



## PROFESSIONAL SERVICES AGREEMENT 2019 Gravel Crushing

AGREEMENT made between TETON COUNTY (Governmental Entity), a political subdivision of the state of Idaho, herein "*ENTITY*" and C.M. Owen Construction, LLC "*CONTRACTOR*".

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF WORK:** *ENTITY* engages *CONTRACTOR* to perform the work associated with the supply of Gravel Crushing Services associated with Exhibit "1" attached hereto.
2. **PAYMENT:** *ENTITY* agrees to pay *CONTRACTOR* for all services rendered under this Agreement an amount not to exceed the total sum of \$306,960.00. The parties agree that *CONTRACTOR* will invoice *ENTITY* for payment under this Agreement for services rendered herein. *CONTRACTOR* shall submit monthly invoices for the percentage for work performed for each task set forth in Exhibit "A". If *ENTITY* and *CONTRACTOR* agree in writing the contract may be extended or increased.
3. **RIGHT OF CONTROL:** *ENTITY* agrees that it will have no right to control or direct the details, manner, or means by which *CONTRACTOR* accomplishes the results of the services performed hereunder. *CONTRACTOR* has no obligation to work any particular hours or days or any particular number of hours or days. *CONTRACTOR* agrees, however, that his other contracts or services shall not interfere with the performance of his services under this Agreement.
4. **INDEPENDENT CONTRACTOR RELATIONSHIP:** *CONTRACTOR* is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of *ENTITY*. *ENTITY* shall determine the work to be done by *CONTRACTOR*, but *CONTRACTOR* shall determine the legal means by which it accomplishes the work specified by *ENTITY*.
5. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by *ENTITY* on behalf of *CONTRACTOR* or the employees of *CONTRACTOR*. *CONTRACTOR* shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. *CONTRACTOR* understands that *CONTRACTOR* is responsible to pay, according to law, *CONTRACTOR*'s income tax. *CONTRACTOR* further understands that *CONTRACTOR* may be liable for self-employment (Social Security) tax to be paid by *CONTRACTOR* according to law.
6. **LICENSES AND LAW:** *CONTRACTOR* represents that he possess the skill and experience necessary and all licenses required to perform the services under this agreement. *CONTRACTOR* further agrees to comply with all applicable laws in the performance of the services hereunder.
7. **FRINGE BENEFITS:** Because *CONTRACTOR* is engaged in its own independently established business, *CONTRACTOR* is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of *ENTITY*.
8. **EQUIPMENT, TOOLS, MATERIALS OR SUPPLIES:** *CONTRACTOR* shall supply, at *CONTRACTOR*'s sole expense, all equipment, tools, materials and/or supplies to accomplish the services to be provided herein.

**9. TERM:** Work will be substantially completed within 120 calendar days after the date when the Contract Times commence to run. If work is not completed within 120 calendar days, *ENTITY*, at its sole discretion, may extend the contract term at no additional cost to the *ENTITY*. *ENTITY* may terminate the contract at any time. In the event that the contract is terminated, *ENTITY* shall pay *CONTRACTOR* for the percentage of all materials used and labor performed up to the date of termination.

It is mutually agreed that the time for the commencement and completion of the work will affect the progress of other work that the County can or will suffer financial damages in an amount not now possible to ascertain if this work is not completed on schedule. In view of these facts, it is agreed, in the event the County recognizes suffering, County will withhold from the Contractor, as liquidated damages and not as a penalty, the sum of \$500 per day for each calendar day that work remains uncompleted beyond the date specified for the completion of the work. Completion of the work will be when the Contractor produces the contract quantity specified +/- 5% by the Contract Date.

**10. WARRANTY:** *CONTRACTOR* warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. *CONTRACTOR* acknowledges that it will be liable for any breach of this warranty.

**11. INDEMNIFICATION:** *CONTRACTOR* agrees to indemnify, defend, and hold harmless *ENTITY*, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the act and/or any performances or activities of *CONTRACTOR*, *CONTRACTOR*'s agents, employees, or representatives under this Agreement.

**12. INSURANCE:** *CONTRACTOR*, at its sole cost and expense, shall maintain proof of general liability, workers' compensation and vehicle liability insurance. These policies shall be in full force and effect at all times during the term of this Agreement. *CONTRACTOR* shall include *ENTITY* as an additional insured on all required policies and the policies shall name and protect *CONTRACTOR*, all *CONTRACTOR*'s employees, *ENTITY*, and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the *CONTRACTOR*'s acts. *CONTRACTOR* shall provide proof of liability coverage as set forth above to *ENTITY* prior to commencing its performance as herein provided. The policies shall require insurer to provide *ENTITY* with 30 days advance notice of any cancellation, expiration, non-renewal or reduction in coverage under the policy.

