

# CONSTRUCTION CONTRACTOR AGREEMENT

## 2020 GRAVEL HAUL

AGREEMENT No:

THIS AGREEMENT made the \_\_\_ day of \_\_\_\_\_.

BETWEEN:

**BEAVER COUNTY**

a municipal corporation incorporated under the laws of the Province of Alberta  
(the "County")

OF THE FIRST PART

-and-

\_\_\_\_\_  
(the "Contractor")

OF THE SECOND PART

WHEREAS the County requires the services of the Contractor as an independent contractor, in connection with the services as set out in Schedule "A";

AND WHEREAS the County and the Contractor have reached agreement with respect to the terms and conditions under which the Contractor will provide such services to the County;

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

**1. DEFINITIONS**

In this Agreement:

- (a) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in the Province of Alberta;
- (b) "Change Directive" means a written request by the County to modify the scope of the Services;
- (c) "County Property" means the Work Product and all information, records or materials, regardless of form, and including, but not limited to, any copyright, patent, industrial design process or trademark, acquired or produced under this Agreement by the Contractor, or provided by the County for use by the Contractor;
- (d) "Event of Default" means, with respect to either party:
  - (i) when one party to this Agreement neglects or fails to observe, perform or comply with any of its obligations or covenants pursuant to this Agreement, and:
    - (A) such neglect or failure is not cured within 30 days after being required in writing to do so by the other party, or

- (B) if such neglect or failure is not capable of being cured within 30 days as aforesaid but can be cured within a commercially reasonable period of time by a commercially reasonable effort by such party, such party has not commenced to cure such neglect or failure within the said 30 day period and has not continued to effectively and diligently cure such neglect or failure within such commercially reasonable period of time;

with respect to the Contractor, if:

- (ii) an assignment of its assets for the benefit of its creditors or makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;
  - (iii) a petition in bankruptcy is filed and presented against the Contractor or a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Contractor;
  - (iv) ceases or threatens to cease to carry on its business;
  - (v) an execution, sequestration, extent or other process of any court becomes enforceable against the Contractor or a distress or analogous process is levied upon the property of the Contractor that is not cured within sixty (60) days; or
  - (vi) any of the representations or warranties given hereunder are found to be incorrect or untrue and, as result, have a material, adverse effect upon the provision of the Services;
- (e) "Fees" means the fees to be paid by the County to the Contractor as set forth in Schedule "B" hereto;
- (f) "Force Majeure" means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall be deemed not to be a Force Majeure;
- (g) "Hazardous Substance" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
- (i) any form of radioactive materials;
  - (ii) explosives;
  - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
  - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
    - (A) endangers the health, safety or welfare of persons or the health of animal life;
    - (B) interferes with normal enjoyment of life or property; or
    - (C) causes damage to plant life or to property; and
  - (v) substances declared to be hazardous, toxic or a pollutant or contaminant under any law or regulation now or hereafter enacted or promulgated by any governmental

authority having jurisdiction over the parties hereto.

- (h) "Security" means:
  - (i) a performance bond in the amount of 50% of the value of the estimated total value of the contract supply of gravel or gravel haulage, in form and content acceptable to the County in its sole and unfettered discretion;
  - (ii) a labour and materials bond in the amount of 50% of the value of the estimated total value of the contract supply of gravel or gravel haulage, in form and content acceptable to the County in its sole and unfettered discretion;
- (i) "Services" means those activities identified in Schedule "A" hereto;
- (j) "Term" means the period of time commencing on \_\_\_\_\_ and ending on \_\_\_\_\_, subject to extension or earlier termination as set forth herein; and
- (k) "Work Product" means all records, materials, reports, documentation, designs, inventions, discoveries, improvements, software, copyright, know-how or other intellectual property, whether or not patentable or copyrightable, and other items made, prepared or produced for the County by or on behalf of the Contractor or any of its employees and sub-contractors as part of the performance of its obligations hereunder (whether then provided or delivered to the County or not), including related materials, regardless of media or format.

