



City of Ketchum

October 19, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Snow Hauling Contracts

Recommendation and Summary

Staff is recommending the council approve the snow hauling contracts and adopt the following motion:

"I move to authorize the Mayor to approve the contract for services with; Canyon Excavation, LLC, Hiatt Trucking, Joe's Backhoe, Lunceford Excavation, Rick's Excavation and S. Erwin Excavation".

The reasons for the recommendation are as follows:

- The City of Ketchum does not have the staff and equipment necessary to perform the snow hauling duties and meet the historical level of service.
- Standardized contracts provide an economical method of achieving the historical level of service while ensuring fairness amongst the service providers.

Introduction and History

Currently, the City of Ketchum's Streets Division uses contracted snow haulers to remove snow from the right-of-way immediately after snowstorms greater than 3-inches. Doing so ensures that roadways are immediately passable and parking areas are clear while also providing greater visibility to all users.

Prior to 1996, the Street Division would plow snow on the first night of the storm. On the next night, City staff would start hauling snow away using both city-owned and contracted trucks. This process was less costly but considerably slower. During back-to-back storms, the Streets Division would only plow as the staff was unable to haul snow. As a result, the snow would pile up in town to the point where there would be little parking and very narrow travel lanes down each street.

In 1996, the City had a good snow year with several back-to-back storms which left the city core full of snow with little to no parking. The city council wanted change and so approved funds to upgrade equipment, increase staff, and utilize more contracted snow haulers. Today, the City uses up to 14 contract trucks to help haul snow while City staff plows. The contract allows the city to require that the trucks and drivers are safe, professional and follow a list of details specific to completing the snow hauling job safely and responsibly. Having contracts in place also guarantees that the City will not be paying varying hourly amounts to different contractors; all the contractors are on the same pay scale.

Analysis

As stated, the City started using snow hauling contracts to keep the pay and requirements equal for all contractors. For the coming year, the city will pay \$75.00 per hour for a truck that holds between 14 and 16 cubic yards and \$80.00 per hour for a truck that holds more than 16 cubic yards. The city also pays up to an hour travel time, per truck, per day. While the hourly rate is lower than summer rates, the travel time has made the arrangement workable for the contractors.

Financial Impact

The Streets Division Professional Services line item funds the contract snow haulers, flagging services, and engineering services. This year \$182,000 is budgeted for the line item. The minimal price changes in this contract should not significantly affect this line item.

Sincerely,

Brian Christiansen
Director of Streets and Facilities

Attachments:

Snow Hauling Contracts for:
Canyon Excavation Contract #20539
Hiatt Trucking Contract #20540
Joe's Backhoe Contract #20541
Lunceford Excavation, Inc Contract #20542
Rick's Excavation Contract #20543
S. Erwin Excavation Contract #20544



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20539

(City of Ketchum/Canyon Excavation, LLC)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation (“Ketchum”), and CANYON EXCAVATION, LLC, an Idaho corporation (“Contractor”).

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, It is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the “Services”); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall haul snow from the streets of Ketchum as follows:
 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor’s supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor’s trucks.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks shall use only biodegradable truck bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks or trailers that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 TO 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck or trailer repair or maintenance or dislodging any stuck truck and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of **Contractor’s drivers are duly licensed to and capable of operating the trucks contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.
10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks and trailers used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.

11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for
12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.
13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
 Box 2315
 Ketchum, ID 83340-2315

CONTRACTOR:

Canyon Excavation, LLC
 P.O. Box 961
 Shoshone, ID 83352

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

CANYON EXCAVATION, LLC,
an Idaho corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20540

(City of Ketchum/Hiatt Trucking, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation (“Ketchum”), and HIATT TRUCKING, INC, an Idaho corporation (“Contractor”).

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, It is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the “Services”); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall haul snow from the streets of Ketchum as follows:
 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor’s supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor’s trucks and trailers.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks shall use only biodegradable truck and trailer bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 TO 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck repair or maintenance or dislodging any stuck truck and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
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11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for
12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.
13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
 Box 2315
 Ketchum, ID 83340-2315

CONTRACTOR:

Hiatt Trucking, Inc.
 P.O. Box 759
 Hailey, ID 83333

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

HIATT TRUCKING, INC
an Idaho corporation

By: _____
Neil Bradshaw

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20541

(City of Ketchum/Joe's Backhoe Service, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and JOE'S BACKHOE SERVICE, INC, an Idaho corporation ("Contractor").

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, it is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the "Services"); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

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 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor's supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor's trucks.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks shall use only biodegradable truck bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 to 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one-hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck or trailer repair or maintenance or dislodging any stuck truck and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary, and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of **Contractor’s drivers are duly licensed to and capable of operating the trucks contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.
10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks and trailers used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.

11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for
12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers' shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.
13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
 Box 2315
 Ketchum, ID 83340-2315

CONTRACTOR:

Joe's Backhoe Service, Inc.
 P.O. Box 54
 Richfield, ID 83349

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

JOE'S BACKHOE SERVICE, INC,
an Idaho corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20542

(City of Ketchum/Lunceford Excavation, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and LUNCEFORD EXCAVATION, INC, an Idaho corporation ("Contractor").

