



Invitation to Submit Tenders

You are invited to submit a tender for:
Road Grader Maintenance Contract

To submit a tender, complete the attached Contract for Road Grader Maintenance Contract and submit it to the Birch Hills County office in Wanham, AB, no later than Tuesday, October 17, 2017 at 2:00 p.m. local time.

If you are the successful bidder, the attached contract will be signed with Birch Hills County, which will constitute the making of a contract between Birch Hills County and yourself. No bidder shall acquire any legal or equitable rights in relation to the Birch Hills County until the signing of a written agreement by Birch Hills County.

Date _____

Contractor _____

Phone Number _____

Address _____

NOTES TO BIDDERS:

For information regarding this tender or contract, you may contact Dion Hynes at (780) 694-3793 or e-mail: dionh@birchhillscounty.com.

Sealed Tenders **must** be received no later than Tuesday, **October 17, 2017 at 2:00 p.m.** local time at the Birch Hills County office in Wanham, AB. Sealed Envelopes must be clearly marked "**Sealed Tender for Road Grader Maintenance Contract**".

Sealed Tenders will be opened on **Tuesday, October 17, 2017 at 2:01 p.m.** local time at the Birch Hills County office in Wanham, AB. Public may be present. Tenders must be received at the time and date set forth above or they will not be accepted. Tenders received late will not be considered.

Birch Hills County reserves the right to conduct discussions with any bidder that submitted a tender to assure full understanding of the tender submitted.

Birch Hills County reserves the right to accept or reject any or all tenders and to waive irregularities and informalities at its discretion. Birch Hills County reserves the right to accept a tender other than the lowest tender without stating reasons. By the act of submitting its tender, the bidder waives any right to contest in any legal proceeding or action the right of the Birch Hills County to award the purchase to whomever it chooses, in its sole and unfettered discretion, and for whatever reasons Birch Hills County deems appropriate.

Without limiting the generality of the foregoing, Birch Hills County may consider any other factor besides price and capability that it deems in its sole discretion to be relevant to its decision.

THIS AGREEMENT MADE THIS ____ DAY OF _____ 201__.

CONTRACT FOR _____

BETWEEN:

Birch Hills County
(hereinafter referred to as "County")

OF THE FIRST PART,

- And -

(Hereinafter referred to as the "Contractor")

OF THE SECOND PART

WHEREAS the County and the Contractor have agreed to enter into an agreement for their mutual benefit and desire to set out the terms and conditions thereof;

NOW THEREFOR THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

1. **Contracting Services**
 - 1.1 The County hereby engages the Contractor to provide certain services to the County as an independent contractor as identified in Schedule "A" and to perform other work as requested by the County related thereto (altogether the "Work").
 - 1.2 "Equipment" means equipment to be used for the Work under this Agreement, as identified in Schedule "B" and Schedule "C"

2. **Scope of Services and Representations**

2.1 The Contractor represents warrants and agrees to provide a skilled and experienced operator to perform the Work in a safe, competent and professional manner. The Contractor shall perform the Work continuously and diligently and shall complete all Work in accordance with the provisions of this Agreement.

2.2 Without limitation to Clause 2.1, in respect of the Work, the Contractor shall ensure that:

(a) _____;

(b) _____;

(c) _____.

2.3 The Contractor represents that the Equipment provided will be maintained in a good and safe condition and will be in proper running order at all times. For further certainty, and without restricting the generality of the foregoing, the Contractor represents that at all times the Equipment provided will meet the following minimum requirements:

(a) The Equipment must fully comply with all safety regulations under the *Workers' Compensation Act* and *Occupational Health and Safety Act*

2.4 The Contractor shall not substitute the Equipment without first having received the prior approval of the County.

2.6 The Contractor shall provide operators qualified to operate the Equipment.

2.7 The Contractor shall:

(a) Provide any advance warning signs (the "Signs") which County or its representative deems necessary;

(b) Position the Signs at both ends of the worksite in the manner determined by the County or its representative before commencing daily operations, and remove the Signs at the end of each work day;

(c) Use such extra Signs as the County or its representative deems necessary.

- 2.8 The Contractor shall commence and discontinue the Work upon direction of the County or its representative. Weekly progress may be reviewed.
- 2.9 The Contractor shall provide to the County or its representative a contact phone number for call back to the worksite, and shall ensure that an operator is at the worksite within four (4) hours from the time a call back phone call is made to the contact phone number.
- 2.10 The Contractor shall comply with all applicable statutes, regulations, by-laws, and licensing requirements of local authorities in effect at any time, including, without limitation to the foregoing, the *Occupational Health and Safety Act*, the *Environmental Protection and Enhancement Act*, and the *Workers' Compensation Act*.
- 2.11 The Contractor shall follow and comply with all policies and procedures made by the County relating to the Work.
- 2.12 The Contractor represents that all employees of the Contractor will comply with the terms and conditions of this Agreement while performing the Work.
- 2.13 The Contractor shall allow the County to install a GPS tracking device on any Equipment used to fulfill this contract.

