



## **SNOW REMOVAL AGREEMENT**

**THIS AGREEMENT** is made and entered into \_\_\_\_\_, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **A-1 LANDSCAPING** of 5445 Rustic Ave., Billings, MT 59106, hereinafter referred to as "**CONTRACTOR**."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONTRACTOR** as an independent contractor to provide **snow removal services for various city owned properties**, more accurately described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.
2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on September 30, 2023. The parties may extend this **AGREEMENT**, by mutual concurrence, for three additional one-year terms, in writing prior to termination of each term.
3. **SCOPE OF WORK:** The **CONTRACTOR** shall perform the services outlined in Exhibit "A". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.
5. **PAYMENT:** **CITY** agrees to pay **CONTRACTOR** the rates listed in Exhibit "B" for the work described in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.
6. Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** monthly for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and



identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONTRACTOR'S** discretion.

7. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and may not be considered an employee of the **CITY** for any purpose. **CONTRACTOR** is not subject to the terms and provisions of the **CITY'S** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

8. **INDEMNITY:**

The **CONTRACTOR** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONTRACTOR'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONTRACTOR'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONTRACTOR** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONTRACTOR** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify and hold the **CONTRACTOR** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

**8. INSURANCE:**

- A. The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONTRACTOR** shall provide the following insurance:

- Workers' compensation and employer's liability coverage as required by Montana law.
- Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- Automobile liability -- \$1,500,000 per accident.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Worker's Compensation Policies.

**CONTRACTOR** shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. **CONTRACTOR** shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

**CONTRACTOR** shall furnish **CITY** with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

9. **WARRANTY:** **CONTRACTOR** warrants that all services and work will be performed in a good workman-like manner. **CONTRACTOR** acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".
10. **COMPLIANCE WITH LAWS:** **CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.
9. **PREVAILING WAGE RATES:** Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA. The booklet is attached and may also be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

## 11. **NONDISCRIMINATION:**

A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONTRACTOR** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and

Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.

- B. The **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **CONTRACTOR** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONTRACTOR'S** legal duty to furnish information.

- C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **CONTRACTOR** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor

of the **CONTRACTOR** under this **AGREEMENT**.

- F. The **CONTRACTOR** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
12. **DEFAULT AND TERMINATION:** If either party fails to comply with any condition of this **AGREEMENT** at the time or in the manner provided for, the other party may, at its option, terminate this **AGREEMENT** and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this **AGREEMENT**.
13. **LIAISON:** **CITY's** designated liaison for this **AGREEMENT** is Liz Kampa, Purchasing Agent, and **CONTRACTOR's** designated liaison for this **AGREEMENT** is Jeff Hudiburgh, Owner.
14. **GOVERNING LAW AND VENUE:** This **AGREEMENT** shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this **AGREEMENT** shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.
15. **SEVERABILITY:** Any provision or part of the **AGREEMENT** 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 the **CONTRACTOR**, who agree that the **AGREEMENT** shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
16. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other.
17. **OWNERSHIP OF DOCUMENTS:** All documents, data, drawings, specifications, software applications and other products or materials produced by the **CONTRACTOR** in connection with the services rendered under this **AGREEMENT** shall be the property of the **CITY** whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the **CITY** at its request and may be used by the **CITY** as it



sees fit. The **CITY** agrees that if the documents, products and materials prepared by the **CONTRACTOR** are used for purposes other than those intended by the **AGREEMENT**, the **CITY** does so at its sole risk and agrees to hold the **CONTRACTOR** harmless for such use. All or any portions of materials, products and documents produced under this **AGREEMENT** may be used by the **CONTRACTOR** upon confirmation from the **CITY** that they are subject to disclosure under the Public Disclosure Act. All services performed under this **AGREEMENT** will be conducted solely for the benefit of the **CITY** and will not be used for any other purpose without written consent of the **CITY**. Any information relating to the services will not be released without the written permission of the **CITY**. The **CONTRACTOR** shall preserve the confidentiality of all **CITY** documents and data accessed for use in **CONTRACTOR's** work product.

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

**CITY OF BILLINGS, MONTANA**

**A-1 LANDSCAPING**

\_\_\_\_\_  
**WILLIAM A. COLE, MAYOR**

\_\_\_\_\_  
**SIGNATURE**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PRINT NAME**

