



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **GM Emulsion, LLC**, a New Mexico limited liability corporation ("Contractor"), to be effective for all purposes October 31, 2018.

WHEREAS, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 19-08 (the "RFP") on July 26, 2018, requesting proposals for On-Call Concrete and Related Services, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated August 9, 2018 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was one (1) of four (4) successful Offerors for the services listed in the RFP; and

WHEREAS, the County Council, as part of a multiple source award, approved this Agreement and AGR19-08a, AGR19-08b, and AGR19-08d at a public meeting held on October 30, 2018; and

WHEREAS, the aggregate compensation between this Agreement and Agreement Nos. AGR19-08a, AGR19-08b, and AGR19-08d are not to exceed the combined sum of THREE MILLION DOLLARS, (\$3,000,000.00), excluding New Mexico gross receipts taxes (NMGR); and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

1. Contractor shall provide County with on-call concrete and related services. Services to be performed shall consist of a variety of concrete and related services anticipated to be done at various locations throughout County. County, at its sole discretion, shall determine when Contractor's Services are required and shall issue written Task Orders as needed.
 - a. Task Orders for complex projects may include plans furnished by County.
 - b. All services shall conform to the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, 2007 edition.
 - c. Services required for bus shelters and bus stops shall conform to the federal requirements as described in "FEDERAL TRANSIT ADMINISTRATION (FTA) GRANT COMPLIANCE REQUIREMENTS FOR CFDA 20.507/20.500."

- d. Services requiring traffic control shall be required at each site and must conform to the Manual of Uniform Traffic Control Devices and must be approved by Los Alamos County Traffic Department staff.
- e. Services shall consist of 4000 psi fiber reinforced concrete, high hazard air entrained concrete, in accordance with the design and dimensions as shown on detailed drawings or on plans furnished by County at the time of issuance of Task Order.
- f. Base course is required under all sidewalk, curb and gutter, drive pads, valley gutter, and other concrete structures.
- g. Services requiring removal and disposal are incidental to the projects and shall consist of the removal, wholly or in part, of existing concrete structures as directed by County, or as shown on plans provided by County at the time Task Order is issued.
- h. Services shall include disposing of the materials and backfilling of the resulting areas when required.
- i. At no time shall Contractor use devices or equipment which might damage structures, facilities, or property to be preserved and retained.
- j. Existing structures, if damaged by Contractor during removal, shall be removed and replaced with a similar structure at Contractor's expense. Contractor shall be responsible for costs of disposal.
- k. Contractor shall be required to begin work within fourteen (14) days of issuance of Task Order. Length of time to complete each project shall be negotiable, but generally will not exceed twenty-one (21) days.

SECTION B. TERM: The term of this Agreement shall commence October 31, 2018 and shall continue through October 30, 2022 unless sooner terminated, as provided herein. At County's sole option this Agreement may be renewed for up to three (3) consecutive one-year periods, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the above Services in accordance with the Rate Schedule set out as Exhibit "A." "Contract Year" as used in Exhibit "A" shall be three hundred sixty-five (365) days from the Effective Date of this Agreement, e.g., Year 1 Unit Rates shall be from Effective Date plus three hundred sixty-five (365) days. Compensation for any one Task Order shall not exceed the approved Task Order amount, but not including NMGR. Compensation for all Agreements (AGR19-08a, AGR19-08b, AGR19-08c, and AGR19-08d) and Task Orders under this Agreement, shall not exceed a combined total of THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00) excluding NMGR. There are no reimbursable expenses associated with this Agreement.
2. **Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager indicating Task Order number, Services performed, dates and times Services were performed, personnel providing Services, amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an

agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that exceeds the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.

2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with

the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

- 1. Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Dan Erickson, PE
Incorporated County of Los Alamos
101 Camino Entrada, Bldg. 1, Suite 216
Los Alamos, New Mexico 87544

Contractor:

Gabriel Martinez, Vice President
GM Emulsion, LLC
5935 Agua Fria
Santa Fe, New Mexico 87507

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
HARRY BURGESS **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