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, it is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the "Services"); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall haul snow from the streets of Ketchum as follows:
 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor's supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor's trucks and trailers.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks and trailers shall use only biodegradable truck bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 TO 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one-hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck repair or maintenance or dislodging any stuck truck or trailer and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary, and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of **Contractor’s drivers are duly licensed to and capable of operating the trucks contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.
10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks and trailers used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.
11. Insurance. Contractor shall maintain public liability insurance in the amount of

\$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for

12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers' shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.

13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
Box 2315
Ketchum, ID 83340-2315

CONTRACTOR:

Lunceford Excavation, Inc.
P.O. Box 739
Ketchum, ID 83340

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.

15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.

16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this

Agreement as the result of the drafting and preparation of the document.

- 19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
- 20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
- 21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

LUNCEFORD EXCAVATION, INC,
an Idaho corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20543

(City of Ketchum/Rick's Excavation, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and RICK'S EXCAVATION, INC, an Idaho corporation ("Contractor").

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, It is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the "Services"); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall haul snow from the streets of Ketchum as follows:
 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks and trailers necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor's supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor's trucks.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks shall use only biodegradable truck bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks or trailers that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 TO 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one-hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck repair or maintenance or dislodging any stuck truck and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary, and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of **Contractor’s drivers are duly licensed to and capable of operating the trucks and trailers contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.
10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.

11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for
12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers' shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.
13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
 Box 2315
 Ketchum, ID 83340-2315

CONTRACTOR:

Rick's Excavation, Inc.
 P.O. Box 443
 Bellevue, ID 83313

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

RICK'S EXCAVATION, INC,
an Idaho corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum



City of Ketchum

INDEPENDENT CONTRACTOR AGREEMENT #20544

(City of Ketchum/S. Erwin Excavation, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 19th day of October 2020, by and between THE CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and S. ERWIN EXCAVATION, INC, an Idaho corporation ("Contractor").

RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, It is deemed in the best interest of Ketchum to contract with Contractor for certain snow hauling services as set forth in more detail herein below (the "Services"); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve snow removal throughout Ketchum in furtherance of the health, safety and welfare of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall haul snow from the streets of Ketchum as follows:
 - a. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained trucks necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Division or any other employee of Ketchum designated by such Division Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor's supplies or equipment.
 - b. **At all times while performing the Services, Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
 - c. Ketchum shall plow, collect and place the snow in Contractor's trucks.

- d. Contractor's drivers shall haul the snow in Contractor's trucks to a Ketchum-designated snow storage site.
- e. Contractor's trucks shall use only biodegradable truck bed liner materials to provide for any non-stick surface.
- f. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks.
- g. Ketchum shall make all reasonable efforts to work until all of the snow is hauled; however, Ketchum may allow its employees to take a break before all of the snow is hauled.
- h. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
- i. Contractor is solely responsible for freeing any of Contractor's trucks that become stuck.

3. Consideration. Ketchum shall pay Contractor the following consideration:

- a. FOR A TRUCK WITH A BED SIZE OF 14 TO 16 cubic yards: SEVENTY-FIVE DOLLARS (\$75) per hour.
- b. FOR A TRUCK WITH A BED SIZE OF 16 cubic yards or more: EIGHTY DOLLARS (\$80) per hour.
- c. Ketchum shall pay Contractor up to THIRTY (30) minutes each way for travel time to and from Ketchum, not to exceed one-hour total per truck per day.
- d. Ketchum shall only pay Contractor for time actually worked and not for breaks or down time due to any reason including without limitation, equipment failure, labor disputes, strikes, being stuck, adverse weather, or traffic accidents.
- e. Contractor must submit a written bill to Ketchum prior to receiving any of the compensation due under this Agreement.

4. Waiver. If Contractor requests Ketchum's assistance in any matter such as truck repair or maintenance or dislodging any stuck truck and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.

5. Time of Performance. Contractor shall provide the Services on an “on call” basis as designated by the Head of the Ketchum Street Division and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2021, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Contractor, its managers, members, directors, officers, shareholders, agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Contractor under this Agreement and for Contractor’s payments for work performed in performance of this Agreement by Contractor’s managers, members, directors, officers, shareholders, agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of **Contractor’s drivers are duly licensed to and capable of operating the trucks contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.**
9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.
10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks and trailers used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.

11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for
12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances, including without limitation, the Department of Transportation's rules and regulations, 49 CFR Part 40 Drug Testing Program and the Omnibus Transportation Employee Testing Act of 1991. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 9-337 *et seq.* Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.
13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to the Ketchum and the Contractor shall be addressed as follows:

KETCHUM:

City of Ketchum
 Box 2315
 Ketchum, ID 83340-2315

CONTRACTOR:

S. Erwin Excavation, Inc.
 P.O. Box 1112
 Bellevue, ID 83313

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 19th day of October 2020.

THE CITY OF KETCHUM,
an Idaho municipal corporation

S. ERWIN EXCAVATION, INC
an Idaho corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Its: _____

ATTEST:

Katrín Sharp
Deputy City Clerk
City of Ketchum