3. **Term**

- 3.1 This Agreement shall be in effect from January 1, 2018 to December 31st, 2020.

4. **Termination and Suspension**

- 4.1 The County may terminate this Agreement, if in the sole opinion of the County the Contractor fails to provide an acceptable quality or quantity of Work with thirty (30) days written notice to the contractor.
- 4.2 The Contractor may terminate this Agreement at any time without reason, by giving the County sixty (60) days written notice of termination.
- 4.3 If for any reason the Contractor:
 - (a) Fails to provide the Equipment identified;

- (b) Fails to maintain the Equipment in good condition during the course of this Agreement;
- (c) Fails to provide a skilled, well-trained operator for the Equipment;
- (d) Fails to provide or maintain the Insurance required by Clauses 7.1 and 7.5;
- (g) Fails to provide or maintain Workers' Compensation coverage required by Clause 6.1;
- (h) Fails to perform the Work in a manner satisfactory to the County; or
- (i) Becomes insolvent or is assigned into or is petitioned into bankruptcy;

The County may terminate this Agreement without penalty to the County as outlined in Clause 4.1.

- 4.4 The County Council or its representative may suspend the Contractor without notice and without penalty from continuing to perform the Work when:
- (a) The Contractor or employees of the Contractor engage in conduct that is a marked departure from the standards which responsible and competent individuals or contractors performing such Work conduct themselves;
 - (b) The Contractor or employees of the Contractor perform the Work in an unsafe or careless manner, or;
 - (c) The Contractor or employees of the Contractor fail to comply with any term or condition of this Agreement.
- 4.5 The County or its representative shall advise the Contractor in writing of the reasons for suspension and the effective date of the suspension.
- 4.6 The Contractor may appeal a suspension provided written notice of appeal is received by the County within 10 calendar days from the date the Contractor was advised of the suspension.
- 4.7 Upon receiving notice of appeal from the suspension, the County shall hold a hearing within 10 days, or such other time as agreed between the Parties. The hearing will be before the Council of Birch Hills County.
- 4.8 When the Contractor's suspension is appealed the County may:

- (a) Impose conditions on the Contractor for future compliance with the terms of this Agreement;
 - (b) Rescind the suspension and pay the Contractor the amount that would have been paid under this Agreement but for the period of the suspension, less all deductions required by law; or
 - (c) Terminate this Agreement without notice to the Contractor or penalty to the County.
- 4.9 The decision of the County on an appeal regarding a suspension shall be final and binding upon the Parties.
- 4.10 Failure of the Contractor to give notice of appeal of a suspension within the required time period shall be a waiver by the Contractor of the right to an appeal and shall result in the County:
- (a) Imposing conditions for future compliance with the terms of this Agreement; or
 - (b) Terminating this Agreement without notice to the Contractor and without penalty to the County.
- 4.11 Upon termination of this Agreement, the Contractor shall not perform any further Work in connection with the Agreement except to advise the County or its representative of the work completed to the termination date.

5. **Compensation**

- 5.1 The County shall pay the Contractor for the Work a fee of \$_____ per hour, payable within 15 days after receipt of an invoice (the "Invoice") submitted by the Contractor to the County. Invoices are to be submitted on the 15th and 30th of each month.
- 5.2 The Contractor shall supply the following information with each Invoice:
- (a) Copy of operator time sheets
 - (b) Map of Area Graded

Invoices received without this information may be returned by the County to the Contractor. The County shall not be liable for any payment delays caused by the return of Invoices received without this information.

- 5.3 The hourly fee set out in Clause 5.1 shall be for the Work performed pursuant to this Agreement, and without limitation to the foregoing, shall

include the Contractor's expenses not limited to wages, contractor's fees, oil, repairs, maintenance, wing and availability of "V" plow, sandvik or equivalent blade adapter to fit tips and fuel.

- 5.4 The County may withhold payment of any monies payable to the Contractor while the Contractor is in default of any provision in this Agreement.
- 5.5 The Contractor shall be guaranteed 1500 hrs for every fully completed year of work, for the term of this contract in the event that there is not sufficient demand for contract services.

