



THIS CONTRACT made the _____ day of _____, 2023.

BETWEEN:

MUNICIPAL DISTRICT OF PINCHER CREEK No. 9
(hereinafter referred to as the "MD")

OF THE FIRST PART

- and -

(hereinafter referred to as the "Contractor")

OF THE SECOND PART

WHEREAS the MD requires the Contractor to perform certain work as defined in this contract, which work is to be performed within the MD and more particularly described as follows, namely **Gravel Haul Services for the MD of Pincher Creek No. 9** (hereinafter referred to as "the Work");

AND WHEREAS the Contractor is qualified or has in its employment personnel qualified to perform the required Work;

NOW THEREFORE, in consideration of the promises, mutual terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. The MD hereby retains the Contractor and the Contractor hereby accepts such retainer to provide the Work, which includes, but is not limited to the following, namely:
 - a. The Work, in general terms, shall consist of:
 - (1) The contractor shall supply all necessary labour, equipment, expertise, supervision and incidentals to complete this Contract according to the specifications, which are part of this Contract. The Work includes as follows:
 - Provision of equipment and Gravel Haul Services on a scheduled or as required basis as outlined in **Appendix "A"**.
 - (2) The MD reserves the right to change, add or delete equipment, locations or frequencies at the tendered rate.
 - (3) It will be the responsibility of the contractor to ensure public safety and adhere to signage and notification requirements as per MD requirements.
 - (4) Equipment required includes, but is not limited to:
 - Tridem belly dump trailers (Preference of tri-axle dual cross clam belly dump with individual gate trips)
 - Each truck must have a programmable two way radio capable of programing to a current MD channel at your cost.
2. The Contractor will provide qualified employees to provide the Work required under this Contract. The obligations of the Contractor performed pursuant to this Contract shall only be performed by the Contractor or an employee or a party acting on behalf of the Contractor who has been approved in advance in writing by the MD, such approval which may be arbitrarily withheld and which may be terminated or revoked at any time in the discretion of the MD
3. In carrying out its obligations hereunder, the Contractor shall be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, which, without limiting the generality of the foregoing, shall comply with the provisions of the *Occupational Health and Safety Act*, S.A. 2017, Chapter 0-2.1 and amendments thereto, and Regulations thereunder, or any successive legislation, and shall at all times ensure that all employees and Sub-contractors at the site(s) where the Work is being performed comply with the requirements of the *Occupational Health and Safety Act*, and Regulations thereunder. The Contractor shall be the general representative and agent to the MD for the purposes of ensuring compliance with safety regulations for both its own employees and those of any Sub-contractors. The Contractor shall bring to the attention of Sub-contractors the provisions of the *Occupational Health and Safety Act* and Regulations thereunder. The Contractor acknowledges that he is an "employer" as defined in the *Alberta Occupational Health and Safety Act*. For the purposes of the Contract, the Contractor is assigned the role

of Prime Contractor, pursuant to the *Occupational Health and Safety Act* for the Work site and is responsible for ensuring compliance with the *Occupational Health and Safety Act* by all employers and employees on the Work site.

4. Prior to commencing the Work described hereunder and prior to receiving any payment, the Contractor shall provide evidence of compliance with all requirements of the Province of the place of the Work with respect to Workers' Compensation including payment due thereunder. At any time during the term of this Contract, when requested by the MD's representative, the Contractor shall provide such evidence of compliance by himself and any or all of his Sub-contractors.
5. The term of the Contract shall be from the date of its final signing or May 1, 2023 to December 31, 2023 (hereinafter referred to as the "Term").
6. The Contractor will submit daily load tickets for the amount of Work performed by the Contractor once the work is completed for that day.
7. In consideration of the proper performance by the Contractor of the Work pursuant to this Contract, and subject to verification of the actual Work performed by the Contractor, the MD shall pay the Contractor the amount set out in the Contractor's invoice, within thirty (30) days from the date of receipt of an invoice from the Contractor. The MD will make payments in Canadian funds to the Contractor on account of the Contract Price.
8. Payment for the performance of the Work by the Contractor shall be calculated in accordance with the rates and methods set out in **Appendix "A"** or as otherwise indicated. The contractor's invoice shall contain the following information:
 - Date work performed
 - Location
 - Quantity
9. If the MD fails to make payments to the Contractor as they become due under the terms of this Contract or in an award by arbitration or court, interest of Prime, as set by the Bank of Canada, plus one percent (Prime plus 1%) per annum on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.
10. Nothing in this Contract shall be construed as:
 - a. constituting either party as the agent, employer or representative of the other party;
 - b. creating a partnership; or
 - c. imposing upon either party any partnership duty, obligation or liability to the other party.