*CONTRACTOR* shall maintain limits of insurance no less than:

**General Liability:** \$2,000,000 aggregate and \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Comprehensive General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities related to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

**Commercial Auto Liability:** \$1,000,000 per accident for bodily injury, including accidental death, and property damage that may arise from operations pursuant to this Agreement.

**Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance as required by the Labor Code of the State of Idaho and Employers' Liability limits shall be a minimum of \$1,000,000 per accident.

**13. NONWAIVER:** Failure of either party to exercise any of the rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

**14. CHOICE OF LAW:** Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Idaho.

**15. ENTIRE AGREEMENT:** This is the entire Agreement of the parties and can only be modified or amended in writing by the parties.

**16. SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

**17. ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

**18. BONDS:** 100% payment bond and 100% performance bonds are required at the time this contract is executed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ENTITY:

Teton County

By \_\_\_\_\_  
(Name)

Its \_\_\_\_\_  
(Title or Office)

CONTRACTOR:

By \_\_\_\_\_  
(Name)

Its \_\_\_\_\_  
(Title or Office)

**EXHIBIT 1  
(Bid Documents)**



**Teton County  
Request for Bids  
2019 Gravel Crushing  
April 11, 2019**

**1) Purpose of Request:**

The Teton County Road & Bridge Department is requesting bids from qualified contractors for the crushing of gravel at the Driggs Gravel Pit located in Teton County. The operator will mobilize into this pit for crushing.

The Driggs Gravel Pit located at the Teton County Transfer Station in Teton County, 1088 Cemetery Road, Driggs, ID

**2) Time Schedule:**

The County will follow the following general timetable:

- a. Issue RFB April 11, 2019
- b. The deadline for submitting the responses is April 26, 2019 at 10:00 AM local time.
- c. The sealed bids will be publicly opened and read aloud at 10:10 am, April 26, 2019 at the Teton County Courthouse.

**3) Instructions to Proposers:**

- a. All responses shall be sent to:

Jay Millin  
Teton County  
150 Courthouse Drive  
Driggs, ID 83422

OR

Emailed to Jay Millin at; [jmillin@co.teton.id.us](mailto:jmillin@co.teton.id.us):

OR

Hand delivered to the County Clerk/Recorder office at 150 courthouse Drive, Driggs ID

- b. An authorized representative of the firm must complete and sign bid.

**4) Terms and Conditions:**

- a. The County reserves the right to reject any and all bids, and to waive minor irregularities in any RFB response.
- b. The County reserves the right to request clarification of the information submitted, and to request additional information from any respondent.
- c. Any RFB response may be withdrawn up until the date and time set above for opening of the RFB responses.

- d. Companies may submit written questions concerning this RFB to the Contact Person for receipt no later than 5:00 PM local time on April 22, 2019. Questions may be submitted to Jay Millin via email to [jmillin@co.teton.id.us](mailto:jmillin@co.teton.id.us). Questions received after the stated deadline will not be answered. No oral statement of any person shall modify or otherwise change or affect the terms or conditions stated in the RFB, and chances to the RFB, if any, shall be made in writing only and issued in the form of an Addendum to the RFB and highlighted in the RFB. Addendum, if any, will be posted on the County web site. Bidders are responsible for all Addendum posted.
- e. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner to perform all work as specified or indicated in the bidding documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the bidding documents.
- f. This Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

### **Bidder's Representations**

In submitting this Bid, Bidder represents that:

- a. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the bidding documents.
- b. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- c. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- d. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- e. Based on the information and observations referred to in section d above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- f. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- g. Bidder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Owner is acceptable to Bidder.
- h. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

## **Bidder's Certification**

Bidder certifies that:

- a. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- b. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- c. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- d. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- e. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
- f. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
- g. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
- h. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## **5) Scope of Work**

Depending on budget appropriations and Contractor unit pricing, County reserves the right to reduce or increase contracted yardage if deemed necessary. The following criteria will be adhered to as part of the crushing requirements:

