



*Valley County*

501 Court Square #1  
Glasgow, Montana 59230

Phone: (406) 228-6219  
Fax: (406) 228-9027

## **AGREEMENT**

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between **VALLEY COUNTY**, a political subdivision of the State of Montana, by and through its Board of Commissioners, hereafter called **COUNTY**, and \_\_\_\_\_, having its principal office at, hereafter called **CONTRACTOR**.

### **WHEREAS:**

1. The **COUNTY** has called for bids for the crushing of 94,500 tons of gravel to an aggregate size of 7/8-inch minus crushed road gravel.
2. The **CONTRACTOR** has been awarded the contract following the submission of its bid.
3. The **COUNTY** and the **CONTRACTOR** wish to specify the terms of their performance as described herein.
4. These recitals are intended as a substantive part of this Agreement.

**NOW, THEREFORE**, for and in consideration of the **MUTUAL PROMISES** of the parties and other good and valuable consideration, the parties hereby **AGREE** as follows:

### **I. SERVICES**

The **CONTRACTOR** hereby agrees to provide to the **COUNTY** with 94,500 tons of gravel. All said gravel located in this pit shall be crushed and stockpiled in an aggregate size of 7/8-inch minus, all at the so-called **Reddig Pitt**, which is located on the following real property, located in Valley County, State of Montana, and is more particularly described as follows:

#### **TOWNSHIP 31 NORTH, RANGE 44 EAST, SECTION 25.**

The **COUNTY** shall be the permit holder at all the sites and shall be responsible for the stripping and reclamation of the sites as provided by Montana law.

Nothing in the foregoing paragraphs shall be construed as directing the performance of the work or prescribing how the **CONTRACTOR** performs its services.

The **CONTRACTOR** is an independent contractor and not an employee of the **COUNTY**. No statement contained herein shall be construed so as to find the **CONTRACTOR** an employee of

the **COUNTY**, and the **CONTRACTOR** shall be entitled to none of the rights, privileges or benefits of Valley County employees except as otherwise may be stated herein.

## **II. TERMS OF AGREEMENT**

The term of this Agreement shall commence on or about the \_\_\_\_\_ and ending on July 30, 2024. This contract may be extended at the discretion of the **COUNTY**.

## **III. COMPENSATION**

1. Base Compensation. The **CONTRACTOR** shall receive the sum of \$ \_\_\_\_\_ per ton for the gravel. This price shall include all mobilization and crushing. The gravel shall be stockpiled. The **CONTRACTOR** will be paid upon the completion of the 94,500 tons of crushed gravel.

## **IV. EQUIPMENT**

The **CONTRACTOR** shall provide all equipment and supplies necessary to properly perform its obligations hereunder.

The **CONTRACTOR** may store its equipment and supplies on-site during the period of this Agreement. All such stored equipment and supplies are to be removed upon the completion of the **CONTRACTOR'S** performance hereunder. Such storage shall not interfere with the **COUNTY'S** business needs, which shall take priority over all other considerations.

The **CONTRACTOR** is expected and acknowledges its responsibility to maintain on-hand necessary protective garments and equipment for its employees as required by state and federal law and regulation. The failure to maintain such equipment on-site shall be considered a material breach of this contract.

The **CONTRACTOR** shall maintain all necessary training and employment records and documentation as required by Mine Safety and Health Administration (MSHA), Montana Department of Public Health and Human Services (DPHHS), other federal or state agency or department, and any applicable state or federal legislation or regulations. The failure to maintain such records shall be considered a material breach of this Agreement.

## **V. LICENSURE**

The **CONTRACTOR** will obtain and maintain for the duration of this Agreement a proper Montana State Contractor's License and will maintain such license and registration to properly conduct business as whatever business entity the **CONTRACTOR** chooses. The **CONTRACTOR** shall provide a copy of all necessary licenses and certification to the **COUNTY** for its records prior to beginning performance under this Agreement.

## **VI. INSURANCE**

The **CONTRACTOR** will provide and maintain liability insurance coverage in the minimum amount of **\$1,000,000.00**. The **COUNTY** shall be named as an additional insured on any policy of insurance under this Agreement. The **CONTRACTOR** shall maintain proper insurance coverage for its vehicles and equipment. The **CONTRACTOR** shall provide the **COUNTY** with copies of all policies of insurance prior to beginning performance hereunder.

The **CONTRACTOR** is responsible to maintain worker's compensation coverage for itself and for any employees of **CONTRACTOR**, provided, however, that nothing herein shall preclude **CONTRACTOR** from exempting itself from worker's compensation coverage if permitted by Montana law and regulations.

