

Santaquin City Resolution 05-06-2017

A RESOLUTION APPROVING AN EXCHANGE AGREEMENT WITH UTAH COUNTY

WHEREAS, Santaquin City recently replaced its VacTruck and surplussed it's old VacTruck; and

WHEREAS, Utah County Public Works desires the acquisition of the city's surplussed VacTruck; and

WHEREAS, Santaquin City has need to pave a roadway and parking area in its cemetery; and

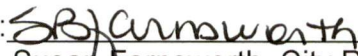
WHEREAS, Utah County Public Works has an asphalt machine and the personnel need to operate said equipment and is willing to provide said services in exchange for ownership of the VacTruck; and

WHEREAS, the value of the equipment and labor provided by Utah County Public Works is equitant to the value of the VacTruck;

NOW, THEREFORE, BE IT RESOLVED, that Santaquin City approves the attached exchange Agreement with Utah County.

Approved and adopted by the Santaquin City Council this 17th day of May, 2017.


Kirk F. Hunsaker, Santaquin City Mayor

Attest: 
Susan Farnsworth, City Recorder



UTAH COUNTY AGREEMENT

THIS AGREEMENT is made and entered into by and between Utah County, a body corporate and politic of the State of Utah, located at 100 East Center Street, Provo, Utah 84606, hereinafter referred to as COUNTY, and the following hereinafter referred to as CONTRACTOR:

Santaquin City			

Name			
45 West 100 South			

Address			
Santaquin	Utah	84655	
City	State	Zip	

Contact Person: Ben Reeves
Phone #: 801-754-3211
Email: BReeves@santaquin.org

WHEREAS, COUNTY desires to obtain a vacuum truck that has been declared surplus by Santaquin City, and further to obtain said [X] product(s) [] service(s) or [] product(s) and service(s) in accordance with Utah State Law; and

WHEREAS, CONTRACTOR is willing to provide such [X] product(s) [] service(s) or [] product(s) and service(s) for COUNTY in consideration of receiving such fees and other consideration as herein provided;

NOW, THEREFORE, in consideration of such mutual promises set forth herein, the parties hereto agree as follows:

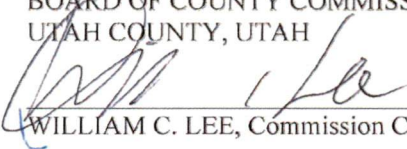
1. DESCRIPTION OF PRODUCT(S) SERVICE(S) OR PRODUCT(S) AND SERVICE(S)
In consideration of the compensation set forth in Section 2, CONTRACTOR agrees to provide [X] one 1993 White-GMC vacuum truck VIN # 4V2JCBHD0PR819303, and all materials required for work specified in Section 2 below, or [] provide the [] product(s) [] service(s) or [] product(s) and service(s) as specified in CONTRACTOR's Proposal attached hereto as ATTACHMENT B, which attachment is incorporated herein by this reference.

2. COMPENSATION
In exchange for services listed in Section 1, COUNTY will: [X] pay CONTRACTOR through providing labor and equipment to prepare for and install asphalt paving on approximately 680 linear feet of roadway 13 feet wide and 3 inches thick, including a 30 ft by 30 ft pull-off area, within the Santaquin City Cemetery. [] or compensate in accordance with the terms set forth in CONTRACTOR's Proposal attached hereto as ATTACHMENT B, or such other amount as modified in accordance with the terms hereof.


3. TERM
The term of this AGREEMENT shall commence upon execution hereof and shall terminate upon completion of the work specified, or until the following date, the _____ of _____, 20__.

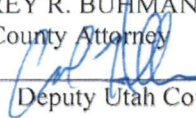
4. ATTACHMENTS
The following attachments are incorporated into this Agreement as if fully set forth herein:
[X] ATTACHMENT A: Utah County Standard Terms and Conditions
[] ATTACHMENT B: CONTRACTOR'S Proposal
[X] ATTACHMENT C: Special Provisions
[] ATTACHMENT D: Utah County Procurement Compliance
Except as explicitly modified by Special Provisions as set forth in ATTACHMENT C, any ambiguities or conflicting terms shall be resolved by granting full deference to the terms of Utah County's Standard Terms and Conditions as set forth in ATTACHMENT A.

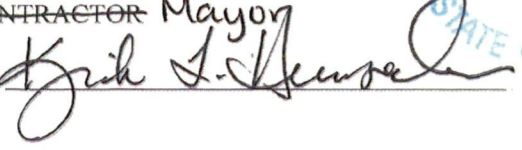
IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed on this, the 10th of May, 2017.

BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH

WILLIAM C. LEE, Commission Chairman

SANTAQUIN CITY
Incorporated
January 4,
1932

ATTEST:
BRYAN E. THOMPSON
Utah County Clerk/Auditor
By: 
Deputy

APPROVED AS TO FORM:
EFFREY R. BUHMAN
Utah County Attorney
By: 
Deputy Utah County Attorney

CONTRACTOR Mayon
By: 

ATTACHMENT A: UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS

1. **TERM**

The term of this AGREEMENT shall commence upon execution hereof and shall terminate upon acceptance of the product(s) specified herein, or until the date specified on the signature page of this AGREEMENT.