- a. Contractor will provide crushed aggregate to the specifications outlined in Exhibit "A".
- b. Bidder agrees that the Work will be substantially complete within 120 calendar days after the date when the Contract Times commence to run. The contractor may begin at any time after execution of the contract.
- c. Bidder agrees to comply with Idaho Code 44-1001 through 44-1005, regarding employment of Idaho residents.
- d. Contractor shall prepare a uniformly graded pad large enough to accommodate material being crushed. The stockpile area shall have a smooth surface with positive drainage and be free of any debris or foreign objects. The County's designated representative must first approve the stockpile area before the Contractor begins the crushing operation.
- e. Contractor is responsible for establishing an adequate number of grade elevation points to maintain a uniform graded pit floor that will allow for positive drainage. The Contractor, upon completion, shall grade and slope the mined pit walls to a slope not to exceed 1:1 (horizontal vs. vertical).
- f. Contractor will be responsible for the blending of all raw materials in the pit to meet the specifications of crushed aggregates in this contract.

- g. Oversize material shall be stockpiled by the Contractor in a designated area within the pit limits to be determined by the County's designated representative.
- h. Any material recycled from the primary crushing operation shall be fully processed or stockpiled at a location to be determined by the County's designated representative.
- i. Contractor shall stockpile production aggregate in such a manner as to prevent cross contaminating stockpiles of materials.
- j. Contractor will provide easy access to County equipment for loading and hauling operations that will not interfere with the crushing and/or mining operations.
- k. The County will provide a designated representative to survey site for stockpiles. After material is crushed a survey cross sections of stockpile will be completed by a County designated representative.
- l. Pay request vouchers shall be submitted monthly to the Teton County Road and Bridge Department, 150 Courthouse Drive, Driggs, Idaho 83422. Pay request vouchers will be itemized and shall only charge for quantities that have been measured by a County designated representative and confirmed by the Contractor. All payment requests to County for material crushed must be accompanied with both gradation reports and quantity summaries. In the event of a dispute as to the amount of material crushed, both County and Contractor shall have the right to re-measure the stockpiles at their own expense.
- m. If the County hauls from the production stockpile, and daily load count of material removed shall be kept and the amount confirmed by the Contractor and the County's designated representative. The method of measure shall then be the amount of tons per truckload. Contractor is not responsible for the loading of trucks.
- n. It is mutually agreed that the time for the commencement and completion of the work will affect the progress of other work that the County can or will suffer financial damages in an amount not now possible to ascertain if this work is not completed on schedule. In view of these facts, it is agreed, in the event the County recognizes suffering, County will withhold from the Contractor, as liquidated damages and not as a penalty, the sum of \$500 per day for each calendar day that work remains uncompleted beyond the date specified for the completion of the work. Completion of the work will be when the Contractor produces the contract quantity specified +/- 5% by the Contract Date.
- o. Before leaving the designated pit location, Contractor shall schedule a meeting with the County to inspect the work completed to include: stockpiling of oversize material, uniform grading/leveling of the pit floor, and cleanup of discarded litter. This shall be performed to the satisfaction of the County.
- p. Rain Days – The Contractor agrees to notify the County designated representative at the time the Contractor decides to stop crushing. The County reserves the right to inspect the pits and negotiate the time allowed, if any, for rain delays.
- q. Provide on-site supervision for the duration of the project. Working hours shall commence no earlier than 7:00 a.m. and cease no later than 7:00 p.m. Hours of operation shall not apply to routine maintenance of contractor's equipment on site.
- r. Contractor will be permitted to store all necessary equipment and materials within the site. Fuel tanks must be properly safeguarded so as to avoid any groundwater contamination. Contractor shall be required to abide by all rules and regulations governing sand and gravel operations with respect to employee health and safety.