2. **OBLIGATIONS**

The Contractor shall:

- (a) upon the execution of this Agreement, deliver the Security to the County;
- (b) perform the Services to the sole satisfaction of the County and in accordance with and subject to the terms and conditions contained in this Agreement;
- (c) perform all of its obligations contemplated hereunder in strict compliance with all County Bylaws, Policies and Procedures, including, but not limited to, security policies, procedures and regulations, in force from time to time;
- (d) provide qualified staff to provide the Services;
- (e) provide all materials, equipment, supplies, tool, implements and transportation necessary to perform the Services, unless otherwise expressly stated in this Agreement;
- (f) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, which, without limiting the generality of the foregoing, shall include the provisions of the *Occupational Health and Safety Act* and the *Environmental Protection and Enhancement Act*, all as amended from time to time, and the Contractor shall cause all of its employees and approved subcontractors to be so bound;
- (g) if any personal information is provided by the County to the Contractor under this Agreement, keep such personal information confidential, use such personal information only for the purposes for which it has been provided for and ensure that appropriate security measures are in place to protect such personal information from any unauthorized use or disclosure, in accordance with the *Freedom of Information and Protection of Privacy Act* and *Personal Information Protection Act* and all other applicable federal, provincial and municipal legislation and related regulations,

- (h) obtain and maintain at its sole expense all necessary permits, licenses, consents and approvals required by all authorities having jurisdiction incidental to the performance of the Contractor's obligations under this Agreement;
- (i) pay all fees and all other costs incidental to the performance of the Contractor's obligations under this Agreement;
- (j) provide all such written and verbal reports as required by the County on the progress of the Services;
- (k) make available such information, including data and documents, to the County as reasonably required by the County to allow the County to evaluate the quality and progress of the Services;
- (l) upon receipt of request from the County, provide evidence of full compliance with all requirements of the *Workers' Compensation Act* to and including the dates of such requests, such evidence to include the Contractor and any and all subcontractors;
- (m) maintain complete and accurate books, records, and accounts of all costs and expenditures related to the performance of the Services in accordance with generally accepted accounting principles and make such records available to the County for inspection, reproduction, audit or any other reasonable purpose at the County's request. The Contractor shall ensure that these records are not destroyed without the County's written authorization for a period of 3 years after the end of the Term or any renewals thereof;
- (n) be the "prime contractor", as the term is defined in the *Occupational Health and Safety Act* (Alberta), for the Services and as such, the Contractor acknowledges its responsibilities as the "prime contractor" for coordinating safety for the Services, including its own workers as well as those of subcontractors, utilities providers, suppliers, inspectors, and all other parties performing work in connection with the Services;
- (o) as the "prime contractor", shall implement a system or process to ensure compliance with the *Occupational Health and Safety Act*, Regulation and Code by contractors present on the worksite. Prior to performance of the Services in this Agreement the Contractor shall submit to the County a copy of a valid "Certificate of Recognition" or occupational health and safety program outlining this system or process;
- (p) in the event that the worksites of two (2) or more "prime contractors" coincide, they shall jointly develop, agree and submit a safety plan for the affected worksite. If the "prime contractors" cannot agree upon the safety plan, work at the affected worksite shall cease and the County shall decide which "prime contractor" shall be responsible for resolving the disputed issue. The County's decision is final and binding upon the "prime contractor";
- (q) provide to the County a written safety plan. The safety plan shall address:
  - (A) the hazards of the services to be performed under this contract;
  - (B) the control measure that shall be implemented to eliminate or reduce the risks of the hazards to a reasonable level; and
  - (C) the first aid/medical services and measures that shall be activated in event of an emergency.

For other hazards identified during the performance of the Agreement, the County may also request that safety plans be provided.