Termination of this AGREEMENT shall not terminate any warranty or other continuing obligation owed by CONTRACTOR as set forth herein.

2. **EXTRA WORK**

a. Extra work shall be undertaken only when previously authorized in writing by Utah County, and is defined as additional work which is neither shown nor defined in this AGREEMENT or the attached CONTRACTOR's proposal (if any), but determined by Utah County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical, unforeseen, and completely beyond the control of the CONTRACTOR.

b. Miscellaneous items normally associated with the major work items included in this agreement, but which may not be specifically identified, shall be furnished by the CONTRACTOR as if they had been included in the agreement, without additional cost to COUNTY. After prior authorization of the County Commission in writing, payment for authorized extra work will be made by reimbursement for all direct and substantiated costs of labor, materials, and supplies used.

3. **GOVERNING LAW AND VENUE**

It is agreed that this AGREEMENT shall be governed by, construed and enforced in accordance with the laws of the State of Utah, and the ordinances of Utah County. The parties shall submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Agreement or the breach thereof. Venue shall be in Provo in the Fourth Judicial District Court for Utah County

4. **AMENDMENTS**

No oral modifications or amendments to this AGREEMENT shall be effective, but such may only be modified or amended by a written agreement signed by the parties that identifies itself to be an amendment to this AGREEMENT.

5. **ASSIGNMENT**

The parties to this AGREEMENT shall not assign said AGREEMENT, or any part thereof, without the prior written consent of the other party to the AGREEMENT. No assignment shall relieve the original parties from any liability hereunder.

6. **SUCCESSORS IN INTEREST**

This AGREEMENT shall be binding upon the heirs, successors, administrators, and assigns of each of the parties thereto.

7. **INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, save, hold harmless, and defend at CONTRACTOR's own expense COUNTY, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgements, losses, damages, expenses, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising or resulting from (a) CONTRACTOR'S, its subcontractors, agents or employees performance of this AGREEMENT or product(s) purchased by COUNTY under this AGREEMENT that are defective, whether known or not known by COUNTY or CONTRACTOR, at the time of acceptance by COUNTY. CONTRACTOR shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of this AGREEMENT.

8. **SALES TAX EXEMPTION**

The COUNTY sales and use tax exemption number is _____. The tangible personal property or services being purchases are being paid from County funds and used in the exercise of that entity's essential functions. If the items being purchases are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in this Agreement. As such, CONTRACTOR shall not charge COUNTY sales tax for the product(s) purchased by this agreement.

9. **COMPLIANCE WITH LAWS**

Each party agrees to comply with all federal, state, and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by CONTRACTOR of applicable law shall constitute an event of default under this Agreement and CONTRACTOR shall be liable for and hold the COUNTY harmless and defend the COUNTY from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the COUNTY as a result of the violation. CONTRACTOR is responsible, at its expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

10. **PAYMENT**

Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the CONTRACTOR will be remitted by mail unless paid by the COUNTY's Purchasing Card. CONTRACTOR shall accept payment by Purchasing Card without any additional fees.

11. **FORCE MAJEURE**

Neither party to this Agreement will be held liable for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. CONTRACTOR shall notify COUNTY of any delay or default beyond CONTRACTOR's control as soon as CONTRACTOR becomes aware of the conditions causing delay or default. The COUNTY may terminate this Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.

12. **INTERPRETATION OF AGREEMENT**

The invalidity of any portion of this AGREEMENT shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include all genders. The paragraph and section headings in this AGREEMENT are for convenience only and do not constitute a part of the provisions hereof.

13. **LEGAL**

CONTRACTOR shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors. This AGREEMENT shall be interpreted pursuant to the laws of the State of Utah.

14. **NO PRESUMPTION**

Should any provision of this AGREEMENT require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.

15. **WARRANTY**

CONTRACTOR warrants to COUNTY that all services and materials furnished under this AGREEMENT will be of highest quality, consistent with the degree of skill and care ordinarily exercised by similarly situated members of CONTRACTOR'S profession, and in conformance with the terms hereof. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the COUNTY under this Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this AGREEMENT or CONTRACTOR's proposal, attached hereto (if any). The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this Agreement unless otherwise specified and mutually agreed upon elsewhere in this Agreement. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the COUNTY has relied upon the CONTRACTOR's skill or judgment to consider when it advised the COUNTY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the COUNTY has not been warned. Remedies available to the COUNTY include the following: The CONTRACTOR will repair or replace (at no charge to the COUNTY) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the COUNTY may otherwise have under this Agreement.

16. **DELIVERY**

Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the CONTRACTOR. Responsibility and liability for loss or damage will remain with CONTRACTOR until final inspection and acceptance when responsibility will pass to the COUNTY except as to latent defects, fraud, and CONTRACTOR's warranty obligations.

17. **ENTIRE AGREEMENT**

This AGREEMENT shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this AGREEMENT shall not be binding upon either party except to the extent incorporated in this AGREEMENT.