The relationship created by this Contract between the MD and the Contractor is that of independent contractor.

11. The Contractor has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the MD, nor to bind the MD in any manner whatsoever.
12. All amounts payable by the MD to the Contractor for Work hereunder shall be exclusive of any Goods and Work Tax ("GST") payable thereon and the MD shall, in addition to the amounts payable, pay to the Contractor all amounts of GST applicable thereon.
13. The Contractor shall be responsible for the payment of all income tax, Canada Pension, employment insurance and all other required payments, contributions or deductions including, but not limited to, any assessments levied pursuant to the *Workers' Compensation Act* that arise or may hereafter arise with respect to the Work performed by the Contractor under this Contract.
14. The Contractor shall be responsible for all fees, licenses, permits, filings, and all other costs incidental to the performance of the Contractor's obligations under this Contract.
15. The MD may, at its discretion, agree in advance to reimburse the Contractor for specific expenses to be incurred by the Contractor in the discharge of its obligations hereunder. Such expenses shall only be paid when approved prior to expenditure and thereafter supported by proper receipts, invoices or vouchers submitted to the MD within thirty (30) days from the date upon which such expenses are incurred.
16. The Contractor will report on a regular basis, as required by the MD, on the Work provided pursuant to this Contract. The Contractor will make available such information, including trip reports and tonnage, as the MD may require from time to time relating to the obligations of the Contractor to allow the MD, to evaluate the quality and progress of Work provided under this Contract.
17. Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for labour, products, tools, service machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.
18. The Contractor shall maintain good order and discipline among his employees engaged on the Work and shall not employ on the Work anyone not skilled in the task assigned to him.

19. The Contractor shall confine his apparatus, the storage of products, and the operations of his employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises with his equipment.
20. The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris.
21. The MD and its authorized agents or representatives shall at all times have access to the Work. If parts of the Work are in preparation at locations other than the site of the Work, the MD or its authorized agents or representatives shall be given access to such Work whenever it is in progress.
22. Defective Work or equipment, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the MD as failing to conform to shall be removed promptly from the site of Work by the Contractor and replaced or re-executed promptly at the Contractor's expense.
23. The MD reserves the right to terminate your contract if you can not supply trucks in a timely minor. This also means you might not be reinstated to the haul for the balance of the season.
24. Where the MD determines that the Contractor is in default of its obligations as set out in this Contract, the MD shall, by written Notice of Default, require the Contractor to remedy such default, at the Contractor's sole expense, within forty-eight (48) hours of the delivery of the Notice of Default to the Contractor. The Contractor shall be in compliance with the MD's instructions if:
 - a. the Contractor corrects the default within the time specified in the Notice of Default; or
 - b. if the default cannot be corrected within the time specified in the Notice of Default, the Contractor commences the correction of the default within the time specified in the Notice of Default; and
 - (1) the Contractor provides a schedule to correct the default acceptable to the MD; and
 - (2) the Contractor corrects the default within the time set out in the schedule agreed to by the MD

In the event that the default is not corrected in accordance with this clause to the MD's satisfaction, or in the event of urgent circumstances where the giving of a written Notice of Default is impossible, or impracticable, as may be determined by the MD in its sole and unfettered discretion, the MD may, without prejudice to any other right that the MD has pursuant to this Contract, or at law:

- a. terminate the Contractor's right to continue with the Work of this Contract, in whole or in part; or
- b. terminate the Contract forthwith; or

- c. correct the default at the Contactor's expense and deduct the cost of same from any amount of monies that maybe, or become, due and owing to the Contractor; or
- d. complete the Work, or allow another contractor to complete Work if results are not satisfactory to the MD's Consultant or his representative, or in the event that the schedule for the performance of the Work is not being met.

The sum of all damages, expenses, fees, costs, including but not limited to solicitor and client legal costs, incurred or suffered by the MD as a result of the Contractor's failure to correct the default, or the termination of the Contractor's right to continue with the Work of this Contract, in whole or in part, or the termination of the Contract forthwith, shall be a debt immediately due and owing by the Contractor to the MD which debt may be offset by the MD against any monies payable to the Contractor pursuant to this Contract or any other monies payable by the MD to the Contractor. The exercise by the MD of the rights pursuant to this clause shall not limit any other remedy the MD may have pursuant to this Contract or at law.

