progress Payments; Retainage.* City shall make 95% progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work or Contractor shall have the options regarding retaining in accordance with Minnesota Statutes §§ 15.71 and 15.74.

4.3 *Payments to Subcontractor.*

A. Prompt Payment to Subcontractors. Pursuant to Minnesota Statutes § 471.425, subd. 4a, Contractor must pay any subcontractor within ten (10) days of Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. Contractor must pay interest of 1.5 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor.

B. Form IC-134 required from general contractor. Minnesota Statutes § 290.92 requires that the City of Burnsville obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

4.4 *Final Payment.* Upon final completion of the Work, City shall pay the remainder of the Contract Price as recommended by City.

5. Time of Performance.

5.1 The Work must be completed according to the amount of working days specified in the Section 1010 of the General Requirements of the project specifications (the "Completion Date").

5.2 Contractor and City recognize that time is of the essence of this Contract and that City will suffer financial loss if the Work is not completed on or before the Completion Date, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City the amount described in the Paragraph 33 of the General Conditions of the project specifications for each calendar day that expires after the Completion Date until the Work is complete.

6. Contractor's Representations. Contractor represents and warrants the following:

6.1 Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.

6.2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

6.3 Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

6.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

6.5 Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work, or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

6.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.7 Contractor is aware of the general nature of other work to be performed by City or others at the Site that relates to the Work as indicated in the Contract Documents.

6.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.9 Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.

6.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.11 *Subcontracts.*

A. Unless otherwise specified in the Contract Documents, Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the City the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the City.

B. Contractor is responsible to the City for the acts and omissions of Contractor's subcontractors, and of their direct and indirect employees, to the same extent as Contractor is responsible for the acts and omissions of Contractor's employees.

C. The Contract Documents shall not be construed as creating any contractual relationship between the City and any subcontractor.

D. Contractor shall bind every subcontractor by the terms of the Contract Documents.

7. **Worker's Compensation.** Pursuant to Minnesota Statutes § 176.182, Contractor must provide acceptable evidence of compliance with the state Workers' Compensation insurance requirements for all of its employees and, in case any part of the Work is subcontracted, Contractor will require its subcontractors to provide Workers' Compensation insurance or acceptable evidence of compliance in accordance with the statutory requirements of the State of Minnesota.

8. **Commercial General Liability.** Contractor shall obtain the following minimum insurance coverage by a single policy or combination of policies (including umbrella policies) and maintain it at all times throughout the life of the Contract, with the City of Burnsville endorsed as an additional insured. Contractor shall obtain any further insurance requirements stated elsewhere in the project specifications. Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury:	\$2,000,000 each occurrence \$2,000,000 aggregate products and completed operations
Property Damage:	\$2,000,000 each occurrence \$2,000,000 aggregate

The Additional Insured coverage must be primary and non-contributory. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after final payment and Contractor shall continue to provide evidence of such coverage to City on an annual basis during

the aforementioned period; or if any reason Contractor's work ceases before final payment, for a minimum period of three (3) years from the date Contractor ceases work. Coverages must be equivalent to that provided by ISO Forms CG 20 10 04 13 and CG 20 37 04 13.

Property Damage Liability Insurance shall include coverage for the following hazards:

X (Explosion)
C (Collapse)
U (Underground)

For any contract involving the repair, maintenance or construction of property that involves the provision of equipment, supplies or materials to the City for projects greater than \$100,000, Contractor shall obtain and maintain Builder's Risk insurance in an amount not less than the project or contract cost.

Contractual Liability (identifying the contract):

Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:
\$2,000,000 aggregate

Business Automobile Liability (owned, non-owned, hired):

Bodily Injury &
Property Damage: \$2,000,000 each occurrence
\$2,000,000 each accident
OR
\$2,000,000 Combined single limit

Contractor shall submit a Certificate of Insurance to the City showing proof of the above-required insurance prior to doing any work.

The City retains the right to revise the insurance requirements depending on the size and risk of the project.

9. Performance And Payment Bonds. Prior to commencement of work, Contractor shall furnish the City performance and payment bonds satisfying the requirements of Minnesota Statutes § 574.26 each in the amount of the contract price.

10. Warranty. Contractor guarantees that all new equipment warranties as specified within the bid shall be in full force and transferred to the City upon payment by the City. Contractor shall be held responsible for any and all defects in workmanship, materials, and

equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

11. Defense Obligation. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the City and its officials, employees, and agents, against claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, other than the Work itself, but only to the extent caused by the negligent or wrongful acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12. Non-Discrimination. Contractor shall comply with Minnesota Statutes § 181.59.

12.1 Contractor specifically agrees that in its hiring of employees under this Contract, Contractor will not, on the basis of race, creed, or color, discriminate against any person who is a citizen of the United States or any person is a resident alien who is qualified and available to perform work under this Contract or any subcontract made pursuant to it. Contractor further agrees that it will not, on the basis of race, color, or creed, discriminate against, or intimidate, or prevent the employment of any such persons; and once such persons are hired, Contractor will not, on the basis of race, creed, or color, prevent, or conspire to prevent, such persons from performing the work under this Contract or any subcontract made pursuant to it.

12.2 Contractor shall ensure compliance with this Section 12 by any of its subcontractors.

12.3 Contractor acknowledges that it understands that a violation of this Section 12 is a misdemeanor criminal offense. Contractor further acknowledges that this Contract may be cancelled or terminated by the City, with possible forfeiture of any money due or to become due for a second or subsequent violation of this Section 12.

13. Miscellaneous.

13.1. Terms, including but not limited to "Work" and "Site", used in this Contract have the meanings stated in the General Conditions.

13.2 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

13.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

13.4 *Data Practices/Records.* All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy. All books, records, documents, and accounting procedures and practices of Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.

13.5 *Software License.* If the equipment provided by Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, Contractor shall pay all software licensing fees. Contractor shall also pay for all software updating fees for a period of one year following cutover. Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.

13.6 *Assignment.* Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

13.7 *Waiver.* In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.

13.8 *Governing Law; Venue.* The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Dakota County.

13.9 *Entire Agreement.* This Contract represents the entire agreement of the parties and is a final, complete, and all-inclusive statement of the terms agreed upon, and supersedes and terminates any prior agreement(s), understanding(s), or written or verbal representation(s) made between the parties.

13.10 *Permits and Licenses; Rights-of-Way and Easements.* Contractor shall procure all permits and licenses, pay all charges and fees for such permits and licenses, and shall give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

13.11 *Notices.* Any notice required by this Contract to be delivered to the other party shall be in writing, and shall be either hand delivered to the other party; deposited in the United States Mail, to be delivered by certified or registered mail, return receipt requests; or deposited

with an overnight courier to be delivered to the other party. Notices shall be delivered to the following address for each party:

If to the City:

City of Burnsville
ATTN: City Manager
100 Civic Center Parkway
Burnsville, MN 55337

If to Contractor:

Allied Blacktop Co.
ATTN: _____
10503 89th Ave. N
Maple Grove, MN 55369

Each party may designate a new or alternate address by providing the same to the other party in writing.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Contract to be effective as of the date of the last signature affixed below.

CITY OF BURNSVILLE

ALLIED BLACKTOP CO.

BY: _____
Elizabeth B. Kautz, Mayor

BY: _____
NAME
Its: TITLE

BY: _____
Gregg M. Lindberg, City Manager

Date: _____

Date: _____

City of Burnsville

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