

Bath 2022 Paving Bid

AGREEMENT
Bath 2022 Paving

AGREEMENT made this 11 day of May, 2022 by and between the CITY OF BATH, a municipal corporation, with its principal offices in Bath, in the County of Sagadahoc, and State of Maine, (hereinafter referred to as "City"), and Crooker Construction, LLC, a corporation with an office in the Town of Topsham, in the County of Sagadahoc, and State of Maine, (hereinafter referred to as "Contractor").

In consideration of the mutual covenants contained herein, it is agreed by and between the parties as follows:

1. Scope of Services. The Contractor shall furnish all of the services, materials and perform all of the work as described in the Scope of Services, which Scope of Services is attached hereto as Exhibit A and made a part hereof (hereinafter, referred to as the "Services"), and the Contractor covenants that it shall do everything required by this Agreement and the Scope of Services in return for payment as provided herein.

Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all Services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its Services. Deficiencies are defined as willful or negligent acts that affect completion of the Services developed and provided hereunder, or willful or negligent non-assignment of personnel or assignment of unqualified personnel to perform the duties hereunder.

Approval by the City of Services furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the Services shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement, and the Contractor shall remain liable in accordance with applicable law for all damages to City caused by the Contractor's willfully negligent performance of any of the Services furnished under this Agreement.

2. Period of Service. Execution of this Agreement shall be considered a Notice to Proceed and shall authorize Contractor to commence the services to be provided hereunder. Such services shall be completed within a schedule deemed mutually acceptable by both of the parties.

3. Independent Contractor. Throughout the performance of this Agreement, the Contractor is acting in independent capacity and not as an officer, employee or agent of the City. Additional personnel needed to the Contractor's duties under this Agreement shall be employed or retained by said Contractor, and is solely responsible for complying with all applicable state and federal laws, including but not limited to: workers compensation law, employment security law and minimum wage and hours laws. Contractor is also responsible for maintaining its vehicles and equipment in a safe and legal condition.

4. Contract Price. The City shall pay the Contractor for the performance of the 2022 Bath Street Paying Program under this Agreement a fee of \$470,825. The Contractor shall submit for City's Approval, monthly invoices for the Services performed hereunder in the previous month. The City shall pay Contractor such approved amounts within thirty (30) days from City's receipt of said invoice. Payments due and unpaid thirty (30) days after submission shall bear interest from that date at the maximum rate permitted under Maine law at the time of the delinquency for unpaid municipal taxes.

5. Guarantee. The Contractor represents that in the performance of its obligations hereunder, it will perform in accordance with applicable standards of conduct for professionals in the field.

6. Permits and Licenses. Not applicable.

7. City's Right to Terminate Agreement. Without prejudice to any other right or remedy, the City may terminate this Agreement for cause by providing the Contractor with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of the Contractor as a bankrupt; the making of a general assignment by the Contractor for the benefit of its creditors; the appointment of a receiver because of the Contractor's insolvency; the Contractor's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly skilled workers or proper materials to perform the Services; the Contractor's persistent disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and the Contractor's substantial violation of any provisions of this Agreement. In the event of a termination for cause, the City may finish the Services by whatever method it may deem expedient. In the event of any termination, the City will pay Contractor for all services rendered to the date of termination, all reimbursable expenses, and all reimbursable termination expenses.

8. Insurance.

A. General. Each policy of insurance required by this Agreement shall contain a provision endorsed to Bath that the insurance provided therein may not be canceled or restricted without Thirty (30) days prior written notice to the City.

The Contractor shall provide the City, if requested, certificates satisfactory to the City concerning the effectiveness and the specific terms of the insurance required by this Agreement. Failure to provide and continue in force any insurance required by this Agreement shall be deemed a material breach of this Agreement for which the City, at its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.

B. Worker's Compensation and Other Insurance. The Contractor shall carry insurance furnishing benefits in accordance with the State of Maine General Laws or such other worker's compensation requirement as may pertain. The Contractor shall carry insurance coverage for employer's liability, general liability, including broad form coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, and automobile liability in an amount of not less than One Million Dollars (\$1,000,000).

Nothing herein shall be deemed as a waiver of any immunity enjoyed by the City pursuant to the Maine Tort Claims Act, 14 M.R.S.A. Section 8101 *et seq.*

9. Indemnification. The Contractor, at its expense, shall indemnify and hold harmless the City, its members, officers and employees, from and against all claims, causes of action, suits, losses, damages and

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expenses, including attorney's fees, arising out of or resulting from negligent acts, errors or omissions or breach of contractual duties to the City by Contractor and anyone employed by it (including sub-contractors and their employees) in performance of this Agreement. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the City which would otherwise exist. The City shall give Contractor prompt and timely notice of any claims, threatened or made, or suit instituted against it, which could result in a claim for indemnification, hereunder, provided, however, that lack of such notice shall not be a waiver of Contractor's indemnification of the City. The City shall cooperate with Contractor in the defense of such a claim.

10. Liens. Not applicable.

11. Assignment. Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any prior moneys due or to become due to it hereunder, without previous written consent of the City.

12. Subcontracts. The Contractor shall not sublet any part of this Agreement without the prior written permission of the City. The Contractor agrees that it is fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

13. Use of the Premises. Not applicable.

14. Cleaning Up. Not applicable.

15. Force Majeure. Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited to, strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.

16. Notices. Notices hereunder shall be deemed sufficient if sent by U.S. Certified mail as follows:

TO CITY

Lee Leiner, P.E., Public Works Director
City of Bath
55 Front St
Bath ME 04530

TO CONTRACTOR

Brett Plossay, Paving Manager
Crocker Construction, LLC
103 Lewiston Rd., P.O. Box 5001
Topsham, ME 04086-5001

17. Controlling Laws. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

18. Nondiscrimination. The Contractor, in the performance of its assigned tasks under the terms and conditions of this Agreement, shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, ancestry, age, sex, or handicap status. The Contractor, in performance of

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the tasks under the terms and conditions of this Agreement, shall not discriminate in its relationship with, hiring of, or other contact with subconsultants or suppliers because of race, color, creed, national origin, ancestry, age, sex or handicap status.

19. Extent of Agreement. This Agreement (and Request for Bids, and Contractor's Bid Response) represent(s) the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor.

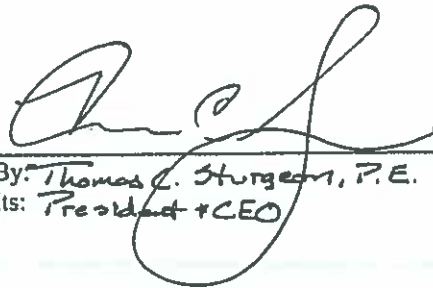
20. Severability. If any part of this Contract is declared by a Court to be void or unenforceable, the remaining provisions will continue in full force and effect.

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

CITY OF BATH



By: Marc Meyers
Its: City Manager



By: Thomas C. Sturgeon, P.E.
Its: President + CEO