

**DUPLICATE
ORIGINAL****CONTRACT FOR SERVICES**

THIS CONTRACT is made on the 1st day of July, 2020 ("Effective Date"), by and between the TOWN OF ATHERTON ("City"), and CITY OF REDWOOD CITY ("RWC").

WITNESSETH:

WHEREAS, the City desires to obtain maintenance services necessary to perform the routine periodic maintenance for Atherton motor vehicles in accordance with standard motor vehicle maintenance schedules for the manufacture or type of such vehicles. Motor vehicles includes automobiles, pickup trucks, heavy duty trucks and similar such vehicles owned by the Town of Atherton for municipal purposes; and

WHEREAS, RWC operates and maintains a motor vehicle maintenance facility and is willing to provide maintenance services to the City, subject to the terms and conditions provided in this Contract;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. RWC shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in **Exhibit "A"**. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

B. RWC enters into this Contract as an independent contractor and not as an employee of the City. RWC shall have no power or authority by this Contract to bind the City in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the RWC are employees, agents, contractors or subcontractors of the RWC and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against RWC by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

C. The RWC agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. TERM OF CONTRACT:

A. Unless terminated earlier pursuant to Section 4, the term of this agreement shall be for a period of one (1) year from the Effective Date, and shall renew automatically for four additional one-year terms in an amount not to exceed \$40,000 per term, for a maximum term of five years from the Effective Date.

B. The services of RWC are to commence upon full execution of this Contract, and shall be undertaken and completed in accordance with the Schedule of Performance attached hereto and incorporated herein by this reference as **Exhibit "B."**

C. RWC's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 3.

D. The City's City Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

3. COMPENSATION:

A. The RWC shall be paid monthly for the actual fees and costs of services, but in no event shall total compensation exceed \$40,000 per term, without City's prior written approval. RWC's fees shall be as specified in the Schedule of Fees, which is attached hereto and incorporated herein as **Exhibit "C"**.

B. Said amount shall be paid upon submittal of periodic billings showing completion of the tasks that month. RWC shall furnish City with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billings. If RWC's performance is not in conformity with the Schedule of Performance, payments may be delayed or denied, unless the RWC's failure to perform in conformity with the Schedule of Performance is a documented result of the City's failure to conform with the Schedule of Performance, or if the Schedule of Performance is extended pursuant to Section 5.

C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 4.

4. TERMINATION:

A. This Contract may be terminated by either party, provided that the other party is given not less than thirty (30) calendar days' written notice (delivered by registered mail) of intent to terminate.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that the RWC is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, RWC shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, RWC shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by RWC, and the City may withhold any payments due to RWC until such time as the exact amount of damages, if any, due the City from RWC is determined.

D. In the event of termination, the RWC shall be compensated as provided for in this Contract, except as provided in Section 4C. Upon termination, the City shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

5. AMENDMENTS, CHANGES OR MODIFICATIONS:

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

6. EXTENSIONS OF TIME:

RWC may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Contract or the attached Work Program in the manner provided in Section 5.

7. PROPERTY OF CITY:

A. It is mutually agreed that all materials prepared by the RWC under this Contract shall become the property of the City, and the RWC shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the RWC shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the RWC in performing this Contract which is not RWC's privileged information, as defined by law, or RWC's personnel information, along with all other property belonging exclusively to the City which is in the RWC's possession.

B. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by RWC hereunder (the "Work") to be a work made for hire. RWC acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the City.

8. COMPLIANCE WITH ALL LAWS:

A. RWC shall comply with all applicable laws and codes of federal, State and RWC, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. It shall be City's responsibility to obtain all rights of way and easements to enable RWC to perform its services hereunder. RWC shall assist City in providing the same.

B. RWC warrants to the City that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this Contract.

9. WARRANTIES AND RESPONSIBILITIES - RWC:

A. RWC agrees and represents that it is qualified to properly provide the services set forth in Exhibit "A".

B. RWC agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and RWC law in accordance with Section 17A hereof.

C. RWC shall designate a project manager who at all times shall represent the RWC before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City, is no longer employed by RWC, or is replaced with the written approval of the City, which approval shall not be unreasonably withheld.

10. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. RWC shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by RWC.

11. ASSIGNABILITY:

RWC shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. However, claims for money due or to become due RWC from the City under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

12. INTEREST IN CONTRACT:

RWC covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest, which would conflict in any manner or degree with the performance of its services hereunder.

13. MATERIALS CONFIDENTIAL:

RWC agrees that all of the materials prepared or assembled by RWC pursuant to performance of this Contract shall not be made available to any individual or organization without the prior written approval of the City, except by court order or as required by applicable law, including the California Public Records Act.

14. LIABILITY OF RWC-NEGLIGENCE:

RWC shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to RWC or its employees, agents, contractors or subcontractors.

15. INDEMNITY AND LITIGATION COSTS:

A. RWC agrees to indemnify, defend and hold harmless City, its officers, officials, agents, and employees, against all claims, damages, demands, liability, costs, losses, and expenses arising from any injury to any person which occurs as a result of the negligence of RWC, its officers, employees or agents in the performance of this Contract.

B. City agrees to indemnify, defend and hold harmless RWC, its officers, officials, agents, and employees, against all claims, damages, demands, liability, costs, losses, and expenses arising from any injury to any person which occurs as a result of the negligence of City, its officers, employees or agents in the performance of this Contract.