- 25. Security is not required for this contract.
- 26. The Contractor acknowledges that the MD is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, Chapter F25. Confidentiality for any records compiled or created under this Contract cannot be ensured by the MD Provisions exist under the *Freedom of Information and Protection of Privacy Act*, to allow disclosure of personal or business information where disclosure would not be harmful to business interest or would not be deemed an unreasonable invasion of your personal privacy as defined within the *Freedom of Information and Protection of Privacy Act*. The Contractor also acknowledges that information and records compiled or created under this Contract, which are in the custody of the Contractor, are also subject to the *Freedom of Information and Protection of Privacy Act*. If the MD receives a request for information under the *Freedom of Information and Protection of Privacy Act*, which includes information provided by the Contractor, the MD will give the Contractor notice of such request and the Contractor will respond to such notice in accordance with the *Freedom of Information and Protection of Privacy Act*. If the Contractor does not respond to the notice from the MD, it will proceed to process the request for information in accordance with its procedures as set forth within the *Freedom of Information and Protection of Privacy Act*. If the MD's response to a request under the *Freedom of Information and Protection of Privacy Act* is appealed to the Office of the Information and Privacy Commissioner, the Contractor shall be responsible for the burden of proof as to exception from disclosure as defined under the *Freedom of Information and Protection of Privacy Act*.

27. The Contractor shall be responsible for all costs related to confidentiality requirements. As applicable, for MD records and information under its care, the Contractor shall bear the burden and associated costs of records management practices required under the *Freedom of Information and Protection of Privacy Act*. As well, the Contractor shall be responsible to provide for the protection of confidential MD records and information as required by the *Freedom of Information and Protection of Privacy Act*. Neither the MD, nor the MD's employees, shall use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course of the duties. Neither the Contractor, nor the Contractor's employees, shall use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course of the duties.
28. The MD shall furnish to the Contractor such information in its possession reasonably required for the proper performance of the obligations of the Contractor, and shall, in every way provide such cooperation as is reasonable in order for the Contractor to be able to perform the Work required pursuant to this Contract in a satisfactory manner.
29. The Contractor shall retain all information and records received or compiled by the Contractor in accordance with this Contract for a minimum period of one (1) year from the date of termination of this Contract.
30. The Contractor hereby represents and warrants with and to the MD, and acknowledges that the MD is relying upon such representation and warranty, that the Contractor is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations.
31. Without in any way limiting the liability of the Contractor under this Contract, the Contractor shall obtain and maintain in force, at the Contractor's own expense, during the existence of this Contract, or any extension thereof, and shall provide evidence of the existence of same to the MD prior to commencing any of the Work, the following insurance:
 - a. standard automobile insurance covering owned, non-owned and rented automotive equipment, bodily injury and property damage insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive per accident for the injury to or death of one or more persons or damage to or destruction of property;
 - b. a commercial general liability insurance policy per occurrence providing coverage of not less than Two Million (\$2,000,000.00) Dollars inclusive per occurrence, with an annual general aggregate, if any, not less than \$5,000,000, in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property.
Coverage to include:

- (1) non-owned automobile liability;
 - (2) independent sub-contractors;
 - (3) employees;
 - (4) contractual liability including this Contract;
 - (5) contingent employer's liability;
 - (6) broad form property damage endorsement;
 - (7) cross-liability; and
 - (8) products and completed operations;
- c. workers compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta;
 - d. employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than Two Million (\$2,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-contractor engaged by the Contractor; and
 - e. such other insurance as the MD may from time to time reasonably require.

The Contractor shall be liable for the cost of all of the insurance required to be held by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

- 32. The Contractor and the MD acknowledge and agree that the MD shall not be liable nor responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Contractor, his employees or agents in the performance of this Contract.
- 33. The Contractor shall be responsible for any loss or damage to property of the MD howsoever caused by the Contractor's negligence or that of his employees or agents, or by the Contractor's breach of this Contract. The Contractor shall extend his own "All Risks" property insurance to cover his legal liability for the property of others in his care, custody or control and shall note the interest of the MD as applicable.
- 34. The Contractor shall ensure that:
 - a. all insurance coverage maintained by the Contractor in accordance with this Contract shall include waivers of subrogation by the insurers in favour of the MD and shall name the MD as an added insured in respect to the Work provided to the MD by the Contractor;
 - b. no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days written notice of such cancellation to the MD; and
 - c. a Certificate of Insurance is furnished, satisfactory to the MD, evidencing the required insurance coverage.
- 35. The Contractor shall at all times and without limitation, indemnify and save harmless the MD, its Councillors, directors, officers, insurers, employees, contractors, agents and representatives from and against any and all liabilities, losses, costs, damages, legal fees (on a

solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which any of the MD, its Councillors, directors, officers, insurers, employees, contractors, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- a. any act or omission on the part of the Contractor during the performance or purported performance or non-performance of this Contract; or
- b. the failure of the Contractor to remit all applicable tax withholdings, Canada Pension contributions, employment insurance contributions and all other payments, contributions or deductions for which the Contractor is liable.

