

**APPENDIX A –
PARTNERING AGREEMENT**

PARTNERING AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2020

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER a municipal corporation
having its office and postal address at 4325 Blackcomb Way,
Whistler, B.C. V8E 0X5

(“**RMOW**”)

AND:

ALPINE PAVING (1978) LTD.

3010 Norland Avenue
Burnaby, B.C.
V5B 3A6

(“**Alpine Paving**”)

WHEREAS:

- A. Alpine Paving operates an asphalt supply facility at a tenure site adjacent to the Cheakamus Crossing neighbourhood (the “**Facility**”).
- B. Alpine Paving’s operations at the Facility create noise and dust (“**airborne particulate matter**”) and may negatively affect the nearby residential areas in Cheakamus Crossing.
- C. A portion of the airborne particulate matter results from the heavy truck traffic using an unpaved section of road to travel to and from the Facility.
- D. In 2011, RMOW Council directed that the RMOW not procure asphalt from a facility located within 3 kilometers of a residential neighborhood in the municipality due to residents’ concerns.
- E. As a result of the restriction on asphalt procurement, RMOW has procured asphalt from outside of the municipality, causing the RMOW to incur additional costs to procure asphalt, increasing GHG emissions associated with the Road and Trail Reconstruction project, and likely reducing the quality of asphalt in Whistler.
- F. RMOW Council, by resolution on June 9, 2020, subsequently directed that the RMOW allow the purchase of asphalt from the Facility, subject to the RMOW continuing air quality monitoring, requesting consolidation of production days, and having dialogue with Alpine Paving about best practices for their operations.
- G. Alpine Paving and RMOW consider that the Works described herein will mitigate the airborne particulate matter by paving unpaved road surfaces, and constructing a berm to reduce visual and noise pollution.

H. RMOW considers it is necessary or desirable to construct the Works to:

- i. mitigate the airborne particulate matter from the Facility;
- ii. mitigate visual and noise pollution from the Facility;

and wishes for Alpine Paving to construct the Works on behalf of the RMOW.

I. RMOW may, pursuant to Section 21 of the *Community Charter*, provide assistance to a business or other entity through a partnering agreement for the provision of a service on behalf of the RMOW.

NOW THEREFORE THIS AGREEMENT WITNESSES that in good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement unless something in the subject matter or context is inconsistent therewith, the capitalized terms herein will have the meanings set out below:

- (a) “**Assistance**” has the same meaning as in the Community Charter;
- (b) “**Agreement**” means this agreement including the recitals and the Schedules to this agreement as amended from time to time in accordance with this agreement;
- (c) “**Business Day**” means a day other than a Saturday, Sunday, or statutory holiday in the Province of British Columbia;
- (d) “**Community Charter**” means the *Community Charter*, SBC 2003, c 26 as amended or replaced from time to time;
- (e) “**Governmental Authority**” means any federal, provincial, territorial, or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;
- (f) “**Person**” or “**person**” means any individual, corporation, limited-liability company, partnership, firm, joint venture, association, trust, or other entity or organization, including a Government Authority;
- (g) “**Works**” means the construction of mitigation measures in and around the Facility for the purpose of mitigating the airborne particulate matter and include:
 - (i) paving the 150 meter long (8 meters wide) gravel entrance to the Facility;
 - (ii) constructing a berm to reduce visual impacts of the Facility and particulate matter; and
 - (iii) related works or improvements,

and more particularly described in Appendix “A” to this Agreement.

1.2 Headings

The division of this Agreement into sections and the insertion of the recitals and headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 Currency

All transactions referred to in this Agreement will be made in lawful currency of Canada.

1.4 Singular, Plural, Gender and Person

Wherever in this Agreement the context so requires the singular number shall include the plural number and vice versa and words importing gender shall be deemed to include all genders.

1.5 Statutes

Each reference to a statute is deemed to be reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

1.6 Statutory references

Unless otherwise specified, references in this Agreement to a statute is deemed to be a reference to that statute, and to the regulations made under that statute, as amended or re-enacted from time to time.

1.7 Appendices

The following appendices form part of this Agreement:

Appendix A – Overview of Works

1.8 Time of Day

Unless otherwise specified, references to time of day or date mean the local time or date in Whistler, British Columbia.

2. CONSTRUCTION & MAINTANANCE OF WORKS

2.1 Construction of Works

Alpine Paving will construct the Works and undertake all related design and implementation activities to construct the Works as set out in this Agreement.

