RESOLUTION NUMBER 05-092

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING AND INSTRUCTING THE MAYOR TO EXECUTE AGREEMENTS WITH ELEVEN SEPARATE INDEPENDENT CONTRACTORS TO PERFORM AND COMPLETE SNOW REMOVAL SERVICES FOR THE CITY.

WHEREAS, it is the policy for the Ketchum Street Department to maintain the city streets in as safe a condition as possible during the winter months, depending upon available budget, manpower and equipment; and

WHEREAS, the City Council of the City of Ketchum hereby finds that such Agreements are in the best interest of said City in order to protect and promote the public health, safety, and welfare of the residents of and visitors to the City of Ketchum; and

WHEREAS, pursuant to Idaho Code §50-301, the City of Ketchum is empowered to enter into contracts; and

WHEREAS, the City desires to employ the eleven separate independent contractors to perform and complete snow removal work for the City.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, the City Council hereby authorizes and instructs the Mayor of said City to execute Independent Contractor Snow Hauling Agreements for the winter months of 2005-2006, terminating May 1, 2005, with the following Contractors:

Joe's Backhoe Service, Inc.
S. Erwin Excavation, Inc.
Burks Excavation, LLC
Peterson Trucking, Inc.
Ware Trucking
Hiatt Trucking, Inc.
CR Concrete & Excavation, Inc.
KATCO Excavation, Inc.
B & G Dirtworks, LLC
Rick's Excavation, Inc.
Summit Forest Products, LLC

PASSED by the City Council and APPROVED by the Mayor this 17th day of October, 2005.

ATTEST:

Sandra E. Cady, CMC
City Clerk/Treasurer

CITY OF KETCHUM, IDAHO

Edward E. Simon,
Mayor

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst,
City Attorney

INDEPENDENT CONTRACTOR AGREEMENT

(Ketchum of Ketchum/Hiatt Trucking, Inc.)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 20 day of Oct, 2005, 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 and trailers necessary to haul snow from Ketchum streets designated by the Head of the Ketchum Street Department or any other employee of Ketchum designated by such Department 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 and trailers to a Ketchum-designated snow dump.

e. Contractor's trucks and trailers shall use only biodegradable truck and trailer bed liner materials to provide for any non-stick surface.

f. Contractor shall provide all tools, equipments, 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 and trailers.

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.

(the "Services").

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

a. FOR A SINGLE TRUCK: SIXTY-FIVE DOLLARS ($65) per hour plus a FIVE DOLLAR ($5) per hour fuel surcharge, for a total of SEVENTY DOLLARS ($70) per hour.

b. FOR A SINGLE TRUCK AND ONE TRAILER: EIGHTY DOLLARS ($80) per hour plus a FIVE DOLLAR (S5) per hour fuel surcharge, for a total of EIGHTY-FIVE DOLLARS (S85) 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 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 Department 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, 2006. 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 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. 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.

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:

KETCHUM OF KETCHUM
KETCHUM ADMINISTRATOR
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340-2315

CONTRACTOR:

HIATT TRUCKING, INC.
LINCOLN HIATT
794 ~~853~~ EAST 670 NORTH
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 20 day of Oct, 2005.

THE CITY OF KETCHUM,
An Idaho municipal corporation

By: _____
Edward Simon, Mayor

HIATT TRUCKING, INC.,
An Idaho corporation

By: _____
Its: President

ATTEST:

_____
Sandra E. Cady, CMC,
Ketchum City Clerk/Treasurer

APPROVED AS TO FORM AND CONTENT EXLUSIVELY FOR THE CITY OF KETCHUM:

By: _____
Benjamin W. Worst,
Ketchum City Attorney