38. The parties acknowledge and agree that the provisions of this Contract, which, by their context, are meant to survive the termination or expiry of the Term, shall survive the termination or expiration of the Term and shall not be merged therein or therewith.
39. This Contract may be terminated for convenience by the MD at any time by giving ninety (90) days written notice of termination for convenience to the Contractor. The effective date of the termination for convenience shall be set out in the Notice of Termination for Convenience. The Contractor's right to consideration shall be limited to payment for Work performed and not previously paid for up to the effective date as set out in the Notice of Termination for Convenience. The Contractor specifically agrees that the Notice of Termination for Convenience and consideration set forth in this clause constitutes reasonable, fair and equitable notice and compensation for damages, if any, which may be suffered by the Contractor as a result of the termination for convenience of this Contract. In the event this Contract is terminated for convenience, the Contractor shall perform the Work required by this Contract up to and including the effective date set out in the Notice of Termination for Convenience and shall, upon request, provide the MD with a written report on the Work rendered to the time of termination for convenience. Except for any such report, the Contractor shall not perform any further Work subsequent to the effective date set out in the Notice of Termination for Convenience.
40. No work shall be performed by the Contractor until the Contract has been executed by both parties hereto.
41. No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act on the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

42. For the purposes of this Contract, the addresses of the parties are:

Municipal District of Pincher Creek No. 9
P.O. Box 279
Pincher Creek, Alberta T0K 1W0

AND

Attention: _____

Any communication, notice or service of documents required to be made during the course of this Contract will be good and sufficient if delivered to, or posted by prepaid registered mail addressed to, the above addresses. Notice given in any such manner shall be deemed to have been received by the party on the day of delivery or upon the 3rd day after the date of mailing provided that normal postal service is in existence at the time of mailing and for three (3) days thereafter. Any party may change its address for service from time to time upon written notice to that effect. In the event of disruption of normal postal work, any party giving notice hereunder shall be required to deliver the same.

43. The laws of the Province of Alberta shall govern the interpretation of this Contract and the jurisdiction for suite relating to any matters hereunder shall be Alberta.
44. This Contract constitutes the entire Contract between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, contracts or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Contract save as expressly set out in this Contract.
45. This Contract may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.
46. This Contract shall endure to the benefit of and be binding upon the parties herein and their respective heirs, successors and assigns.
47. Time is of the essence in this Contract, and if either party shall fail to perform the covenants on its part to be performed at fixed times or alternatively within a reasonable time for the performance thereof under the terms of this Contract, the other party may elect to terminate this Contract in accordance with the provisions set out hereinbefore.

48. If any term, covenant or condition of this Contract or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Contract shall be valid and shall be enforceable to the fullest permitted by law.
49. The parties agree all reasonable efforts shall be made to resolve all disputes under this Contract by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations. The parties agree that any dispute not resolved through negotiation shall be submitted for arbitration in accordance with the provisions of the relevant arbitration legislation in the Province of Alberta. The parties hereto agree that submission of a dispute dealt with by this section shall be a condition precedent to any application or action brought before any competent court.
50. The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under and Subcontract and to:
- a. enter into contract or written agreements with his Sub-contractors to require them to perform their work in accordance with and subject to the terms and conditions of the Contract; and
 - b. be as fully responsible to the MD for acts and omissions of his Sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

Nothing contained in the Contract shall create a contractual relationship between a Sub-contractor and the MD

51. The Contractor shall protect the Work and the MD's property and property adjacent to the site of the Work from damage and shall be responsible for damage which may arise as the result of his operations under the Contract except damage which occurs as the result of acts or omissions by the MD, other Contractor, or their agents and employees.
52. Should the Contractor in the performance of this Contract damage the Work, the MD's property or property adjacent to the site of the Work, the Contractor shall be responsible for the making good such damage at his expense.
53. The Contractor shall be responsible for the proper performance of the Work.
54. The Contractor agrees to correct promptly, at his own expense, defects or deficiencies in the Work which appear prior to and during the period of one (1) year from the date of substantial performance of the Work as defined within the *Builders' Lien Act* of the Work, or such longer periods as may be specified for certain products or work.
55. The MD shall promptly give the Contractor written notice of observed defects and deficiencies.

IN WITNESS WHEREOF the parties have executed this Contract as of the date first above written.

MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9

PER: _____

Reeve Rick Lemire

(Seal)

PER: _____

Chief Administrative Officer Rolland Milligan

(CONTRACTOR)

Witness

PER: _____

(Seal)

Witness

PER: _____