2.2 Maintenance of Works

Alpine Paving will maintain the Works after their completion in the same manner a reasonable owner would, including conducting ongoing and pre-emptive maintenance of the Works.

2.3 Standard of Work

Alpine Paving will perform all work and services under this Agreement in a workmanlike manner

2.4 Compliance with Laws

Alpine Paving will strictly comply with all enactments and obtain all required permits from a Governmental Authority in designing and constructing the Works.

2.5 No Partnership or Joint Venture

RMOW and Alpine Paving disclaim any intention to create a partnership or joint venture or to constitute either of them the agent of the other and nothing contained in this Agreement shall be construed to constitute the Parties as partners, joint ventures', agents or legal representatives of or with the other. Neither Party shall have, or represent that it has the authority or power to act for or to undertake or create any obligations or responsibilities, express or implied, on behalf of, or in the name of the other.

3. PAYMENT AND ASSISTANCE

3.1 Permissible Assistance by District

RMOW may provide Assistance to Alpine Paving to construct the Works on its behalf.

3.2 RMOW to Pay towards Works

RMOW will pay Alpine Paving up to \$45,000 (the "**Budgeted Amount**") for Alpine to construct the Works.

3.3 Payment Terms

RMOW will release up to the Budgeted Amount to Alpine Paving in the following manner:

- (a) The amount of submitted invoices up to the balance of the Budgeted Amount within 30 days of Alpine Paving submitting an invoice for completed Works to the satisfaction of RMOW.

3.4 Provision of Material, Supplies and Labour at cost

Alpine Paving represents and warrants the Budgeted Amount is based on Alpine Paving providing all necessary material, supplies and labour to fulfil its obligations under this Agreement at cost and without overhead or profit.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties

Alpine Paving represents and warrants that:

- (a) Alpine Paving is duly incorporated and validly exists under the *Business Corporations Act (BC)*;

4.2 Survival of Representations and Warranties

The representations and warranties of Alpine Paving will be true and accurate when Alpine Paving signs this Agreement.

5. RELEASE & INDEMNITY

5.1 Release & Indemnity from Alpine Paving

Alpine Paving will release, indemnify and hold harmless the RMOW and its elected officials, officers, employees, volunteers and agents from and against any losses, damages, expenses (including legal fees on a solicitor and own client basis) and liabilities (including those arising from

any litigation or other proceedings) arising from or any breach, negligence or malfeasance by the Alpine Paving under this Agreement.

5.2 Releases and Indemnities Survive

The releases and indemnities under this Agreement will survive and continue in full force and effect after termination of this Agreement, in whole or in part, whether by effluxion of time, release, discharge or otherwise.

6. INSURANCE

6.1 Alpine to Maintain Insurance

Alpine Paving will obtain and maintain for the entire term of this Agreement, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage against claims for personal injury, death, or property damage or loss upon, in, or about the Facility arising from the Works in an amount of not less than \$5,000,000 per occurrence for bodily injury (including death), and property damage subject to a maximum deductible of \$5,000 for any one loss, and with endorsements for personal injury, voluntary medical payment to a limit of \$1,000 for each person, and \$10,000 for each accident for any one occurrence with no deductible, blanket contractual, products and completed operations and cross liability with limits not less than \$5,000,000 for any one loss or damage, subject to maximum deductible of \$5,000; and will ensure that all insurance policies under this Agreement:

- (a) list the RMOW as an additional insured;
- (b) are placed with insurers licensed in British Columbia;
- (c) contain a cross liability clause and a waiver of subrogation clause in favour of the RMOW;
- (d) are primary and primary and does not require the sharing of any loss by any insurer that insures the RMOW;
- (e) contain a clause to the effect that any release from liability entered into by the RMOW prior to any loss shall not affect the right of Alpine Paving or RMOW to recover; and
- (f) are endorsed to provide the RMOW with 30 days advance notice in writing of cancellation or material change.