6. **Workers' Compensation Coverage**

- 6.1 The Contractor guarantees that Workers' Compensation coverage is in effect for the work provided at all times. The Contractor shall provide proof of Workers' Compensation coverage in the form of an account number and letter of clearance in the applicable industry to the County. The Contractor's Workers' Compensation account shall be kept in current and good standing by the Contractor for the duration of this Agreement.

7. **Insurance**

- 7.1 The Contractor shall provide the County with an acceptable Certificate of Insurance from an insurer licensed to do business in the Province of Alberta, as evidence that the Contractor has the following insurance (the "Insurance"):
 - (a) Commercial Liability coverage not less than \$5,000,000.00
 - (b) The County must be named as an additional insured under this policy.
- 7.2 The provision of the Insurance shall be at the sole expense of the Contractor, and shall not limit the Contractor's obligations under this Agreement.
- 7.3 The Contractor shall maintain the Insurance in full force and effect for the duration of the Agreement.
- 7.4 The Contractor shall perform no Work until the Certificate of Insurance has been accepted by and filed with the County.
- 7.5 The Contractor shall provide insurance against loss or damage to his equipment.

8. **Occupational Health and Safety**

8.1 The Contractor represents that he is an “employer” as defined in the *Occupational Health and Safety Act*, and shall comply with the *Occupational Health and Safety Act* and the Regulations thereunder.

9. **Independent Contractor**

9.1 The Parties agree that no oral agreement or provisions of this Agreement shall be construed so as to constitute the Contractor or employees of the Contractor as being the agents, servants or employees of the County. The Contractor or employees of the Contractor shall have no authority to make any statements, representations, or commitments of any kind, or take any action, which may be binding on the County, except as may be authorized in writing by the County.

9.2 The Contractor or employees of the Contractor shall not be nor be deemed to be employees of the County, and shall not be eligible for or participate in any of the County’s employee benefit programs. The Contractor shall at all times be deemed to be an independent contractor and consequently no deductions whatsoever will be made from the compensation payable to the Contractor pursuant to Clause 5.1, including:

- (a) for employee benefits of the Contractor such as disability insurance, health and pension plans. Provision for any such benefits for the personnel or dependents shall be the sole responsibility of the Contractor;
- (b) for Unemployment Insurance Contributions, Canada Pension Plan Contributions and Income Tax. Payments related to any of the foregoing shall be the sole responsibility of the Contractor and shall be forwarded to the appropriate federal and provincial Government Agencies. The Contractor shall provide proof of compliance with this requirement to the County forthwith upon request.

10. **Liability and Indemnity**

10.1 The Contractor shall be liable to and shall indemnify and hold harmless the County, its employee and agents, from any and all actions, claims, demands, proceedings and costs whatsoever that may arise, directly, or indirectly, out of any act or omission of the Contractor, his employees or agents, in the performance of this Agreement.

- 10.2 The Contractor shall be liable to the County for any losses, costs, damages and expenses which the County may sustain, pay or incur as a result of or in connection with the breach by the Contractor of any obligations under this Agreement, or in connection with the Work provided, and the Contractor shall reimburse the County for any financial loss, direct or indirect, associated with the Contractor's failure to comply with the terms and conditions of this Agreement.
- 10.3 Without limitation to Clause 10.2, the Contractor shall indemnify and save harmless the County for any actions, claims, demands, proceedings and costs, including legal costs on a solicitor client basis, resulting from the Contractor's breach of any term of this Agreement, including the failure to have the required or adequate insurance coverage in effect.
- 10.4 The Contractor's obligation to indemnify the County shall survive the termination of this Agreement.
- 10.5 The County shall not be liable nor responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Contractor, his employees or agents in the performance of this Agreement.

11. **Assignment**

- 11.1 The Contractor shall not assign or sublet this Agreement or any Work pursuant to this Agreement, without the written consent of the County.

12. **Notices**

- 12.1 Any notices to the County or the Contractor shall be in writing and shall be valid and effective if personally delivered or if sent by pre-paid registered mail. Any notice given by registered mail shall be deemed to have been received three (3) days after it was mailed. In the event of a disruption in the mail service, all notices will be by personal delivery. The addresses of the Parties for the purposes of notices are:

Birch Hills County
Administration Building
Main Street Wanham
4601 50 Street
Box 157
Wanham, AB T0H 3P0
Attention: Dion Hynes

Contractor:

13. **Survival of Representations**

13.1 Notwithstanding any provision to the contrary in this Agreement, it is hereby agreed by the Parties that the representations contained herein shall survive the termination of this Agreement.

