

The City of Alturas

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT, dated the 21st day of July, 2020 is between The Modoc County Road Department ("MCRD") and City of Alturas ("CITY") for a PROJECT generally described as labor forces, material, equipment, and authorization to work on CITY Streets.

ARTICLE 1. SCOPE OF SERVICES

The Scope of Services is set forth in Attachment A Scope of Work, for labor forces, material, equipment and authorization to work on City Streets, and as detailed in future Supplements to this Agreement.

ARTICLE 2. COMPENSATION

MCRD's compensation or fees are set forth as shown in the Scope of Work, and as detailed in future Supplements to this Agreement.

ARTICLE 3. TERMS OF PAYMENT

Payment for MCRD services will be made as progress invoice payments not to exceed the actual services provided in an amount as outlined in Attachment A.

Said invoices shall be based on MCRD work performed and shall include, in detail, the work performed on the project scope as defined in Supplement and as applicable. Each invoice shall indicate the number of hours worked and by whom and for reimbursable costs incurred to the date of such billing.

MCRD shall be notified within fifteen (15) working days following receipt of its invoice of any circumstances or data identified by CITY that would cause withholding of approval for such payment. CITY shall pay MCRD's invoice within thirty (30) days from the date CITY received said invoice; however, CITY at its own discretion, may withhold at least five percent (5%) of each invoice until successful completion of the scope of work and delivery and acceptance of all products by CITY. The MCRD will not be reimbursed for additional costs that exceed the estimated costs not set forth in approved cost proposal in Supplement unless by amendment to Supplement designated as "Additional Services" and shall identify authorized change order number on all invoices. CITY reserves the right to withhold payment of disputed amounts.

ARTICLE 4. OBLIGATIONS OF MCRD

Amendments to Article 4, if any, are included as Attachment.

A. General

MCRD will perform construction work under this AGREEMENT, providing services for City Street projects.

B. Standard of Care

The standard of care applicable to MCRD's services will be the degree of skill and diligence normally employed by MCRD performing the same or similar services at the time said services are performed.

C. Access to MCRD's Accounting Records

MCRD will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to CITY during MCRD's normal business hours for a period of three (3) years after final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. CITY, or CITY's representative, may only audit accounting records applicable to the PROJECT.

D. MCRD's Insurance

MCRD will maintain throughout this AGREEMENT the following insurance:

- (a) Worker's compensation and employer's liability insurance as required by the State of California.

- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations and owned, nonowned, or hired vehicles, with \$500,000 combined single limit.

E. Performance Period

The Performance Period for this Agreement shall be from the date agreement is executed and will continue until December 31, 2025 unless otherwise terminated by CITY or MCRD. MCRD will not be held responsible for County, City, State, or any other agency, review and approval durations that are beyond MCRD's control.

ARTICLE 5. OBLIGATIONS OF CITY

Amendments to Article 5, if any, are included as Attachment.

A. CITY-Furnished Data

CITY will provide to MCRD all data in CITY's possession relating to MCRD's services on the PROJECT. MCRD will reasonably rely upon the accuracy, timeliness and completeness of the information provided by CITY.

B. Access to Facilities and Property

CITY will make its facilities accessible to MCRD as required for MCRD's performance of its services.

C. Timely Review

CITY will examine MCRD's designs, reports, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors as CITY deems appropriate; and render decisions required by MCRD in a timely manner.

D. Prompt Notice

CITY will give prompt written notice to MCRD whenever CITY observes or becomes aware of any developments that affect the scope or timing of MCRD's services, or of any defect in the work of MCRD.

E. Litigation Assistance

The Scope of Services does not include costs of MCRD for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of MCRD by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that MCRD's sole negligence caused CITY's damage.

F. Changes

CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect MCRD's cost of or time required for performance of the services, an equitable mutually agreed upon adjustment will be made through an amendment to this AGREEMENT.

G. Services of MCRD

Unless this AGREEMENT is modified or terminated, CITY will have all services specified in this AGREEMENT performed by MCRD. Notwithstanding the above, CITY retains the option of performing construction itself, or of retaining others for construction services.

ARTICLE 6. GENERAL LEGAL PROVISIONS

Amendments to Article 6, if any, are included as Attachment.

A. Authorization to Proceed

Execution of this AGREEMENT by CITY will be authorization for MCRD to proceed with the work, unless otherwise provided for in this AGREEMENT.

B. Reuse of PROJECT Documents

All reports, drawings, specifications, documents, and other deliverables of MCRD, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse on another project, change, or alteration by CITY or by others acting through or on behalf of CITY of any such instruments of service without the written permission of MCRD will be at CITY's sole risk. CITY agrees to indemnify MCRD and MCRD's officers, employees, subcontractors and affiliated companies from all claims, damages, losses and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change or alteration.

C. Force Majeure

MCRD is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of MCRD.

D. Termination

This AGREEMENT may be terminated by either party for convenience on 30 days' written notice, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within seven (7) working days of written notice and diligently completes the correction thereafter.

On termination, MCRD will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.

E. Suspension, Delay, or Interruption of Work

CITY may suspend, delay, or interrupt the services of MCRD for the convenience of CITY/MCRD. In the event of force majeure or said suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of MCRD's personnel and subcontractors, and MCRD's compensation will be made.

F. No Third-Party Beneficiaries

This AGREEMENT gives no rights or benefits to anyone other than CITY and MCRD and has no third-party beneficiaries.