7. NOTICES

7.1 Notices

Any notice, request, demand and other communication required or permitted to be given under this Agreement shall be in writing and will be sufficiently given if, to the RMOW, it is delivered by hand, e-mail or prepaid registered mail (return receipt requested), or if, to Alpine Paving, it is delivered by hand, e-mail or prepaid registered mail (return receipt requested) as follows:

(a) If to the RMOW:

Resort Municipality of Whistler
4325 Blackcomb Way, Whistler, B.C. V8E 0X5

Attention: Capital Projects Manager

E-mail: engineers@whistler.ca

(b) If to Alpine Paving:

Alpine Paving (1978) Ltd.
3010 Norland Avenue, Burnaby, B.C. V5B 3A6

Attention: Patrick Wilson, Manager

E-mail: Patrick@alpinepaving.com

Any such notice, request, demand or other communication will be deemed to have been given, in the case of posting on the Lands, at time of posting, delivery by hand, when delivered, in the case of e-mail, when an e-mail is received by the recipient if received before 5:00 p.m. on a day other than a Business day, or on the next Business Day if such e-mail is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day, and in the case of delivery by prepaid registered mail, as aforesaid, on the date received.

8. DEFAULT AND DISPUTE RESOLUTION

8.1 Default Event

Any of the following will constitute a default event (“**Default Event**”):

- (a) Alpine Paving failing to substantially:
 - (i) begin construction of the Works within 1 month of executing this Agreement; or
 - (ii) complete construction of the Works within 3 months of executing this Agreement;
- (b) Alpine Paving becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver is appointed for Alpine Paving; or
- (c) Alpine Paving permanently ceases operations at all, or a significant portion, of the Facility or transfers ownership or use of the Facility.

8.2 Remedies on Default

If a Default Event occurs prior to Alpine Paving completing the Works:

- (a) RMOW may cease any further payments to Alpine Paving under this Agreement; and
- (b) Alpine Paving will reimburse RMOW for any amounts paid to it under this Agreement prior to the Default Event.

8.3 Force Majeure

Neither Party shall be liable for any loss or damage hereunder due to unforeseen circumstances or to causes beyond its reasonable control, including, without limitation, riots, insurrections, wars, acts of terrorism, military or national emergencies, acts of Governmental Authority, inability to

obtain labour, delays caused by suppliers, subcontractors or other parties, material shortages, curtailment of or inability to obtain sufficient electrical or other energy supplies, natural disasters, power outages and interruptions, brownouts, internet service provider failure or delay, cyber-attacks and fire).

8.4 Dispute Resolution

All disputes and questions whatsoever which shall arise between the parties in connection with this Agreement, or the construction or application thereof or any section or thing contained in this Agreement or as to any act, deed or omission of any party or as to any other matter in any way relating to this Agreement, shall be resolved by arbitration conducted before a single arbitrator in accordance with the rules of the British Columbia International Commercial Arbitration Centre for Domestic Disputes. Unless otherwise agreed to by the parties, the arbitration shall be held in the City of Vancouver. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom and it shall be enforceable in any court having jurisdiction.

9. GENERAL

9.1 Assignment

This Agreement shall not be assignable by either party in whole or in part without the mutual written consent of both parties. Any purported assignment without the required consent is not binding or enforceable against any party.

9.2 Enurement

This Agreement will enure to the benefit of and be binding on the parties hereto and their respective successors.

9.3 Further Assurances

Each party will execute and deliver promptly all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions of this Agreement.

9.4 Remedies Cumulative

The rights and remedies under the Agreement are cumulative and are not in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.5 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

9.6 Amendment

This Agreement may not be amended except by a written instrument signed by both parties.

9.7 Entire Agreement

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement constitute the entire agreement between the parties for the subject matter of this Agreement.

9.8 Governing Law

This Agreement and any dispute arising out of or in connection with this Agreement shall be governed exclusively by and shall be enforced, construed and interpreted exclusively in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

9.9 Attornment

The parties agree to submit to and hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia for any action arising out of or in connection with this Agreement.

9.10 Severability

Each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever such provision shall be severed from this Agreement and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Agreement.

9.11 Fettering

Nothing in this Agreement will fetter or limit any authority or discretion of the RMOW under an enactment.

9.12 Time of Essence

Time is of the essence of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed and delivered by the parties as of the day and year first above written.

RESORT MUNICIPALITY OF WHISTLER

Per: _____
Mayor, Jack Crompton

Per: _____
Municipal Clerk, Alba Banman

ALPINE PAVING (1978) LTD.

Per: _____
Owner, Frank Silveri

Per: _____
Name:

APPENDIX A OVERVIEW OF WORKS

Quarry road vegetated berm

Create berm as discussed

Hydro seeding berm – to include native alder tree seeding

Quarry Road Prep and Paving

Grading and compaction

Install 75mm asphalt surface including use of recycled content