### **VIII. WARRANTIES**

The **CONTRACTOR** agrees that it will:

- A. Perform all services hereunder in a good and professional manner;
- B. Obtain and maintain all required licenses, insurance and coverage specified herein and customary in the industry;
- C. Not assign or subcontract this Agreement without the **COUNTY'S** written consent.

### **IX. PERSONNEL**

The **CONTRACTOR** warrants and represents that all personnel employed to provide services hereunder are completely trained and fully qualified to provide such services. The **CONTRACTOR** agrees to provide the **COUNTY** with such information regarding its staff as is required by the **COUNTY** to verify that all services are being rendered by trained and competent people. **CONTRACTOR** shall not be required to provide any information regarding **CONTRACTOR** or its staff that is confidential under the law or violates the **CONTRACTOR'S** or its staff's right of privacy under the Montana Constitution.

The **CONTRACTOR** acknowledges that it shall comply with the **COUNTY'S** policies against discrimination and that no person shall be excluded from employment on the basis of race, creed, color, sex, marital status, age disability or national origin.

### **X. DEFAULT AND TERMINATION**

In the event that **CONTRACTOR** fails to timely and competently provide services, as set forth herein, or fails to timely perform any other term of this Agreement, the **COUNTY** may give **CONTRACTOR** written notice of such default, detailing the nature of the default and the actions of **CONTRACTOR** required to cure such default, and **CONTRACTOR** shall have fifteen (15) days from the date of such notice to correct the default. If **CONTRACTOR** does not fully correct the default within fifteen (15) days of the date of such notice, the **COUNTY** may, without further notice, terminate this Agreement and it shall have no further force and effect.

Notice shall be served upon **CONTRACTOR** by certified mail, return receipt requested, addressed to **CONTRACTOR** \_\_\_\_\_

Notice shall be deemed given as of the date of its deposit into the United States Mail. The failure or forbearance of the **COUNTY** to give notice of default shall not constitute a waiver of further defaults by **CONTRACTOR**.

#### **XI. INTEGRATION AND CHOICE OF LAW**

This document comprises the total of the Parties' Agreement and supersedes any promise, representation or warranty not expressly set forth herein, and the parties acknowledge that they are not relying upon any such extraneous material. Amendment to or modification of this Agreement shall not be effective unless the same is written and the notarized signature of the Parties affixed thereto. The Parties acknowledge that they have had opportunity to have this document reviewed by counsel and have fully reviewed and comprehended the Agreement.

The Parties agree that this Agreement shall be construed according to the laws of the State of Montana, and that venue shall be proper in the Montana Seventeen Judicial District Court, Valley County. In the event that either Party institutes legal proceedings to enforce any of the provision of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party, all costs and expenses incurred by the prevailing Party in such proceedings, including reasonable attorney's fees.

#### **XII. INDEMNIFICATION**

The **CONTRACTOR** will indemnify, defend and hold harmless the **COUNTY** from any liability by reason of any act of the **CONTRACTOR**, its employees, agents, permitted assignees or subcontractors.

The **COUNTY** will indemnify, defend and hold harmless the **CONTRACTOR** from any liability by reason of any intentional act or gross negligence of the **COUNTY**, its officers, agents or employees.

#### **XIII. SEVERABILITY**

If any part of this Agreement is for any reason held to be contrary to law, such holding shall not affect the remaining portions of this Agreement.

#### **XIV. ASSIGNMENT**

The **CONTRACTOR** is expected to perform its obligations under this Agreement personally or through any employee as it may from time-to-time hire. The **CONTRACTOR** shall not assign or transfer its rights under this Agreement without the prior written consent of the **COUNTY**, which consent shall not be unreasonably withheld. Any assignee or subcontractor hereunder must meet the same qualifications required of the **CONTRACTOR**.

## **XV. TIME IS OF THE ESSENCE**

Time is of the essence and is an essential part of this Agreement.

## **XVI. REMEDIES**

In the event of a dispute regarding an alleged breach of this agreement the parties will submit their claims to a mutually agreeable third-party mediator in an attempt to avoid litigation. Should mediation prove to be unsuccessful, nothing in this paragraph or elsewhere in this Agreement shall be construed to limit the right of each Party to pursue relief in any manner allowable under law.

## **XVII. CAPTIONS**

The numbered captions are for reference purposes only and are of no substantive effect.

## **XVIII. BINDING EFFECT**

This Agreement shall be binding upon the Parties, and their heirs, assigns, successors, administrators and representatives.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

BOARD OF COUNTY COMMISSIONERS  
VALLEY COUNTY, MONTANA

\_\_\_\_\_  
Mary Armstrong, Chairman

**ATTEST:**

\_\_\_\_\_  
Paul Tweten, Member

\_\_\_\_\_  
Marie Pippin

\_\_\_\_\_  
John Fahlgren, Member

\_\_\_\_\_  
(name of construction firm here)