All safety plans shall be reviewed by the County before work proceeds. The County reserves

the right to review documents and monitor the Contractor's compliance to the safety plan. Review of the safety plan and monitoring for compliance does not relieve the Contractor of its responsibilities as defined in the *Occupational Health and Safety Act*, Regulation and Code; and

- (r) not permit any builders' or other liens to be registered against the title to any lands affected by the performance of the obligations of the Contractor hereunder. Upon the registration of such a lien, the Contractor shall obtain a discharge thereof within thirty (30) days after the Contractor has notice of the lien. The County shall have the right, but in no way shall it be obligated, to obtain a discharge of the lien, whereupon all sums paid by the County to procure the discharge, as well as the County's costs of obtaining such discharge including, without restriction, legal and other costs on a solicitor and his own client full indemnity basis, shall be repaid forthwith upon demand by the Contractor.

If the Contractor fails to perform any of its obligations hereunder, the County may deliver written notice to the Contractor that such failure exists and the nature of such failure. The Contractor shall forthwith take all necessary steps to cure such failure. If the Contractor fails to cure the failure to the satisfaction of the County, acting reasonably, the County shall be entitled to call upon the Security without prejudice to any other remedies that may be available to the County at law, equity or otherwise.

### 3. CHANGES IN THE SERVICES

The County may, at any time during the Term, deliver to the Contractor a Change Directive without invalidating the Agreement. Within five (5) Business Days following receipt of a Change Directive, the Contractor shall deliver a written quotation to the County that represents the total adjustment to the Fees if the Services are modified pursuant to the Change Directive. Within five (5) Business Days following receipt of the quotation from the Contractor, the County may deliver written notice to the Contractor to implement the changes contemplated in the Change Directive and the relevant written quotation, failing which no changes shall be implemented. If the County delivers such written notice to the Contractor a change to the Services and the Fees shall be made accordingly, and the Parties agree to perform their respective obligations in accordance with the terms, conditions and intent of this Agreement, as amended hereunder.

### 4. HAZARDOUS SUBSTANCES

The Contractor shall:

- (a) not utilize any Hazardous Substance, nor allow any Hazardous Substance to be placed, held, located or disposed of on, under or at any lands (including any lands owned by the County, or under the County's care, control or management), without the prior written consent of the County, which consent may be arbitrarily withheld;
- (b) not allow any lands (including any lands owned by the County, or under the County's care, control or management) to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the handling, disposal and emission of any Hazardous Substance;
- (c) to the extent that any Hazardous Substance is, subject to the County's consent as herein provided, utilized, placed, held, located or disposed of on, under or at any lands (including lands owned by the County or under the County's care, control or management) in accordance with the terms hereof:
  - (i) comply with, or cause to be complied with, all applicable laws and regulations relating

to the use, storage and disposal of the Hazardous Substance, as well as all terms or conditions required by the County as part of the aforementioned consent; and

- (ii) at the request of the County, provide evidence to the County of compliance with all applicable laws, regulations and other requirements, such evidence to include inspection reports and such tests as the County may reasonably require, all at the Contractor's expense.

**5. PAYMENT OF FEES**

The County will pay the Contractor the Fees following receipt of invoice and in accordance with the payment terms set forth in Schedule "B" hereto, plus any applicable GST thereon.

**6. TAXES AND DEDUCTIONS**

The Contractor shall be responsible to collect, remit, and pay all source deductions, Canada Pension contributions, Employment Insurance premiums, taxes and GST and all other required payments, contributions or deductions under all applicable laws and authorities including, but not limited to, any assessments levied pursuant to the *Workers' Compensation Act* (Alberta) which arise or may hereafter arise with respect to the performance of the obligations of the Contractor under this Agreement and the County shall have no liability for the same.

**7. EXTENSION OF TERM**

The Term may be extended by the parties for a further 1 (one) year to a maximum of not more than 2 (two) renewals which, when combined do not extend the original term more than a period of two (2) years from the end of the original Term and any renewal shall commence on the day immediately following the last day of the Term provided that the parties mutually agree to such extension on or before that date, which is three (3) months prior to the expiry of the Term. If such mutual agreement is not made by the required date, this Agreement shall expire on the last day of the Term and shall be of no further force and effect. If this Agreement is extended, all terms and conditions, with the exception of this extension clause, contained herein shall remain in full force and effect.