By \_\_\_\_\_  
**CITY ATTORNEY'S OFFICE**

\_\_\_\_\_  
**PRINT TITLE**

**ATTEST:**

\_\_\_\_\_  
**DENISE BOHLMAN, CITY CLERK**

## EXHIBIT A

### Scope of Work and Locations

#### Snow Removal:

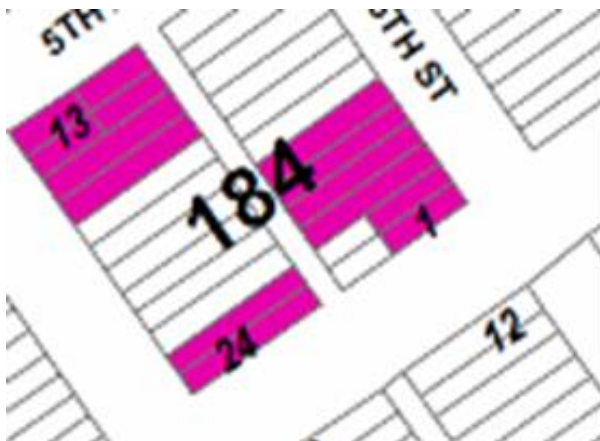
During an active storm, Contractor shall monitor the weather and temperature so as to provide the most effective service. When levels reach one inch (1") or more, Contractor shall dispatch crews to service the areas outlined above. Snow will be pushed to a designated location on property agreed upon by City and Contractor. Every effort will be made by Contractor to complete all snow removal prior to 7:00 am on the days of service. Contractor will make every effort to clear snow and ice prior to business hours, whenever possible. Heavy and late morning or daytime snowfall may delay time of completion. Sidewalks will remain the City's responsibility, unless noted otherwise.

Service is for up to 4" of snowfall on-site and will increase by ½ charge per additional 4" of snow fall, per application of provided service.

The following locations will require the snow removal services:

#### **Community Development:**

516, 518, 524 South 26th Street - Block 184: Lot 1-2 (east 90 feet); Lots 3-6  
505 South 27th Street - Block 184: Lots 13-16  
523 South 27th Street - Block 184: Lot 23-24



#### **Library:**

Library Lot – 510 North 28<sup>th</sup> Street  
(lot snow removal and brooms all sidewalks within property)

**Parking:**

Park I (Roof) – 2912 3<sup>rd</sup> Avenue North

Park II (Roof) – 2651 1<sup>st</sup> Avenue North

Park III (Roof) – North 27<sup>th</sup> Street

Empire Garage (Roof) – 11 North Broadway Avenue

North and South Lots (on either side of the Burger Dive between 1<sup>st</sup> and 2<sup>nd</sup> Ave. North)

Skate Lot – Minnesota and 27<sup>th</sup> Street



Snow removal equipment must be able to safely access the parking garages meeting height and width requirements. The snowplow blade should be modified with a heavy rubber or polyurethane cutting edge attached to the bottom and with tires designed to keep the blade from contacting the concrete floor surface. The Contractor shall make every effort to evenly distribute the snow piles (placed in a mutually agreed upon location) keeping in mind load capacity of the structures.

**Planning:**

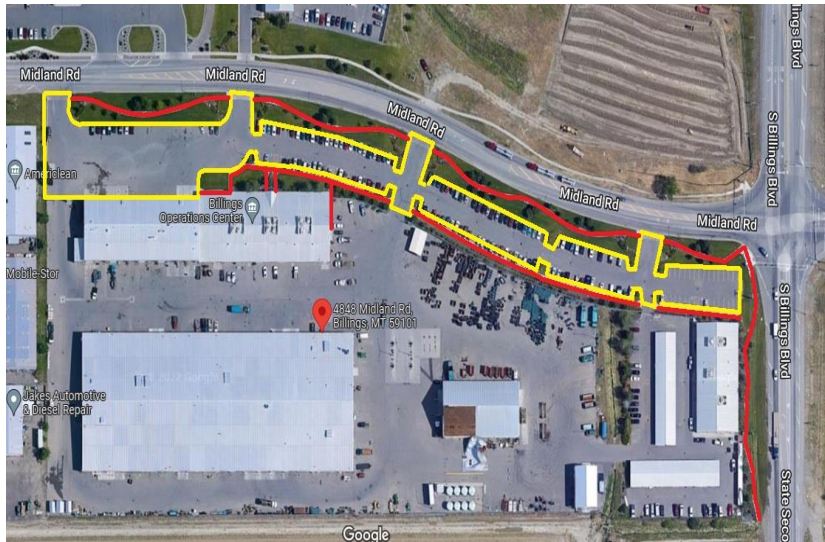
Lincoln School Parking Lot (northeast corner)