- s. The Contractor shall notify the County, in writing, 24 hours prior to the start of the crushing operation. All progress reports and operational delays shall be submitted to the County in writing.
- t. All materials and each part of detail of the work shall be subject to inspection by the County. They shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection of the crushing operation.
- u. All inspections and tests conducted are solely for the convenience and benefit to the County. The County shall in no way be bound by such inspections or tests, nor shall such inspections and tests constitute acceptance of materials or work. The County may reject or accept any work or materials, at any time, prior to the time that a County inspection or test is conducted.
- v. Crushing contractor shall notify County and testing lab 24 hours prior to when gravel test samples need to be taken. It shall be the Contractor's responsibility to have gradation samples taken within the first 1,000 tons by a qualified materials testing laboratory and provide copies of same to County. Contractor shall immediately notify County of gradation samples not meeting the agreed upon specifications. Additionally, Contractor shall allow County to randomly take gradation samples for comparison at its own expense. In the event a gradation sample is out of specification, Contractor shall be allowed to take additional gradation samples in order to establish that material is within acceptable limits. Contractor shall only be paid for material meeting specification.
- w. All testing of crushed aggregates produced under this specification shall be performed by a qualified materials testing laboratory and paid for by the Contractor
- x. All aggregate material classed as non-acceptable shall remain the property of Teton County but it shall not be considered as produced material under the contract. Payment for these materials shall be at the option of Teton County and may be at a lesser amount.
- y.  $\frac{3}{4}$ " surface gravel payment is determined by multiplying the average payment adjustment factor times the unit price times the total cubic yard quantity. The average payment adjustment factor is determined by (1) averaging all of the sample test results, (2) determining the pay adjustment factor for each of the requirements in "3/4 Surface Gravel Gradation" and (3) selecting the lowest pay adjustment factor from Step 2. County will take samples approximately every 2,500 tons while crushing  $\frac{3}{4}$ ".
- z. A sufficient number of tests shall be performed during aggregate production to ensure that the specified quality of the aggregate is obtained. All testing shall include sieve analysis, liquid limit, plasticity index, and rodded unit weight.



## Bidder Response Form

Bidder's Corporation/Partnership Name: C.M. Owen Construction, LLC

Bidder's Business Address: PO Box 1077, Victor, ID 83455

Bidder's Phone Number: 208-787-6936 Bidder's Fax: 208-787-6938

Bidder's Email: beth@cmowenconstruction.com

Idaho Public Works Contractor License No. 022482-UNLIMITED-1-2-4

By (Signature): 

Name (typed or printed): Beth Martin

SUBMITTED ON: 04/26/2019

### 2019 Gravel Crushing Teton County Gravel Pits

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization – Driggs Pit	1	Lump Sum	\$ 6,000.00	\$ 6,000.00
2	BST (Otta Seal) Chips	Ton	600	\$ 8.90	\$ 5,340.00
3	3/8" Chips	Ton	1,500	\$ 29.68	\$ 44,520.00
4	2" minus Crushed Gravel	Ton	30,000	\$ 2.97	\$ 89,100.00
5	3/4" Crushed Gravel	Ton	50,000	\$ 3.24	\$ 162,000.00
Total of All Bid Prices					\$ 306,960.00

Bid prices listed shall include all applicable taxes and fees.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities.

**EXHIBIT A**  
**(Bid Documents)**

Crushed material shall be hard, crushed stone, without an excess of flat, elongated, soft or disintegrated pieces. Material shall meet the following gradations:

**BST Chip (Otta Seal) Chip Gradation**

Sieve Size	% Passing
3/4"	100
5/8"	80-100
3/8"	36-98
1/4"	20-80
#4	10-70
#200	0-6

**3/8" Chip Gradation**

Sieve Size	% Passing
1/2"	100
3/8"	95-100
#4	0-15
#8	0-5
#200	0-2

**3/4" Surface Gravel Gradation**

Pay Adjustment Factor	1.05	1.00	0.95	0.75	0.50	0.00
Sieve Size	Percent Passing					
1 inch	100	100	100	100	100	
3/4 inch	98-100	95-100	95-100	95-100	95-100	95-100
3/8 inch	69-81	67-83	65-85	63-87	61-89	<61 or >89
#4	50-66	48-68	46-70	44-72	42-74	<42 or >74
#16	32-43	30-45	28-47	26-49	24-51	<24 or >51
#40	17-32	15-35	13-37	11-39	9-41	<9 or >41
#200	12-16	10-18	9-19	8-20	7-20	<7 or >20
Plasticity Index	5-11	4-12	3-12	2-12	1-12	0 or >12
#200 + Plasticity Index	19-21	18-22	17-23	16-24	15-24	<15 or >24

*Teton County will provide additional material to be mixed with native gravel as necessary to meet the plasticity requirements.*

**2" Minus Gravel Gradation**

Sieve Size	% Passing
2-1/2"	100
2"	90-100
1"	55-83
#4	30-60
#30	10-25
#200	2-12

*60% of aggregate shall have at least one fractured face.*

**References**

Highway & Street Guidelines for Design and Construction in Teton County, Idaho

Idaho Standards for Public Works Construction