**8. RIGHT OF THE CONTRACTOR TO ACCEPT CONCURRENT RETAINERS**

The Contractor may accept concurrent contracting retainers from other parties during the Term.

**9. WARRANTIES AND REPRESENTATIONS**

The Contractor hereby represents and warrants with and to the County, and acknowledges that the County is relying upon such representations and warranties, that:

- (a) 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; and
- (b) if the obligations of the Contractor hereunder require the supply of software or any other intellectual property to the County;
  - (i) such software or other intellectual property does not, as of the date of this Agreement, infringe any patent, copyright, trade secret, trade-mark, moral rights or other legal or equitable intellectual property rights of any third party and that no one has alleged that such software or other intellectual property infringes any patent, copyright, trade

secret, trade-mark or other legal or equitable intellectual property rights of any third party; and

- (ii) the Contractor has obtained waivers of moral rights from all authors of the such software or other intellectual property to the effect that the authors waive all moral rights that the authors have or may acquire in respect of such software or other intellectual property as against the County and any third party that may be retained by the County to work with such software or intellectual property;
- (c) the Contractor is a resident of Canada for income tax purposes and understands that certain holdbacks may be required by Canadian law; and
- (d) the Contractor is experienced in the performance of all aspects of the Services, and is capable of performing the Services in accordance with the terms, covenants and conditions contained in this Agreement.
- (e) the Contractor agrees to correct promptly, upon receipt of written notification from the County, and in any event no later than 60 days from the receipt of such written notification, and at his own expense, defects or deficiencies that may arise in respect of the Services to be performed by the Contractor which appear within one year of the expiry of the Term of the Contract (the "Warranty Period"), or as the said term may be extended by the mutual agreement of the parties hereto.

#### 10. INSURANCE

Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall obtain and maintain in force during the Term the following insurance, all satisfactory to the County, acting reasonably;

- (a) standard automobile insurance policy providing third party liability coverage for bodily injury and property damage insurance for limits of at least **FIVE MILLION (\$5,000,000.00) DOLLARS** inclusive and in respect of any one claim 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 providing coverage of at least **FIVE MILLION (\$5,000,000.00) DOLLARS** inclusive and 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:
  - (i) non-owned automobiles;
  - (ii) independent subcontractors;
  - (iii) contractual liability including this Agreement;
  - (iv) broad form property damage endorsement; and
  - (v) products and completed operations coverage.
- (c) Workers' Compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta; and
- (d) such other insurance as the County may, from time to time, reasonably require. The Contractor shall cause all insurance coverage maintained by the Contractor in accordance with this Agreement, except for errors and omissions coverage (if required), to name the County and any other party designated by the County as an additional insured and to contain a severability of interests or cross liability clause. The Contractor shall cause all insurance coverage to provide that no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days' written notice of such cancellation to the County. The Contractor shall provide the County with evidence of insurance satisfactory to the County prior to the commencement of the

Services in the form of a Certificate of Insurance attached hereto as Schedule "C". The cost of all of the insurance required to be held by the Contractor as set forth herein shall be borne by the Contractor.

The Contractor acknowledges that these are the minimum insurance requirements that have been established by the County. No representation or warranty of any kind is made by the County as to the completeness or suitability of this insurance and the Contractor shall determine and satisfy itself that it has appropriate and sufficient coverage to satisfy its own risk and insurance requirements, and to cover its obligations under this Agreement.

The Contractor shall require and ensure that each subcontractor provide evidence of comparable insurance to that set forth in this section 10 and shall provide evidence of same to the County upon request.

**11. INDEMNITY**

The Contractor shall at all times and without limitation, be fully liable for, and shall indemnify and save harmless the County, its councillors, officers, employees, contractors, agents and representatives from and against all liabilities, losses, injuries, 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 County, its councillors, officers, 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, relating to, resulting from or arising out of all or any of the following:

- (a) the misconduct, negligent action or negligent failure to act, as the case may be, of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors);
- (b) the costs of repairs, clean-up or restoration paid by the County and any fines levied against the County or the Contractor;
- (c) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Contractor to be fulfilled, kept, observed or performed, as the case may be; or
- (d) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors).

