

## SANTA FE TRAIL RANCH ROAD CONTRACTOR SERVICES AGREEMENT

This agreement is made and entered into between The Santa Fe Trail Ranch Property Owner's Association, P.O. Box 870, Trinidad, CO 81082, hereinafter referred to as SFTR POA, and Heath Andreatta Excavation, LLC, hereafter referred to as "Contractor".

**WHEREAS**, the SFTR POA, as the road authority, is responsible for providing for maintenance of the roads in the development;

**WHEREAS**, the Board has determined that the Contractor has available the equipment listed in the attachments, and the skill, and experience to provide the requested road maintenance services to the SFTR POA;

**WHEREAS**, the Contractor desires to perform the needed road maintenance services to the SFTR POA;

**NOW, THEREFORE**, upon adequate consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **SERVICES PROVIDED.** During the term of this agreement the contractor agrees to perform the following services:
  - 1.1. **Grading of SFTR POA Roads.** Contractor shall grade all aggregate roads as directed to keep such roads in a reasonably passable and safe condition until it is no longer reasonable to grade the roads for the season due to snow cover. Grading shall occur as directed by the SFTR Liaison.
  - 1.2. **Gravel Application and Spreading.** Contractor shall also apply and spread additional gravel as directed by the SFTR Liaison.
  - 1.3. **Road Repair.** Contractor shall provide any road repair services as directed by the SFTR Liaison.
  - 1.4. **Barricades, Detours, and Warning Sign Placement:** Contractor shall, at its own cost, supply and place temporary barricades and warning signs as needed when working in or adjacent to roads. Contractor shall also provide for the establishment of detours as needed. Contractor shall erect other barricades as may be directed by SFTR Liaison. All such barricades and signs shall be positioned in accord with all applicable laws, rules, regulations, and industry best practices.
2. **Specifications and Performance.** Contractor shall perform all services provided for in this Agreement in a good workmanlike manner consistent with industry standards and according to the specifications, performance standards, and performance deadlines set out in the attached **Exhibit A**. All materials used or supplied under this Agreement shall be specified and purchased directly by the SFTR POA and meet the specifications set out in the attached **Exhibit A**.



- 2.1. **Work Limited to Right-of-Way.** Contractor shall not perform any work under this Agreement outside of a SFTR POA road right-of-way unless specifically and expressly directed to do so by the SFTR Liaison.
3. **Equipment.** Contractor warrants that it has the necessary equipment to perform the work required by this Agreement.
4. **Independent Contractor.** Contractor acknowledges and agrees that it is an independent contractor of the SFTR POA and that nothing herein contained shall be construed to create the relationship of employer—employee or joint venture between the SFTR POA and Contractor.
- 4.1. **Independent Judgment.** Contractor shall at all times exercise initiative, judgment, and discretion in how best to perform or provide the services identified herein, unless given specific direction by the SFTR Liaison.
- 4.2. **No Benefits or Withholdings.** Contractor acknowledges and agrees that Contractor is not entitled to receive any additional benefits and is not eligible for workers' or unemployment compensation benefits under the SFTR POA. Contractor also acknowledges and agree that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor and that it is Contractor's sole obligation to comply with the applicable provisions of all federal and state laws.
5. **Liaison.** To assist the parties in the day-to-day performance of this Agreement, to ensure compliance, and to maintain open lines of communication, the Contractor and the SFTR POA shall each designate a liaison and alternate liaison. A party may contact the alternate liaison only after reasonable attempts to communicate with the primary liaison have failed. Either party can change the designated liaison or alternate by sending written notice of the change to the other party. The SFTR POA shall designate its liaison and alternate liaison by Board resolution and said liaisons shall only have those powers expressly conferred in the resolution.

5.1 **Contractor Liaison**

Heath Andreatta

**SFTR POA Liaison**

POA Road Committee Chair

**Contractor Alternate Liaison**

Michelle R. Andreatta

**SFTR POA Alternate Liaison**

POA Board President



6. **Term.** The term of this Agreement shall continue unless terminated earlier by law or the provisions in this Agreement.