**Operations Center:**

4810, 4845, and 4848 Midland Road

**Yellow** indicates areas that are asphalt – plow  
**Red** indicated areas that are concrete – shovel

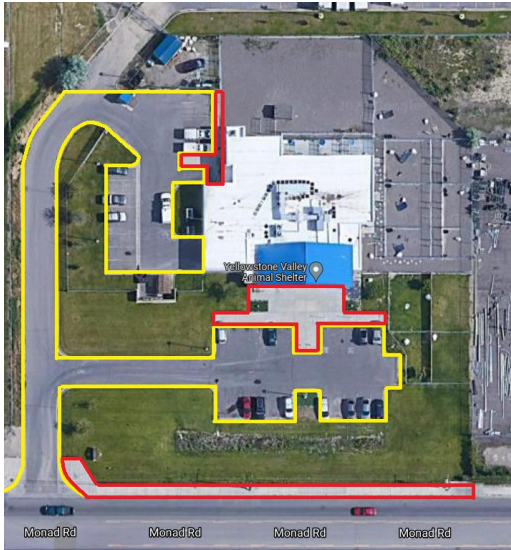


**Stillwater Building:** 316 North 26<sup>th</sup> Street

**Yellow** indicates areas that are asphalt – plow  
**Red** indicated areas that are concrete – shovel



**Yellowstone Valley Animal Shelter:** 1735 Monad Road



Other Locations may be added, as necessary, at a mutually agreed upon price.



Snow Pile Removal: If snow pile removal is necessary, the City and Contractor shall agree via email, and Contractor shall remove piles or subcontract removal for an additional charge as per bid price.

Hazards: City shall be aware that plowing, shoveling and brooming may not completely clear property to bare pavement or concrete surface. Slippery conditions may and most likely prevail even after a service of snow removal and sanding/deicing has taken place. Contractor suggests City post signage displaying the potential for hazards. Contractor assumes no responsibility for accidents occurring, if a result of a naturally occurring condition and/or acts of nature.

Clear Access: City shall make patrons and employees aware that during storms, snow removal is likely and vehicles should be cleared from lots during removal times. Contractor does not assume responsibility for damage caused to vehicles during a snow removal event if vehicles are left in the path of snow removal. Contractor will make every effort to clear snow and ice prior to business hours, whenever possible.



## EXHIBIT B

### Pricing

<u>Location:</u>	<u>Price/Removal:</u>
<b><u>Community Development:</u></b>	
(snow removal and brooms sidewalks)	
516, 518, 524 South 26th Street – Block 184: Lot 1-2 (east 90 feet); Lots 3-6	\$100.00
505 South 27th Street - Block 184: Lots 13-16	\$100.00
523 South 27th Street - Block 184: Lot 23-24	\$100.00
<b><u>Library:</u></b>	
Library Lot – 510 North 28 <sup>th</sup> Street (snow removal and brooms all property sidewalks)	\$260.00
<b><u>Operations Center:</u></b>	
4810, 4845, and 4848 Midland Road (snow removal and brooms sidewalks)	\$485.00
<b><u>Parking:</u></b>	
Park I (Roof) – 2912 3 <sup>rd</sup> Avenue North	\$145.00
Park II (Roof) – 2651 1 <sup>st</sup> Avenue North	\$190.00
Park III (Roof) – North 27 <sup>th</sup> Street	\$100.00
Empire Garage (Roof) – 11 North Broadway Avenue	\$145.00
North and South Lots (on either side of the Burger Dive between 1st and 2nd Ave. North)	\$100.00
Skate Lot – Minnesota and 27 <sup>th</sup> Street	\$100.00
<b><u>Planning:</u></b>	



Lincoln School Parking Lot (northeast corner)	\$100.00
(Brooming sidewalks, if needed)	\$50.00
<b><u>Stillwater Building:</u></b>	
316 North 26 <sup>th</sup> Street	\$175.00
(snow removal and brooms sidewalks)	
<b><u>Yellowstone Valley Animal Shelter:</u></b>	
1735 Monad Road	\$285.00
(snow removal and brooms sidewalks)	
<b><u>Snow Pile Removal:</u></b>	Approximately \$100.00 (see below)

Description	Rate
Broom w/ Bobcat per hour - 1 hour minimum – not available for fresh snowfall on decks/lots (only clean up or sidewalk work upon request)	125.00
Bucket w/ Bobcat per hour - 1 hour minimum	90.00
Bobcat w/100" Bucket per hour - 1 hour minimum	150.00
Front End Loader per hour - 8 hour minimum	175.00
Small Dump Truck per hour - 5 hour minimum	125.00
Big Dump Truck w/no Pup per hour - 8 hour minimum	150.00
Big Dump Truck w/Pup or Side Dump per hour - 8 hour minimum	175.00
Pickup/Dump Trailer per hour - 5 hour minimum	110.00
Labor per hour - 1 hour minimum	75.00
Ice Melt – price per bag with install, if requested. 1 bag minimum.	75.00
Haul off fees \$0-\$15 per load (different areas have different costs) Should not apply to unless snow is moved off site. Most big dump areas are free with A-1 hourly service.	0.00
Holiday Charge – Double Time (Time x 2)	
No sanding or de-icing in proposed contract - include if needed	

Service is for up to 4" of snowfall on-site and will increase by ½ charge per additional 4" of snow fall, per application of provided service.