GM EMULSION, LLC, A NEW MEXICO LIMITED
LIABILITY CORPORATION

BY: _____
GABRIEL MARTINEZ **DATE**
VICE PRESIDENT

Exhibit "A"
AGR19-08c
Compensation Rate Schedule

Item	COST CATEGORY	UNIT	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
1	Hourly rate for concrete-related services not otherwise described	Hour	\$45.00	\$45.00	\$45.00	\$45.00	\$45.00	\$45.00	\$45.00
2	NEW Valley Gutter 6" 4000 psi w fiber	Square Yard	\$44.00	\$44.00	\$44.00	\$44.00	\$46.20	\$46.20	\$46.20
3	Remove and replace Valley Gutter 4000 psi w fiber	Square Yard	\$55.00	\$55.00	\$55.00	\$57.75	\$57.75	\$57.75	\$57.75
4	NEW Curb and Gutter 0' to 100' 4000 psi w fiber	Linear Foot	\$24.00	\$24.00	\$24.00	\$24.00	\$25.20	\$25.20	\$25.20
5	Remove and replace curb gutter 0' to 100' 4000 psi w fiber	Linear Foot	\$33.50	\$33.50	\$33.50	\$33.50	\$35.18	\$35.18	\$35.18
6	NEW curb and gutter 101' to 500' 4000 psi w fiber	Linear Foot	\$22.00	\$22.00	\$22.00	\$22.00	\$23.10	\$23.10	\$23.10
7	Remove and replace curb and gutter 101' to 500' 4000 psi w fiber	Linear Foot	\$31.50	\$31.50	\$31.50	\$31.50	\$33.08	\$33.08	\$33.08
8	NEW curb and gutter more than 500' 4000 psi w fiber	Linear Foot	\$20.00	\$20.00	\$20.00	\$20.00	\$21.00	\$21.00	\$21.00
9	Remove and replace curb and gutter more than 500' 4000 psi w fiber	Linear Foot	\$29.50	\$29.50	\$29.50	\$29.50	\$30.98	\$30.98	\$30.98
10	NEW concrete sidewalk 0 sq ft to 10 sq yd 4" 4000 psi w fiber	Square Yard	\$52.00	\$52.00	\$52.00	\$52.00	\$54.60	\$54.60	\$54.60

11	Remove and replace concrete sidewalk 0 sq ft to 10 sq yd 4000 psi w fiber	Square Yard	\$61.00	\$61.00	\$61.00	\$61.00	\$64.05	\$64.05	\$64.05
12	NEW concrete sidewalk more than 10 sq yd to 80 sq yd 4" 4000 psi w fiber	Square Yard	\$48.00	\$48.00	\$48.00	\$48.00	\$50.40	\$50.40	\$50.40
13	Remove and replace concrete sidewalk more than 10 sq yd to 80 sq yd 4" 4000 psi w fiber	Square Yard	\$57.00	\$57.00	\$57.00	\$57.00	\$59.85	\$59.85	\$59.85
14	NEW concrete sidewalk more than 80 sq yd 4" 4000 psi w fiber	Square Yard	\$46.00	\$46.00	\$46.00	\$46.00	\$48.30	\$48.30	\$48.30
15	Remove and replace concrete sidewalk more than 80 sq yd 4" 4000 psi w fiber	Square Yard	\$55.00	\$55.00	\$55.00	\$55.00	\$57.75	\$57.75	\$57.75
16	NEW 6" x 12" header curb 4000 psi	Linear Foot	\$19.00	\$19.00	\$19.00	\$19.00	\$19.95	\$19.95	\$19.95
17	Remove and replace header curb 4000 psi	Linear Foot	\$28.00	\$28.00	\$28.00	\$28.00	\$29.40	\$29.40	\$29.40
18	NEW residential concrete drive pad 6" 4000 psi w fiber	Square Yard	\$52.00	\$52.00	\$52.00	\$52.00	\$54.60	\$54.60	\$54.60
19	Remove and replace residential concrete drive pad 6" 4000 psi w fiber	Square Yard	\$61.00	\$61.00	\$61.00	\$61.00	\$64.05	\$64.05	\$64.05
20	NEW commercial concrete drive pad 8" 4000 psi w fiber	Square Yard	\$56.00	\$56.00	\$56.00	\$56.00	\$58.80	\$58.80	\$58.80

21	Remove and replace commercial concrete drive pad 8" 4000 psi w fiber	Square Yard	\$66.00	\$66.00	\$6600	\$66.00	\$69.30	\$69.30	\$69.30
22	NEW concrete pedestrian ramp 4000 psi w fiber	Square Yard	\$62.00	\$62.00	\$62.00	\$62.00	\$65.10	\$65.10	\$65.10
23	Remove and replace concrete pedestrian ramp 4000 psi w fiber	Square Yard	\$72.00	\$72.00	\$72.00	\$72.00	\$75.60	\$75.60	\$75.60