7. **Insurance.** Contractor agrees that it will provide and maintain at all times during the term of this agreement such insurance coverages as are indicated herein and that will otherwise comply with the provisions that follow. Such policy or policies shall apply to the extent of, but not as a limitation upon or in satisfaction of, the indemnity provisions of this agreement. The provisions of this section shall also apply to all subcontractors, other lower tier contractors, and Independent contractors engaged by Contractor with respect to this Agreement, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions. All policies required by this agreement shall be issued by financially responsible insurers licensed to do business in the State of Colorado. Contractor shall not commence or perform any work under this Agreement until certificates of insurance are presented to the SFTR POA showing the required coverages are in full force and effect with at least the required coverage limit amounts.

8. **Liability**

8.1. **General Liability.** Commercial General Liability insurance coverage providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for bodily injury, property damage, personal injury, contractual liability (applying to this Agreement), and independent contractors. Contractor agrees to maintain at all times during the period of this Agreement a total combined general liability policy limit of at least \$1,000,000 per occurrence and aggregate, applying to liability for bodily injury, personal injury and property damage, which total limit may be satisfied by the limit afforded under its commercial general liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an umbrella or excess liability policy (or policies); provided that the coverage afforded under any such policy in combination with the limits afforded by an umbrella or excess liability policy is at least as broad as that afforded by the underlying commercial general liability policy. The policy shall name the SFTR POA as an additional named insured.

8.2. **Automobile Liability.** Business automobile liability insurance covering liability for bodily injury and property damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned, and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Agreement. Such policy shall provide total liability limits for combined bodily injury and/or property damage in the amount of at least \$500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an umbrella or excess liability policy; provided that the coverage afforded under any such umbrella or excess liability policy shall be at least as broad with respect to such business automobile liability insurance at that afforded by the underlying policy. Unless included within the scope of Contractor's commercial general liability policy, such business automobile liability policy shall also include coverage for motor vehicle liability assumed under contract. The policy shall name the SFTR POA as an additional named insured.

8.3. **Workers' Compensation.** Workers' compensation insurance shall be in compliance with all applicable statutes. Such policy shall include employer's liability coverage in an amount



of no less than \$500,000.

9. **Indemnification and Hold Harmless.** Any and all claims that arise or may arise against Contractor, its agents, servants, or employees as a consequence of any act or omission on the part of the contractor or its agents, servants, or employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the SFTR POA. Contractor shall indemnify, hold harmless, and defend the SFTR POA, its directors, officers, agents, liaisons, and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the SFTR POA, its directors, officers, agents, liaisons, or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of Contractor, its agents, servants or employee, in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Agreement.

10. **Nonwaiver of Rights.** Nothing in this Agreement shall constitute a waiver by the SFTR POA of any statutory limits or immunities from liability.

11. **Payment.**

11.1. **Rates.** The SFTR POA agrees to pay Contractor for work performed under this Agreement based upon the rates set out in the attached **Exhibit B**.

11.2. **Claims for Payment.** Contractor must submit detailed claims for payment in order to be eligible to receive payment from the SFTR POA. Claims must satisfy the requirements of both the SFTR Liaison and the SFTR Board. Claims must provide a description of the work performed, the location of the work performed, the dates the work was performed. Contractor shall provide a per mile cost of each road for services completed.

11.3. **Proof of Payment.** Any claim for payment that involved the use of materials or labor supplied by someone other than the Contractor shall be accompanied by proof of payment for such materials or labor in the form of a lien waiver. The SFTR Liaison has the option of allowing the Contractor to receive payment for a period without submitting proof of payment for materials or services on the condition that such proof shall be submitted before the SFTR POA makes any other payments to the Contractor.

11.4. **Prompt Payment.** The SFTR POA will pay undisputed claims properly submitted under the terms and conditions of this Agreement within 10 (ten) business days.