G. Indemnification

- (a) MCRD agrees to indemnify CITY from any claims, damages, losses and costs, including, but not limited to attorney's fees and litigation costs, arising out of claims by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of MCRD, MCRD's employees, affiliated companies, officers and subcontractors in connection with the PROJECT.
- (b) CITY agrees to indemnify MCRD from any claims, damages, losses and costs, including, but not limited to attorney's fees and litigation costs, arising out of claims by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CITY, CITY's employees, or agents in connection with the PROJECT.
- (c) If the negligence or willful misconduct of both MCRD and CITY (or a person identified above for whom each is liable) is a cause of such damage or injury, the loss, cost, or expense shall be shared between MCRD and CITY in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

H. Assignment

This is a bilateral personal services AGREEMENT. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this AGREEMENT, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire AGREEMENT are binding on the heirs, successors and assigns of the parties hereto.

I. Interpretation and Waivers

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties and will apply to all the different theories of recovery, including breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, except the limitations will not apply to willful misconduct or gross negligence for limitation of liability or sole negligence for indemnification. Parties means CITY and MCRD, and their officers, employees, agents, affiliates, subcontractors and appointing entities. The parties also agree that CITY will not seek damages in excess of the limitations indirectly through suits with other parties who may join MCRD as a third-party defendant.

CITY waives all claims against MCRD, including those for latent defects, that are not brought before final payment to the MCRD.

J. Jurisdiction

The law of the State of California shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. Any action at law shall be tried in a court of competent jurisdiction in the County of Modoc, State of California; and the parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or state.

K. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

Limitations of liability, indemnities, and other express representations shall survive termination of this AGREEMENT for any cause.

L. Dispute Resolutions

All claims, disputes and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall first be subject to nonbinding mediation unless the parties mutually agree otherwise.

Should mediation fail to mutually resolve any claim, dispute or other matter in question, the parties may then exercise any legal remedy that may be available to them.

M. Conflicts of Interest

MCRD covenants that MCRD presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. MCRD further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by MCRD.

N. Nondiscrimination

During the performance of this AGREEMENT, MCRD shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), gender, and actual or perceived sexual orientation. MCRD shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. MCRD shall include the nondiscrimination and compliance provisions of this clause in all lower-tier subcontracts to perform work under this AGREEMENT.

ARTICLE 7. ATTACHMENTS, SCHEDULES, EXHIBITS AND SIGNATURES

A. Agreement

This AGREEMENT, including its attachments, schedules and exhibits constitutes the entire AGREEMENT, supersedes all prior written or oral understandings and may only be changed by a written amendment executed by both parties.

B. Supplements

Approval of this AGREEMENT authorizes the Designated Representatives for each agency to execute project specific Supplements to the AGREEMENT.

C. Designated Representatives

Jason Diven, Director of Public Works at (530) 233-2512 is the representative of CITY.

Mitch Crosby, Road Commissioner at (530) 233-6412 is the representative of the MCRD.

D. Notice

Any notice required by this AGREEMENT shall be considered sufficiently served when given in writing by either party by Certified Mail, postage prepaid, addressed as follows:

MCRD: Mitch Crosby, Road Commissioner
Modoc County Road Department
202 W. 4th St.
Alturas, CA 96101
Office phone (530) 233-6412
mitchcrosby@co.modoc.ca.us

CITY: Jason Diven, Director of Public Works
City of Alturas
200 W. North Street
Alturas, California 96101
Office phone (530) 233-2512
jdiven@cityofalturas.us

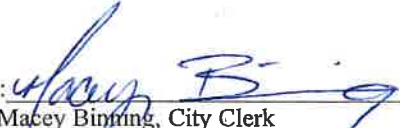
IN WITNESS WHEREOF, the parties hereto have hereunto executed this agreement.

For the CITY,

Dated this 21st day of July, 2020,

By: 
Mark Steffek, Mayor

By: 
Jason Diven, Director of Public Works

ATTEST: 
Macey Binning, City Clerk

For the MCRD,

By: _____
Chair, Modoc County Board of Supervisors

Dated this ____ day of _____, 2020,

Attachment A: Scope of Work

Scope of Services: MCRD will periodically perform asphalt maintenance and roadway construction work on streets and roads within the jurisdiction of the CITY. Work will be performed with MCRD staff operating MCRD equipment, with limits of work identified in projects specific Supplements to this Agreement. Details of work to be performed under project specific Supplements will be agreed upon in writing by MCRD and CITY Designated Representatives prior to the beginning of work. The scope of work may include, but is not limited to, pulverizing and removing existing asphalt, repairing and reshaping existing road base, and placing hot mix asphalt.

Compensation: Payment from CITY to MCRD for work performed shall be the actual cost to MCRD, including overhead, for the County to complete the work identified in the Supplement, but shall not exceed the cost estimated in the Supplement unless agreed to in writing by both parties.

Obligations of CITY: The City of Alturas shall review the scope of work in each Supplement to ensure work can be completed without negative impacts to adjacent infrastructure. During and after completion of the work by MCRD, the CITY retains all responsibility for the maintenance of all underground facilities, including water and sewer infrastructure, and any damage that occurs as the result of construction operations by MCRD. Upon completion of the work by MCRD, the CITY retains full responsibility for the project area, including but not limited to, asphalt maintenance, drainage, and ADA accessibility requirements.