

A 1121201908

**MISSOULA COUNTY
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between Missoula County, hereinafter referred to as "the County", and Maguire Iron, Inc., hereinafter referred to as "Contractor", identified as follows:

Organization Name: **Maguire Iron, Inc. (F006695)**
Organization Type: General For Profit Corporation, Water Tank Storage Industry
Principal Contact: Kal Tucker
Mailing Address: 1610 N. Minnesota Ave., Sioux Falls, SD 57104
Telephone Number: 1-605-334-9749
E-mail Address of Principal Contact: TuckerK@maguireiron.com

Contractor will provide either a Social Security Number or an Employer Identification Number on IRS Form W-9 as provided by law.

1. Purpose

Maguire Iron, Inc has been chosen as the contractor to sandblast, prime and paint the top portion of the Sunset West potable water tank using AWWA specifications and testing/assurance measures. The County desires to enter into a **Professional Services Agreement** with Contractor for services desired, in return for the compensation stated. To this end, the parties mutually agree as follows.

2. Relationship of the Parties

Missoula County is a political subdivision of the State of Montana. Contractor is a South Dakota Corporation, licensed to do business in the State of Montana.

This Agreement is not intended to constitute or create a joint venture, partnership or formal business organization of any kind whatsoever among and between the parties, and their respective rights and obligations will be only those expressly set forth herein. Neither party will have any authority to bind the other except to the extent authorized herein.

Each party will furnish to the other such cooperation and assistance as may be reasonably required and specified hereunder. However, at all times, each party shall remain an independent contractor with respect to the other. Employees and agents of each party will not be deemed to be employees or agents of the other party. Contractor will perform or provide its services free from the supervision, direction or control of the County.

The Contractor is required to comply with the provisions of the Montana Worker's Compensation Act and shall provide proof of compliance as provided in

Paragraph 9.

3. Required Work or Product

The Contractor shall provide the specific services, tasks, or work products shown on the attached Exhibit A, which lists the scope of services relating to this Agreement. By this reference, Exhibit A is made a part of the Agreement.

4. Performance Schedule and County Assistance

Contractor shall commence performance of services identified in Exhibit A of this Agreement on the 15 day of November 2019 and shall complete performance of this Agreement by the 15 day of July, 2020.

The County may, by written change order, request changes within the general scope of this Agreement in the schedule, specifications, or quantity of work to be performed hereunder, and Contractor shall be entitled to a reasonable period of time to perform or provide said changes. Additional fees will be charged to the County for such changes as set out in Exhibit A.

County's Responsibilities - The County shall be responsible for assisting with the performance of this Agreement by doing or providing the following:

- a. Assisting with site access
- b. Assisting with County processes for change orders
- c. Processing payment applications

5. Place where service will be rendered

Contractor will perform most services in accordance with this Agreement at a location of Contractor's discretion. In addition, Contractor will perform services via the telephone, electronic mail, or at such other places as necessary to perform these services in accordance with this Agreement.

6. Compensation for Services

For the satisfactory completion of services to be performed under Exhibit A, the County will pay Contractor a sum not to exceed \$24,400.00 (twenty-four thousand, four hundred dollars). Any modifications must be approved by the County Commissioners through the change order process and will be compensated according to the fee schedule contained on Exhibit A. Invoices

must be submitted to the Principal Contact for the County Identified in Paragraph 11 of this Agreement with complete supporting documentation.

7. Public Works Contracts

For public works contracts as defined in 18-2-401, MCA in which the total cost of the contract is \$25,000 or more involving public funds, Contractor agrees to:

- a. Give preference to the employment of bona fide Montana residents in the performance of the work;
- b. Include provisions for work that is performed at a project location to:
 - i. Pay the travel allowance that is in effect and applicable to the district in which the work is being performed; and
 - ii. Pay the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed;
- c. Post a copy of the applicable prevailing wage rates in a prominent and accessible site at the project location; and,
- d. Maintain payroll records capable of certification for at least three years after completion of work under the Agreement.

8. Insurance and Workers' Compensation

Contractor will be required to maintain general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate. Contractor will be required to provide professional liability insurance.

In accordance with §§ 39-71-401 and 39-71-405 MCA, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Agreement. Contractor shall provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of the contract.

All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to the County prior to commencing work under Agreement. County must be listed as an additional insured on the general liability insurance certificate for this Agreement unless otherwise specified by the County.

9. Records

Contractor shall maintain sufficient records incident to the performance of this Agreement to enable the County to document the performance of the Agreement. Contractor shall allow access to those records by the County and the County Auditor, any independent auditor employed by the County and to representatives of the state or federal government. Records shall be retained for at least three years after completion of the Agreement.

10. Principal Contact for the County

The County official with whom the Contractor must communicate regarding this Agreement and who shall have the authority to accept completion of performance and to submit requests for payment to the County Auditor and Commissioners is:

Name: Deborah Evison Bell
Title: Assistant Director, Administration
Address: 6089 Training Drive, Missoula MT 59808
Telephone Number: 406-258-3702
Email Address: dbell@missoulacounty.us

11. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by Contractor pursuant to this Agreement are the property of the County, which has the exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating thereto. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the County.

12. Public Access to Information

Contractor acknowledges that the County is a local government unit and its records are public and subject to disclosure under Montana law. Certain information may be protected from disclosure. Protected information includes information concerning an individual privacy interest, legitimate trade secrets and other constitutionally protected proprietary information and certain information relating to individual or public safety. The parties agree to confer prior to disclosure of information relating to this Agreement and its performance which may include protected information.