The provisions of this Section are in addition to and shall not prejudice any other rights of the County at law or in equity. This Section shall survive the termination or expiry of this Agreement for any reason whatsoever.

**12. CONFIDENTIAL INFORMATION AND OWNERSHIP OF COUNTY PROPERTY**

All Work Product and all other information and data received and compiled by the Contractor while performing the Services shall be treated as confidential for the benefit of the County, shall constitute a part of County Property, and shall not be disclosed or made known to any other person except as authorized by the County.

The Contractor acknowledges and agrees that the County is the sole legal and beneficial owner of any and all of the County Property.



This Section shall survive the termination or expiry of this Agreement.

**13. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- 13.1 Notwithstanding the termination or expiry of this Agreement, the Contractor acknowledges that information and records compiled or created under this Agreement which are in the custody of the Contractor are subject to the *Freedom of Information and Protection of Privacy Act*. If a request is received for any of these records, the Contractor shall forward the information and records, at the Contractor's expense, to the County within **five (5)** calendar days of official notification by the County.
- 13.2 The County 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 Services.
- 13.3 The Contractor shall retain all information and records received or compiled by the Contractor in accordance with this Agreement for a period of SIX (6) months from the date of termination of this Agreement, after which the information and records will be transferred to the possession of the County.

**14. LIQUIDATED DAMAGES**

- 14.1 Time is to be the essence in this Contract and the completion date set out in clause 1(i) of this Contract shall be strictly enforced. The contractor shall pay to the County as estimated liquidated damages and not as a penalty, the sum of \$1,000 for each day that any portion of the Services remains incomplete after the completion date, the sum being a fair estimate of the actual damages the County will incur if the Services are not completed by the said completion date. The County may, in its sole discretion, set the said liquidated damages off against any amount owing by it to the Contractor.

**15. SET OFF RIGHT TO BENEFIT OF THE COUNTY**

- 15.1 Where the County determines, in its sole discretion, that the performance of any of the obligations of the Contractor are not in accordance with this Agreement, the County may require the Contractor by written notice to remedy such deficiency at the Contractor's sole expense and within such time as stipulated by the County.
- 15.2 If such deficiency is not remedied to the satisfaction of the County, the County shall have the right, but shall be under no obligation, to remedy the deficiency to the County's satisfaction at the sole expense of the Contractor.
- 15.3 The Contractor shall be liable for all costs incurred by the County to remedy such deficiency including, but not be limited to, all legal fees and disbursements on a solicitor and his own client full indemnity basis.
- 15.4 In addition to and without prejudice to all other rights of the County, howsoever arising, if the Contractor fails to make any payment to any third party for which the County is or, acting reasonably, determines that it will be liable or subject to action for, as the case may be, and the Contractor has not made the payment within ten (10) days of being requested to do so by the County, the County may pay such third party on behalf of the Contractor.
- 15.5 Any amount paid or incurred by the County under this Section shall constitute a debt due and owing to the County. The County may: 1) call upon the Security to an amount equal to the debt due and owing to the County; or 2) set-off such amount against any sum of money owed by the County to the Contractor, as such may exist from time to time, until all amounts owing to the

County have been completely set off, without further action or notice to the Contractor.

- 15.6 The exercise by the County of the rights set out in this Section shall not limit or prejudice any other rights of the County, howsoever arising and the County's rights set out in this Section shall survive the expiry or termination of this Agreement.

**16. TERMINATION**

- 16.1 This Agreement may be terminated at any time by the County by giving **60 days** written notice to the Contractor, and the Contractor's right to consideration shall be limited to payment for the Services performed and not previously paid for. The Contractor specifically agrees that the notice and consideration set forth in this paragraph 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 of this Agreement.
- 16.2 If such notice is given, the Contractor shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, provide the County with a written report on the Services rendered to the time of termination.
- 16.3 Except for any such report, the Contractor shall not perform any further Services subsequent to the effective date of termination.