14. **Arbitration**

14.1 With the exception of a dispute involving a suspension governed by Clauses 4.6 to 4.10 of this Agreement, the Parties agree that any dispute between the Parties arising from this Agreement shall be resolved by arbitration before a single arbitrator agreed upon by the Parties, or in default of such agreement, before a single arbitrator appointed by the Court. Either Party may make an application to the Court for the appointment of a single arbitrator at any time after 30 days from the date of the dispute.

14.2 The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act*.

14.3 The decision of the arbitrator shall be final and binding upon the Parties.

15. **General**

15.1 The County shall have the right to deduct from all payments under this Agreement any and all amounts required by the laws of the Province of Alberta and the laws of Canada applicable therein to be withheld in accordance with the applicable provisions of such law.

15.2 If any provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Agreement shall, nevertheless, remain in full force and effect. No provision of this Agreement shall be deemed dependent on any other provision unless expressly so stated herein.

15.3 This Agreement embodies the entire Agreement between the Parties, superseding any prior Agreement, either oral or in writing, and may only be amended by a subsequent written instrument signed by both Parties.

15.4 The failure of either Party to insist in any one or more instances upon the performance of any of the terms and conditions of this Agreement, shall not be construed as a waiver or relinquishment of any right granted hereunder of the future performance of any such term, covenant or

condition, and the obligation of either Party with respect thereto shall continue in full force and effect. Any forbearance by Birch Hills County to seek a remedy for any breach by the Contractor shall not be a waiver by the County of its rights and remedies with respect to any subsequent breach.

- 15.5 This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the Parties do hereby irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.
- 15.6 This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns to the Parties hereto.
- 15.7 Any word or words in this Agreement importing the singular shall include the plural and vice versa.
- 15.8 The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.
- 15.9 This Agreement may be executed in counterparts, each of which when so executed shall constitute an original and all of which together shall constitute one and the same Agreement, which shall be sufficiently evidenced by either such original counterpart.

IN WITNESS WHEREOF the Parties has duly executed this Agreement this ____ day of _____ 2017, in the Hamlet of Wanham, in the Province of Alberta.

BIRCH HILLS COUNTY

Witness Per: _____

Witness Per: _____

CONTRACTOR

Witness Per: _____

Witness Per: _____

SCHEDULE "A"

Work

Title: Contract Grader

Miles to Grade: Approximately 248 km (155 miles)

Services:

- Maintains a crown of approximately 3% on the roadway to allow proper drainage from the roadway surface.
- Retains the super elevation on all curves
- Ensures that no ridge is allowed to build along the edge of the roadway which ponds water
- Stops and removes from the roadway any rocks or other hazardous debris pulled up by the blade which may be large enough to present a problem to vehicular traffic
- Always operates on the right side of the road, and proceeds in the same direction as the traffic; unless otherwise directed
- Operates all flashing lights in accordance with the *Highway Traffic Act* Flashing Light Regulations
- Performs shoulder maintenance during spring and fall to reclaim gravel and ensure proper drainage
- All aspects of snow clearing
- Opening roads in the spring time
- Specialized project work outside of normal maintenance duties not included as part of this contract
- Special requests not limited to clearing, grading of parking lots needs written approval before commencing any work

SCHEDULE "B"

Title: Contract Grader Equipment

Miles to Grade: Approximately 248 km (155 miles)

Services:

- The Equipment must possess a rating of 198-221 H.P (149 K.W.) or greater, with a minimum operating weight of 35,000 pounds with all attachments and have up to a maximum of 5,000 hours on the grader at the start of the contract.
- The Equipment must have attached a packer that meets with County standards equal to 90 inch contour/profile.
- The Equipment must fully comply with all safety regulations under the *Workers' Compensation Act* and *Occupational Health and Safety Act*.
- The Equipment provided must have adequate head lights.
- The Equipment provided must have a strobe or a rotating amber light on top of its canopy.
- The Equipment provided must have flashing lights.
- The Equipment provided must have flags on its mould board and cab roof, which must be kept in good condition and meet the standards of the *Motor Transport Act* (400 mm square).
- The Equipment provided must be equipped with an adequate set of regular blades, sandvik or equivalent blade adapter and tips.
- The Contractor shall provide a wing attachment for snowplowing operations, and shall have a "V" plow available for use upon request.

SCHEDULE "C"

Description of Equipment to be used for the Work

Grader Make: _____

Grader Model: _____

Grader Serial No. _____

Grader Year: _____

Packer Make: _____

Packer Model: _____

Packer Serial No. _____

Owner: _____

Address: _____

Telephone: _____