



Contract

MD of Provost No. 52

THIS CONTRACT made the _____ day of _____, 20_____.

BETWEEN:

MD OF PROVOST NO. 52
(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 for MD (hereinafter referred to as "the Work") as outlined in the Contractor's Proposal dated **[MD to insert date]**, a copy of which is attached hereto as Schedule "A";

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:

1.1 The Work, in general terms, shall consist of:

- Gravel Crushing Operations 2010 in accordance with the Specifications set out in Schedule "A" attached hereto
- Any other work which may be requested by MD from time to time

2. The term of the Contract shall be from **[MD to insert start date]** to **[MD to insert end date]** (hereinafter referred to as the "Term").
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*, R.S.A. 2000, Chapter 0-2 and amendments thereto and Regulations thereunder or any successive legislation, and shall at all times ensure that all employees comply with the requirements of the said 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 its own employees. The Contractor shall bring to the attention of its own employees 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*.
4. The Contractor shall be responsible for the payment of all income tax, Canada Pension, employment insurance and all other required payments, contributions or deductions that arise or may hereafter arise with respect to the Work performed by the Contractor under this Contract.
5. No work shall be performed by the Contractor until the Contract has been executed by both parties hereto.
6. The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the MD's requirements.
7. The Contractor will provide qualified employees to provide the Work required under this Contract. The Contractor will provide a representative for the management and administration of the Work required by this Contract.
8. 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 amounts of such payments shall be based on actual work performed.

9. All amounts payable by the MD to the Contractor for Work hereunder shall be exclusive of any Goods and Services Tax ("GST") payable thereon and the MD shall, in addition to the amounts payable, pay to the Contractor all amounts of GST applicable thereon. The Contractor shall provide the MD with its GST Registration # _____. The MD will also be entitled to hold back the amount of 10% from any payment to the Contractor and only pay the holdback to the Contractor in accordance with the provisions of the **Builders Lien Act** in effect at the time the Work is performed. The Contractor will provide a statutory declaration prior to the release of the holdback by the MD.
10. (a) Nothing in this Contract shall be construed as:
 - (i) constituting either party as the agent, employer or representative of the other party;
 - (ii) creating a partnership; or
 - (iii) imposing upon either party any partnership duty, obligation or liability to the other party.(b) 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. 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.
13. 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.

14. 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 data, reports, and documents, 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.
15. Supporting the Contractors request for payment shall be all applicable invoices for materials, time sheets, government remittance records and such other material as the MD, acting reasonably, may require.
16. 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
 - (i) the Contractor provides a schedule to correct default acceptable to the MD; and
 - (ii) 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 Contractor'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 independent contractor to complete Work if results are not satisfactory to the MD 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.

If any work remains incomplete after the specified or adjusted completion date, the Contractor agrees to pay the M.D. an amount of **\$1,000.00 per day**, for each and every day beyond the specified or adjusted completion date that the work remains incomplete.

The M.D. will deduct assessed liquidated damages from payments due on this Contract. If there are insufficient funds to cover the liquidated damages, the M.D. will invoice the Contractor. The Contractor shall promptly pay the amounts invoiced. Should any Liquidated Damages remain unpaid after 30 days for the date of the invoice, the M.D. may recover the unpaid sum from any money due the Contractor on other Contracts or Accounts.

17. This Contract may be terminated for convenience by the MD at any time by giving forty-eight (48) hours 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.
18. The Contractor acknowledges that the MD is subject to the *Freedom of Information and Protection of Privacy Act*, RSA 2000, Chapter M25. Confidentiality for any records compiled or created under this Contract cannot be ensured by the MD. Provisions exist under the *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 *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 *Act*. If the MD receives a request for information under the *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 *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 *Act*. If the MD's response to a request under the *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 *Act*.

19. 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 *Act*. As well, the Contractor shall be responsible to provide for the protection of confidential MD records and information as required by the *Act*.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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 and bonding:

1. Personal Liability and Property Damage insurance coverage in the minimum amount of \$2,000,000.00 naming the MD as the additional insured.
2. A Performance Bond or certified cheque in an amount equal to 10% of the Tender Price

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

25. 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.
26. 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.
27. 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.
28. For the purposes of this Contract, the addresses of the parties are:

**MD of Provost No. 52
Administration Office
4504-53rd Avenue
Provost, AB
T0B 3S0**

Attention: Tyler Lawrason

AND

CONTRACTOR

[Contractor to insert name and address of contact person]

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.

29. The laws of the Province of Alberta shall govern the interpretation of this Contract and the jurisdiction for any proceeding relating to any matters hereunder shall be Alberta.
30. 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.
31. 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.

32. 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.
33. This Contract shall enure to the benefit of and be binding upon the parties herein and their respective heirs, successors and assigns.
34. 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.
35. 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.
36. 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.

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

MD OF PROVOST NO. 52

CONTRACTOR

Per: _____ c/s

SCHEDULE "A"

A. CRUSHING SPECIFICATIONS

1. Materials

- a) Only materials suitable for the production of gravel will be accepted. The use of organic materials will not be tolerated.
- b) The Successful Bidder will provide a site of sufficient size to allow for required crushing operations.

2. Crushed Gravel

All gravel produced must meet the following specifications:

	<i>Percent Passing</i>
METRIC SIEVE SIZE	Modified Spec. 4:20
40,000	-
25,000	-
20,000	100
16,000	100
10,000	55-60
5,000	15-25
1,250	0-15
630	-
315	-
160	-
80	0-12
% Fracture by Weight (2 faces)	70+
Moisture Content	0-7

3. Fines Elimination

Elimination shall be bid according to a sliding scale relating to percentage of elimination. Elimination sand shall remain the property of the registered pit owner.

4. Moisture Content

The Successful Bidder will ensure that all material produced meets the specifications as set out in Section "A- 2".

5. Testing

All material may be sampled and tested by the Municipal staff while production is taking place. Should the Successful Bidder dispute the results of these tests, an engineering company will be secured to re-test the samples. In the event that the second set of results are close to, or the same as, those reached by the Municipality then the Successful Bidder will be responsible for all costs incurred in securing the engineering company's services. The Successful Bidder agrees that the Municipality will only be responsible for paying and taking delivery of crushed gravel that meets the Municipality's standards and specifications.

B. STOCKPILE OPERATIONS

The Successful Bidder shall deposit all crushed material in the pits as specified in this contract.

C. CALCULATIONS OF QUANTITIES

The Successful Bidder shall use a scale to weigh quantities.

1 cubic yard = 1.2727 tonne