12. **Default.**

12.1. **Force Majeure.** Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to uncontrollable circumstances unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure, provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The SFTR POA and the



Contractor agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable effort to mitigate its effects. If a matter arising under this paragraph is unable to be resolved within thirty (30) days, the party aggrieved by the other party's non-performance may terminate this Agreement upon ten (10) days written notice.

- 12.2. **Inability to Perform**. Contractor shall make every reasonable effort to maintain staff, facilities, and equipment to deliver the services required by this Agreement. Contractor shall immediately notify the SFTR Liaison in writing whenever it is unable to, or reasonably believes it is going to be unable to, provide the agreed upon quality and quantity of services. Upon such notification, the SFTR Liaison shall determine whether such inability requires a modification or cancellation of this Agreement, and make such a recommendation to the Board.
- 12.3. **Change in Policy or Staff**. The SFTR POA reserves the right to terminate this Agreement on ten (10) days written notice if the SFTR POA, in its sole discretion, does not approve of significant proposed or actual changes in Contractor's policies, staff, or employees.
- 12.4. **Termination For Failure to Perform**. The SFTR POA may, by written notice to the Contractor immediately terminate this Agreement if it determines any of the following have occurred: failure to adequately perform or deliver the required services; failure to follow the specifications or standards established by this Agreement; failure to perform or complete the services in a timely fashion as established by the SFTR Liaison; failure to provide the required insurance; or failure to correct deficiencies within ten (10) days. The written notice shall include the reasons for termination.
- 12.5. **Default by Contractor**. Unless excused by the SFTR POA's default, the occurrence of an uncontrollable circumstance, or the SFTR POA issuing a written waiver of default, each of the following shall constitute default on part of the Contractor:
  - (1) The written admission by Contractor that it is bankrupt; or filing by Contractor of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Contractor unless dismissed within ninety (90) days. The Notice of Default and cure provision of this Agreement do not apply to this paragraph.
  - (2) The making of any arrangement with or for the benefit of Contractor's creditors involving an assignment to a trustee, receiver or similar fiduciary. The Notice of Default and cure provisions of this Agreement do not apply to this paragraph.
  - (3) Making material misrepresentations in the attached exhibits and documents or in any other provisions or conditions relied upon in the making or modification of this Agreement.
  - (4) Contractor is found to persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.
  - (5) Failure to make satisfactory progress towards completion of this Agreement.



(6) Failure to perform any other material provision of this Agreement.

12.6. **Default by the SFTR POA.** Unless excused by Contractor's default or the occurrence of uncontrollable circumstances or Contractor waiver of default, each of the following shall constitute a default on the part of the SFTR POA:

- (1) The persistent or repeated failure or refusal by the SFTR POA to pay or to prevent payment of any uncontested amount to the Contractor timely and properly submitted as required by this Agreement.
- (2) Making material misrepresentations either in the attached exhibits and documents or in any other provisions or conditions relied upon in making this Agreement.
- (3) Persistent or repeated failure to perform any other material provision of this Agreement.

12.7. **Written Notice of Default.** Except as otherwise provided for termination for failure to perform, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default and the cure period.

12.8. **Cure Period.** If the party in default fails to cure the specified circumstances as described by the Notice of Default within ten (10) days or such other time as may be specified under the terms of this Agreement, then this Agreement may be terminated by written notice as stated in this Agreement.

12.9. **Withholding of Payment.** Notwithstanding any other provision of this Agreement, the SFTR POA may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is given, until the default is excused, waived in writing, cured, or the Agreement is terminated.

### 13. **Liquidated Damages.**

13.1. **Duty to Mitigate.** Both parties shall use their best efforts to mitigate any damages that might be suffered by reason of any event giving rise to a remedy hereunder.

13.2. **Cost of Termination.** In the event this Agreement is terminated by reason of default by Contractor, the SFTR POA may recover the necessary costs of termination, including but not limited to, attorneys fees and legal costs, from Contractor.