C. In the event of concurrent negligence, liability for any claims, suits, or actions arising out of this Contract shall be apportioned between RWC and City under the established California rules of comparative negligence. The provisions of this paragraph shall survive termination or suspension of this Contract.

16. RWC TO PROVIDE INSURANCE:

A. RWC shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract, the policies of insurance specified in this Section, or the equivalent. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

B. Prior to execution of this Contract and prior to commencement of any work, the RWC shall furnish the City with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the Contract. The RWC and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by RWC and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of RWC or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract. Approval of the insurance by the City shall not relieve or decrease any liability of RWC.

1. Worker's Compensation and Employer's Liability Insurance

a. Worker's Compensation - Insurance to protect the RWC, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. The RWC shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

b. RWC shall provide a Waiver of Subrogation endorsement in favor of the City, its officers, officials, employees, agents and volunteers for losses arising from work performed by the RWC.

2. Commercial General Liability Insurance

a. The insurance shall be provided on form CG0001, or its equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subRWC's work and personal and advertising injury resulting from actions,

failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence and \$2,000,000 general and products/completed operations aggregates.

b. The commercial general liability insurance shall also include the following:

i. Endorsement equivalent to CG 2010 0714 naming the City, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

ii. Endorsement stating insurance provided to the City shall be primary as respects the City, its officers, officials, employees and any insurance or self insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the RWC's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

iii. Provision or endorsement stating that the RWC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Commercial Automobile Insurance

a. The insurance shall include, but shall not be limited to, coverage for claims for bodily injury or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$2,000,000.00 per accident.

b. The commercial automobile insurance shall include the same endorsements required for the commercial general liability policy (see Section 16.B.2.b).

4. Professional Liability. The RWC and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract and for five years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than \$2,000,000 per claim.

C. In addition to any other remedy the City may have, if RWC fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due RWC under this Contract.

D. No policy required by this Contract shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless RWC has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the City.

E. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.

F. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by RWC are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by RWC under the Contract.

G. City acknowledges that RWC is self-insured and may rely on its self-insurance program to meet the insurance requirements specified in this Section 16.

17. MISCELLANEOUS PROVISIONS:

A. RWC shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, San Mateo County and RWC laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

B. RWC shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

C. RWC shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Contract are made to the RWC.

D. This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

E. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City Manager George Rodericks
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027
P-650-752-0504
F-650-688-6524
Email – grodericks@ci.atherton.ca.us

RWC: City of Redwood City
Municipal Services Center
Terence Kyaw
1400 Broadway Street
Redwood City, CA 94063
P-650-780-7466
Email - tkyaw@redwoodcity.org


F. This Contract shall be interpreted and governed by the laws of the State of California.

G. Any action arising out of this Contract shall be brought and maintained in San Mateo County California, regardless of where else venue may lie.

H. In any action brought by either party to enforce the terms of this Contract, each party shall be bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

[Signatures on following page]

ATTEST:

By: 
Anthony Suber, City Clerk

APPROVED AS TO FORM:

By: _____
Mona G. Ebrahimi, City Attorney

TOWN OF ATHERTON

By: 
George Rodericks, City Manager

RWC

By: 
Melissa Stevenson Diaz, City Manager

ATTEST:

By: 
Pamela Aguilar, City Clerk

TOWN OF ATHERTON

By: _____
George Rodericks, City Manager

ATTEST:

By: _____
Anthony Suber, City Clerk

APPROVED AS TO FORM:

By: Mona Ebrahimi
Mona G. Ebrahimi, City Attorney

RWC

By: Melissa Stevenson Diaz
Melissa Stevenson Diaz, City Manager

ATTEST:

By: Pamela Aguilar
Pamela Aguilar, City Clerk

EXHIBIT "A"

RWC Scope of Work

1. RWC shall provide maintenance services for City's motor vehicles on an "as needed" basis and upon request of City who shall deliver the motor vehicles to RWC for maintenance services and upon completion, take delivery of said vehicle.
2. Tires containing nails, screws, etc., shall NOT be patched. Tires shall be replaced immediately identifying the issue. **This applies to emergency vehicles only.**
3. RWC will contact City before conducting major repairs exceeding \$1,000 for parts and/or \$2,000 for parts and labor combined.

EXHIBIT "B"

Schedule of Performance

RWC shall complete maintenance services necessary to perform the routine periodic maintenance for City's motor vehicles in accordance with standard motor vehicle maintenance schedule, which includes automobiles, pickup trucks, heavy-duty trucks and similar vehicles owned by the Town of Atherton for municipal purposes.

The City shall be responsible for scheduling the maintenance services for each of its motor vehicles; provided that upon completion of furnishing maintenance services for each such vehicle, the RWC shall indicate the approximate date of the next recommended maintenance service for such vehicle.

EXHIBIT "C"

Schedule of Fees

1. The hourly rate for all services is \$119.49. The City shall pay RWC for all parts and supplies furnished in connection with such maintenance services at the cost thereof to RWC.
2. Upon receipt of the invoice from the RWC, the City shall pay within 14 business days.
1. Any loss or damage to a City vehicle while stored on RWC's property will be the responsibility of the RWC to rectify.