**17. EVENT OF DEFAULT**

Upon the occurrence of an Event of Default by one Party, the other Party (the "Non-Defaulting Party" may, without prejudice to any of its other rights at law or equity, do one or more of the following:

- (a) pursue any remedy available to the Non-Defaulting Party in law or in equity, it being acknowledged that specific performance, injunctive relief, mandatory or otherwise or other equitable relief may be the only actual remedy;
- (b) terminate this Agreement by written notice thereof given to the Defaulting Party, in which case the Defaulting Party shall have no claim for payment or otherwise against the Non-Defaulting Party; or
- (c) waive the Event of Default, provided however, that any such waiver shall not operate as a waiver of any subsequent or continuing the Event of Default.

**18. DELIVERY OF COUNTY PROPERTY ON EXPIRY OR TERMINATION**

On or before the effective date of the earlier of:

- (a) the expiry of this Agreement; or
- (b) the termination of this Agreement

the Contractor shall unconditionally deliver County Property to the County.

19. **CONFLICT OF INTEREST**

The Contractor:

- (a) shall conduct their duties related to the Agreement with impartiality and shall, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring their impartiality into question;
- (b) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of their duties related to the Agreement, that causes, or would appear to cause to the County in its sole discretion, a conflict of interest, and
- (c) shall have no financial interest in the business of a third party that causes, or would appear to cause in the County's sole discretion, a conflict of interest in connection with the performance of their duties related to the Agreement, and if such financial interest is acquired during the term of the Agreement, the Contractor shall promptly declare it to the County.

A breach of the conflict of interest clauses of this Agreement constitutes immediate grounds for termination of the Agreement, should the County deem such action appropriate.

In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the Contractor's performance under this Agreement, the Contractor shall immediately disclose such matter to the County in writing. Upon making such disclosure the Contractor shall not commence or continue performance of the Services, without the written consent of the County. If the County is of the opinion the Contractor is in a conflict of interest as a result of the Contractor's notice or as a result of any other information brought to the County's attention, the County may terminate this Agreement by providing written notice to the Contractor.

20. **FORCE MAJEURE**

If the parties shall fail to meet their respective obligations hereunder within the respective time prescribed therefore and such failure shall be directly caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party, provided however, in such event, such party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.

21. **GENERAL**

21.1 Contractor's Designate

The Contractor shall designate a person acceptable to the County to act as liaison on behalf of the Contractor in respect of any required or desirable communication with the County under this Agreement. Until further written notice is provided, the Contractor's designate is Gary Zeitner.

## 21.2 Notices

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:

- (a) Beaver County  
Box 140  
Ryley, Alberta T0B 4A0  
Attention: Dan Blackie  
Fax: (780) 663-3602  
E-mail: [dblackie@beaver.ab.ca](mailto:dblackie@beaver.ab.ca)
- (b) Contractor Name and Address

or to such other address as each party may from time to time direct in writing.

Notice shall be served by one of the following means:

- (a) by delivering it to the party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such party;
- (b) if delivered to a corporate party, by delivering it to the address specified in (a) during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (c) by fax or email to the party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
  - (i) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
  - (ii) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (d) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

## 21.3 Governing Law

This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

## 21.4 Time of Essence

Time shall be of the essence of this Agreement.

## 21.5 Preamble and Schedules

The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedule(s) hereto are expressly incorporated into and form part of this Agreement:

- Schedule "A" – Services
- Schedule "B" – Fees
- Schedule "C" – Certificate of Insurance

#### 21.6 Headings

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

#### 21.7 Relationship between Parties

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

#### 21.8 No Authority

Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.

#### 21.9 Agreement Entire Relationship

This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

#### 21.10 Further Assurances

Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

#### 21.11 Amendments

This Agreement 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.

#### 21.12 Waiver

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 of 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.