13. Termination

This Agreement may be terminated by either party unilaterally by giving notice of termination in writing at least 30 days prior to the date of the intended termination.

If the Agreement is terminated prior to completion, County shall be responsible for paying Contractor for completed and accepted work and billed to the County as provided in Paragraphs 6 and 7 within thirty (30) days of termination.

14. Failure to Perform

Upon any material default or substantial failure to perform this Agreement by either party, the other party shall be entitled to the following remedy:

a) Stop performing or accepting performance of the contracted work until the matter is resolved;

b) Within a reasonable time of discovery of the defect of failure to perform, mail a written description of the defect or failure to the other party, and:

1) If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or

2) If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or

3) If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Agreement as of a date certain and state therein whether an action for breach of Agreement will be brought.

4) Where appropriate, obtain completion of the performance of the remaining balance of the Agreement with the original party.

c) If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the District Court of the Fourth Judicial District, Missoula County. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

15. Income Tax Designation

In the event that the Internal Revenue Services should determine that Contractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, Contractor shall acknowledge, as Contractor acknowledges herein, that all payments to Contractor are gross payments and Contractor is responsible for all income taxes and social security payments received prior to such IRS determination.

16. Indemnification

Contractor shall defend, indemnify and hold harmless the County, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of Contractor, its employees or agents.

County shall defend, indemnify and hold harmless Contractor, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the County, its employees or agents.

17. Entire Agreement, Modifications and Non-Assignment

This Agreement contains the entire Agreement between the parties. All preliminary negotiations and Agreements are merged herein. This Agreement cannot be changed or modified in any manner except by a written Agreement signed by both parties.

No obligation or right hereunder may be assigned, transferred, subcontracted or otherwise given to or imposed on any other party in the absence of a written Agreement signed by both parties.

18. Compliance with Laws and Non-Discrimination

Contractor agrees to comply with all federal, state and local laws, rules and regulations. In accordance with §49-3-207 MCA, all hiring must be on the basis of merit and qualifications; and there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

19. Place of Performance and Venue

Contractor and County agree that performance of this Agreement is in Missoula County, Montana. In the event of litigation concerning it, venue is in the 4th Judicial District, in and for the County of Missoula, State of Montana. This Agreement will be construed under and governed by the laws of the State of Montana.

20. Severability

If any part of this Agreement is hereafter held to be void, illegal or unenforceable, the validity of the remaining portion or provisions will not be affected hereby.

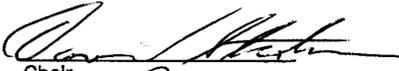
Professional Services Agreement between Missoula County and Maguire Iron, Inc, for the **Sunset West potable water tank interior lid sand blast and epoxy project:**

DATED this 15th day of November, 2019.

Maguire Iron, Inc.;


Kal Tucker, Field Representative MT/ID/WY
Maguire Iron, Inc.

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana


Chair


Commissioner

NOT AVAILABLE FOR SIGNATURE
Commissioner



ATTEST:
Tyler R. Gernant
Clerk & Recorder


DEPUTY

Exhibit A – Missoula County Professional Services Agreement

Project:

Contractor has appropriate licensed staff capable of working on and performing the task of sandblasting approximately 710 square feet of the interior roof of an 80,000-gallon reservoir potable water tank and then epoxying the limited effected area with Certified Water Quality Protective Potable Water Epoxy or Macropoxy Potable Water Epoxy (such as Sherwin Williams Macropoxy 646 PW Potable Water Epoxy or similar product) that meets the requirements of the AWWA (American Water Works Association). All aspects of the project, including but not limited to surface prep, sandblast, surface prep for primer, primer application, surface prep for coating and coating application, quality of coating, mills of coating, etc., must meet the specifications of the AWWA. Must be able to provide testing, reporting and/or quality assurance documentation that coating application meets product and/or AWWA specifications.

In the event that sandblasting, and surface preparation discovers the need for repair and/or welding, the contractor will stop work and contact the County. The County will then have the opportunity to review the required repair, make inquiries on cost estimates, and determine best course of action before allowing contractor to proceed with work.

About the Sunset West Potable Water Tank:

Steel Bolted, 16 feet tall and 30 feet in diameter, 80,000 gallons
24-inch by 24-inch access hatch on top of tank with 4.5-inch lip height. A stainless-steel lid covers this hatch. 15-inch round vent located on top of tank in the middle
45 inches high by 22 inches wide cleanout hatch on west side of tank (manway)
6-inch overflow on north side of tank

Referenced to and made a part of the Professional Services Agreement between Missoula County and Maguire Iron, Inc., dated 11/15, 2019.

Under the terms of the Professional Services Agreement, Maguire Iron, Inc., will provide the following services or tasks or work products:

- 1) Do a pre-assessment of the total area to be sandblasted and to be epoxied,
- 2) Responsible for prepping the site and tank,
- 3) Responsible for sandblasting the interior roof and surrounding effected area to an SSPC-SP 10 near white blast,
- 4) Responsible for priming and final coating of effected and surrounding area using AWWA certified and approved product for a primer thickness of at least 3.0 Dry Film Mills (1 ct) and for Final coating thickness of at least 5.0 Dry Film Mills (1 ct); with a combined thickness of 8.0 Dry Film Mills or 200 microns (minimum AWWA listed standards as specified),
- 5) Clean tank of all debris, including spent blast media, paint containers, and other job-related materials,
- 6) After painting and curing schedule is complete, interior wet surfaces are to be disinfected per AWWA method 3,
- 7) Provide appropriate third-party testing/reporting/quality assurance that application meets AWWA listed standards as specified.