13.3. **Set-Off.** Notwithstanding any other provision of this Agreement to the contrary, upon breach of this Agreement by Contractor the SFTR POA may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of the SFTR POA.

**14. Damages** Time is an essential element of this Agreement. If Contractor fails to meet



the performance deadline as set forth as part of this Agreement, or fails to supply in accordance with the specification, terms, and conditions of the Agreement documents, for any reason, excepting delays caused by uncontrollable circumstances, the SFTR POA shall have the right to purchase the services and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete. The SFTR POA may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of temporary items.

- 14.1. **Re-performance**. The SFTR Liaison may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Agreement that do not meet the established specifications, standards, or SFTR Liaison directives. The Contractor may appeal such directive to the SFTR Road Committee.
- 14.2. **Remedies Cumulative**. Any remedies available to the SFTR POA are cumulative and not exclusive. The seeking or exercising by the SFTR POA of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this agreement.
15. **Conflict of Interest**. Contractor agrees that it will not, during the term of this Agreement, enter into a contract or otherwise accept employment for the performance of any work or service with any individual, business, partnership, corporation, government, governmental unit, or any other organization that would create a conflict of interest in the performance of its obligations under this Agreement, or that would diminish Contractor's ability to complete its duties and obligations to SFTR POA on time and as a first priority.
16. **Non-Exclusivity**. This Agreement is not exclusive between the SFTR POA and Contractor. The SFTR POA may retain additional Contractors or subcontractors to perform any or all of the services listed in this Agreement that the Contractor is unable to perform, for whatever reason.
17. **Subcontracting and Assignment**. Contractor shall not enter into any subcontract for performance of any services contemplated under this Agreement nor assign any interest in the Agreement without the prior written approval of the SFTR Liaison and subject to such conditions and provisions as the SFTR POA may deem necessary or desirable in its sole discretion. Contractor shall be responsible for the performance of all subcontractors.
18. **Modifications**. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by the authorized representatives of the SFTR POA and Contractor.
19. **Termination**. The SFTR may terminate this agreement, with or without cause, upon 30 days prior written notice to Contractor. The Contractor may request a meeting with the SFTR POA Board to discuss the reasons for termination.
20. **Legal Compliance**. Contractor shall abide by all federal, state, or local laws, statutes, ordinances, rules, and regulations now in effect or hereinafter adopted pertaining to this



Agreement.

- 20.1. **Permits.** Contractor shall procure, at its own expense, all permits, licenses, or other rights required for the provision of the services contemplated by this Agreement. Contractor shall inform the SFTR POA of any changes in any of the above permits, licenses, or other rights issued within five days of occurrence.
- 20.2. **Violations.** Any violation of federal, state, or local laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license, permit, or certification by Contractor shall constitute a material breach of this Agreement, regardless of the reason and whether or not intentional, and shall entitle the SFTR POA to terminate this Agreement upon delivery of written notice of termination to Contractor. Notwithstanding any other provision of this Agreement, such termination shall be effective as of the date of such violation, failure, or loss.
21. **Colorado Law Governs.** This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Colorado, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Colorado, County of Las Animas.
22. **Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.
23. **SFTR POA Obligation.** All covenants, promises, agreements, and obligations of the SFTR POA contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the SFTR POA, and not of any governing body member, officer, agent, servant, or employee of the SFTR POA in the individual capacity thereof.
24. **Communication.** The SFTR POA will provide radios to be used by the Contractor at all times when working on the POA property. The Contractor will be responsible for the care and proper use of said radio equipment and liable for the cost of damage repair or replacement. Further, the Contractor will be required to submit reports of whatever type and frequency are required by the POA.