### 21.13 Counterparts

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

### 21.14 Statutory Reference

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

### 21.15 Unenforceability

If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement 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 Agreement shall be valid and shall be enforceable to the fullest permitted by law.

### 21.16 Survival

The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of the Term shall survive the termination or expiry of the Term and shall not be merged therein or therewith.

### 21.17 Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

### 21.18 Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.

### 21.19 GST Exclusive

All amounts payable by the County to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the County will, in addition the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. The Contractor's GST number is \_\_\_\_\_.

### 21.20 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body

corporate where the fact or context so requires and the provisions hereof.

21.21 Binding Effect

This Agreement shall ensure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

21.22 Assignment

The Contractor shall not assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the County, which consent may be arbitrarily withheld.

21.23 Requests for Consent

Each party shall provide any decision with regard to a request for consent in a timely manner.

21.24 Construction

This Agreement shall be interpreted according to its fair construction and shall not be construed as against any party hereto.

21.25 Independent Legal Advice

Each party hereto acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the other party hereto to obtain independent legal advice and other professional advice prior to executing this Agreement. By executing this Agreement, each party hereto acknowledges and agrees that such party hereto has had the opportunity to seek independent legal and other professional advice prior to executing this Agreement, and:

- (a) has obtained such independent legal and other professional advice; or
- (b) has waived the right to obtain such independent legal and other professional advice.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

**BEAVER COUNTY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**CONTRACTOR**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Signed Sealed and Delivered by **CONTRACTOR** in )  
the presence of: )  
OF \_\_\_\_\_, THIS \_\_\_\_ DAY OF )  
\_\_\_\_\_, 2019. )

\_\_\_\_\_) )  
Signature )

\_\_\_\_\_  
**PRINTED NAME OF CONTRACTOR**

\_\_\_\_\_) )  
Printed Name )

\_\_\_\_\_) )  
Address )

\_\_\_\_\_) )  
Occupation )



## **SCHEDULE "A"**

### **SERVICES**

#### **1. Scope**

The Contractor shall perform and deliver the Services in accordance with the terms of this Agreement and according to the following description, conditions, standards, requirements and provisions:

#### **2. Term**

The Services shall be completed in accordance with the County's requested time lines, as communicated by the County to the Contractor from time to time.

#### **3. County's Right to Inspect the Services**

The County is entitled to inspect the Services whether in preparation or completed and delivered, including but not limited to taking random gravel samples for the purposes of testing for compliance with the Contract specifications, and is entitled to order re-execution at the Contractor's expense of any of the Services which in the County's sole discretion do not adhere to the descriptions, terms, conditions and specifications contained in this Agreement.

#### **4. Personnel to Perform the Services**

The parties acknowledge and agree that only the following personnel shall be engaged by the Contractor to perform the Services:

- i. Employees of the Contractor
- ii. Subcontractors of the Contractor

No other personnel may be engaged by the Contractor to perform the Services without the prior written consent of the County.

## SCHEDULE "B"

### FEES

1. **Fees**

2. **Invoices**

The Contractor shall submit a written, signed invoice and time sheet summaries to the County on a monthly basis.

3. **Payment of Invoices**

Subject to the following, the County shall pay the Contractor the amount due no later than 30 Business Days from the date receipt of the invoice.

(a) Payment of amounts that become payable to the Contractor under this Agreement shall, in any event, be subject to the following:

(i) the County may withhold any amount that it deems appropriate until it is satisfied that the Contractor has satisfactorily performed the Services and complied with the obligations of this Agreement; and

(ii) the County may retain up to a fifteen (15%) percent holdback until the later of sixty (60) days following satisfactory completion of the Services, and the Contractor providing a statutory declaration or other evidence satisfactory to and in a form required by the County certifying that all debts, claims or liabilities for labour, equipment, materials, services, Workers' Compensation Board contributions and other obligations arising from or related to the performance of the Services have been paid in full.