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

SFTR POA

Contractor

By: RL Scott President  
Print Name and Title

By: Michelle R. Andreatta  
Print Name and Title

RL Scott  
Signature

Michelle R Andreatta  
Signature

Date: 11 April 2025

Date: April 11, 2025



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## **EXHIBIT A**

### **SPECIFICATIONS, STANDARDS, AND PERFORMANCE DEADLINES**

The following are the specifications, standards, and performance deadlines that the Contractor must comply with when providing the contracted for services in addition to the requirements established in the primary Agreement form. This and all other exhibits are a part of the Agreement and may not be modified except as provided in section 18 of the Agreement.

#### **1. GRADING SFTR POA ROADS**

Frequency of grading will be determined on a case by case basis by the SFTR Liaison. All grading will be per the specifications set forth in the US DOT Gravel Roads Maintenance and Design Manual, attached as Exhibit C (the "Manual"). The Manual is attached hereto and incorporated herein for all purposes.

#### **2. GRAVEL APPLICATION AND SPREADING**

Gravel (road base) thickness and width will be determined by the SFTR Liaison. Application will be per the specifications and procedures set forth in the Manual.

#### **3. SNOW PLOWING**

Plowing will commence as soon as reasonably possible on cessation of snowfall in absence of other direction from the SFTR Liaison. Less than 6" of snow will not be plowed. Snow will be removed as close to the road surface as practical, without damage to the road surface. Two graders will operate, as necessary, and as directed by the SFTR POA Road Liaison. Plowing will cease when the roads become too soft to plow without damage to the road surface.

#### **4. BORROW DITCH REPAIR AND MAINTENANCE**

Borrow ditches will be maintained per the Manual, unless otherwise directed by the SFTR Liaison.



## **5. CULVERTS**

Culverts will be installed at a 45 degree angle across the road with a fall of at least 6" per ten feet. A dike will be built at the mouth of the culvert to direct the flow of runoff into the culvert. The discharge end shall be of sufficient length to prevent erosion back into the reposed road material. Culvert inlets shall be kept clear and any culvert accumulating deposits shall be cleared if the deposits reach 50% of the culvert diameter.

## **EXHIBIT B**

### **RATES FOR SERVICES PERFORMED**

The following is a list of the agreed upon rates as provided for in section 11.2 of the Agreement that will be paid for the listed services under the terms and conditions of the Agreement. This and all other exhibits are a part of the Agreement and may not be modified except as provided in section 18 of the Agreement. All rates are subject to adjustment for abnormal circumstances upon mutual agreement by the Liaisons.

## **EXHIBIT C**

### **US DOT GRAVEL ROADS DESIGN AND MAINTENANCE MANUAL**

<ftp://ftp.wsdot.wa.gov/dotshare/LocalPrograms/LTAP/GravelManual.pdf>

(Manual is incorporated into the Agreement for all purposes as reasonably applicable and can be accessed online and printed as required)



Heath Andreatta Excavation LLC

P.O. Box 1290  
Walsenburg, CO 81089

# Estimate

Date	Estimate #
2/7/2024	78

Name / Address
Santa Fe Trail Ranch POA 33712 Mountain View Drive Trinidad, CO 81082

				Project
Description	Qty	U/M	Rate	Total
Backhoe Work			95.00	95.00
Blade Work			135.00	135.00
Semi and Belly Dump			90.00	90.00
Dump Truck			70.00	70.00
D5 Dozer Work			120.00	120.00
D6 Dozer Work			135.00	135.00
D8 Dozer Work			185.00	185.00
950 Cat Loader			135.00	135.00
Air Vac Truck and 2 Men			150.00	150.00
Skid Steer Work			75.00	75.00
Truck and Trailer for hauling parts			75.00	75.00
325 Excavator Work			165.00	165.00
320 Excavator Work			135.00	135.00
Excavator Work with Hammer attachment			185.00	185.00
Semi & Lowboy			110.00	110.00
Water Truck			90.00	90.00
Laborer			35.00	35.00
Miles traveled to different locations on the Ranch			10.00	10.00
Snow Plow Truck			115.00	115.00
Roller			90.00	90.00
****All prices above are our hourly rates				
Thank You,				
Michelle R. Andreatta, Owner				

Fax #