(b) Release of the holdback or any part thereof or the making of any payment by the County shall not be construed as an acknowledgement or admission by the County that no default or deficiency exists in the Contractor's performance or delivery of the Services pursuant hereto, and shall not prevent the County from later claiming for any default or deficiency.

(c) If in the opinion of the County, the Contractor:

(i) fails to perform the Services in accordance with the terms and conditions of this Agreement, or

(ii) fails to complete the Services or to supply any materials required under this Agreement on or before the end of the Term,

the County shall, in addition to any sum withheld pursuant to any holdback provisions, be entitled to withhold all or any of the monies remaining to be paid under this Agreement and to enforce and realize upon the Security.

4. **Minimum/Maximum Hours**

While there shall be no minimum or maximum hours as part of this Agreement to provide the Services, the Contractor agrees that it shall use its best efforts to perform the Services efficiently and effectively, and as such in a manner that minimizes the costs to the County.

**SCHEDULE "C"**

**SIMPLIFIED CERTIFICATE OF INSURANCE**

(Only this Certificate will be accepted)

<b>Name and Address of Named Insured</b>
<b>Name and Address of Agent/Broker</b>
<b>Nature of Work</b>

**Mandatory Coverage**

Schedule of Coverage	Insurance Company	Policy Number	Effective Date	Expiry Date
A. General Liability				
B. Automobile Liability				

**Particulars of Coverage**

	Limits of Liability
General Liability	
Non-owned Automobile	
Automobile Liability	

**Additional Coverage if required by the County for this Agreement**

Professional Liability	Insurance Company	Policy Number	Effective Date	Expiry Date

The Undersigned hereby represents to Beaver County that the above policies are accurately described and have been issued to the Named Insured. The Undersigned further represents that the policy described as A. General Liability is endorsed to provide thirty (30) days' notice of cancellation or material change restricting coverage, to Beaver County at:  
(address)

This certificate is executed and signed by the insurer, or authorized Agent/Broker.

<b>Signature of Representative</b>

<b>Name of Insurance Company or Agent/Broker</b>

<b>Name of Representative (Please Print)</b>

<b>Telephone</b>	<b>Date</b>

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

CANADA ) I, \_\_\_\_\_  
          ) OF THE \_\_\_\_\_ OF \_\_\_\_\_, IN  
PROVINCE OF ) THE PROVINCE OF \_\_\_\_\_  
          ) )  
ALBERTA TO WIT: ) MAKE OATH AND SAY:

1.           That I am an officer, director or agent of \_\_\_\_\_ named in the within or  
annexed instrument.

2.           That I am authorized by \_\_\_\_\_ to execute the instrument without  
affixing a corporate seal.

SWORN BEFORE ME AT THE \_\_\_\_\_ )  
OF \_\_\_\_\_, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ )  
\_\_\_\_\_, 2019. )  
          ) )  
          ) )

\_\_\_\_\_  
A COMMISSIONER OF OATHS IN AND FOR )  
THE PROVINCE OF ALBERTA )  
          ) )

**AFFIDAVIT OF EXECUTION**

CANADA ) I, \_\_\_\_\_  
 ) of the \_\_\_\_\_ of \_\_\_\_\_, in  
 PROVINCE OF ) the Province of Alberta,  
 ) MAKE OATH AND SAY THAT:  
 ALBERTA TO WIT: )

1. I was personally present and did see \_\_\_\_\_ named in the within (or annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
  
2. The same was executed at the \_\_\_\_\_ of \_\_\_\_\_ in the Province of Alberta, and that I am the subscribing witness thereto.
  
3. I know the said \_\_\_\_\_ and he/she is, in my belief, of the full age of eighteen (18) years.

SWORN BEFORE ME AT THE \_\_\_\_\_ )  
 OF \_\_\_\_\_, THIS \_\_\_\_\_ DAY OF )  
 \_\_\_\_\_, 2019. )  
 )  
 )  
 )  
 )  
 )

\_\_\_\_\_  
 A COMMISSIONER OF OATHS IN AND FOR )  
 THE PROVINCE OF ALBERTA )  
 )