

# INVITATION TO BID (ITB) NUMBER

2517N043

## RETURN THIS BID TO THE ISSUING OFFICE AT:



Department of Transportation & Public Facilities  
Northern Region Procurement Office  
2301 Peger Road  
Fairbanks, Alaska 99709

**THIS IS NOT AN ORDER**

**DATE ITB ISSUED: May 19, 2017**

**ITB TITLE:** Crushed Aggregate; Nome Kougarok Road Mile 48, Federally Funded

**SEALED BIDS MUST BE SUBMITTED TO THE DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES AT THE ABOVE ADDRESS AND MUST BE TIME AND DATE STAMPED BY THE PURCHASING SECTION PRIOR TO 10:00 AM ON Wednesday JUNE 7, AT WHICH TIME THEY WILL BE PUBLICLY OPENED.**

**DELIVERY LOCATION:** MP 48 Kougarok Road, Nome AK

**DELIVERY DATE:** Multiple Dates, see Bid Schedule

**F.O.B. POINT:** FINAL DESTINATION

**IMPORTANT NOTICE:** If you received this solicitation from the State's "Online Public Notice" web site, you must register with the Procurement Officer listed on this document to receive notification of subsequent amendments. Failure to contact the Procurement Officer may result in the rejection of your offer.

### **BIDDER'S NOTICE:**

Contracts for purchases resulting from this bid will be made utilizing Federal Funds. As such, and per AS 36.30.890, no State of Alaska Bidder or Product Preferences may apply.

### **Sec. 36.30.890. Federal Assistance**

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

### **2 AAC 12.730. Federal Assistance**

If a procurement involves the expenditure of federal funds or requires federal assistance and there is a conflict between a provision of this chapter and federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement.

Authority: AS 36.30.040; AS 36.30.890

A handwritten signature in black ink, appearing to read "Eric Johnson".

Eric Johnson  
PROCUREMENT OFFICER

TELEPHONE NUMBER  
(907) 451-5102

FAX NUMBER  
(907) 451-5238

EMAIL: [eric.johnson@alaska.gov](mailto:eric.johnson@alaska.gov)

\_\_\_\_\_  
COMPANY SUBMITTING BID

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
E-MAIL ADDRESS

\_\_\_\_\_  
ALASKA BUSINESS LICENSE NUMBER

\_\_\_\_\_  
FEDERAL TAX ID NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

Note: An Alaska Business License will be required prior to award. Out-of-State bidders must also comply with all corporate laws of the State of Alaska regarding performing business in the State.

**INSTRUCTIONS TO BIDDERS:**

**1. INVITATION TO BID (ITB) REVIEW:** Bidders shall carefully review this ITB for defects and questionable or objectionable material. Bidders' comments concerning defects and questionable or objectionable material in the ITB must be made in writing and received by the purchasing authority at least ten (10) days before the bid opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices. Bidders' original comments should be sent to the purchasing authority listed on the front of this ITB.

**2. BID FORMS:** Bidders shall use this and attached forms in submitting bids. A photocopied bid may be submitted.

**3. SUBMITTING BIDS:** Envelopes containing bids must be sealed, marked, and addressed as shown in the example below. Do not put the ITB number and opening date on the envelope of a request for bid information. Envelopes with ITB numbers annotated on the outside will not be opened until the scheduled date and time.

Bidder's Return Address

Department of Transportation & Public Facilities  
Supply & Services  
2301 Peger Road  
Fairbanks, AK 99709

ITB Name: Crushed Aggregate; Nome Kougarak Road Mile 48, Federally Funded

ITB Number: 2517N043

Opening Date: June 7, 2017 at 10:00 AM

**ELECTRONIC BID SUBMISSION:** Bids may be emailed to [eric.johnson@alaska.gov](mailto:eric.johnson@alaska.gov), no later than the date and time listed on page one of this ITB as the deadline for receipt of bids, and must contain the ITB number in the subject line of the email. Emailed bids must be submitted as an attachment in PDF format. Please note that the **maximum** size of a single email (including *all* text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above. The state is not responsible for unreadable, corrupt, or missing attachments. It is the bidder's responsibility to contact the issuing office at (907) 451-5102 to confirm that the bid has been received. Failure to follow the above instructions may result in the bid being found non-responsive and rejected.

**FAX BID SUBMISSION:** Bids may be faxed to (907) 451-5238, no later than the date and time listed on page one of this ITB as the deadline for receipt of bids. It is the bidder's responsibility to contact the issuing office at (907) 451-5102 to make arrangements prior to faxing the bid and to confirm that the bid has been received. Failure to follow the above instructions may result in the bid being found non-responsive and rejected.

**4. PRICES:** The bidder shall state prices in the units of issue on this ITB. Prices quoted for commodities must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. Prices quoted for services must be quoted in U.S. funds and include applicable federal duty, brokerage fee, packaging, and transportation cost so that the services can be provided without further cost. Prices quoted in bids must be exclusive of federal, state, and local taxes. If the bidder believes that certain taxes are payable by the State, the bidder may list such taxes separately, directly below the bid price for the affected item. The State is exempt from Federal Excise Tax except the following:

- Coal - Internal Revenue Code of 1986 (IRC), Section 4121 - on the purchase of coal;
- "Gas Guzzler" - IRC, Section 4064 - on the purchase of low m.p.g. automobiles, except that police and other emergency type vehicles are not subject to the tax;
- Air Cargo - IRC, Section 4271 - on the purchase of property transportation services by air;
- Air Passenger - IRC, Section 4261 - on the purchase of passenger transportation services by air carriers.
- Leaking Underground Storage Tank Trust Fund Tax (LUST) - IRC, Section 4081 - on the purchase of Aviation Gasoline, Diesel Fuel, Gasoline, and Kerosene.

**5. VENDOR TAX ID NUMBER:** If goods or services procured through this ITB are of a type that is required to be included on a Miscellaneous Tax Statement, as described in the Internal Revenue Code, a valid tax identification number must be provided to the State of Alaska before payment will be made.

**6. FILING A PROTEST:** A bidder may protest the award of a contract or the proposed award of a contract for supplies, services, or professional services. The protest must be filed in writing and include the following information: (1) the name, address, and telephone number of the protester; (2) the signature of the protester or the protester's representative; (3) identification of the contracting agency and the solicitation or contract at issue; (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and (5) the form of relief requested. Protests will be treated in accordance with Alaska Statutes (AS) 36.30.560-36.30.610.

**CONDITIONS:**

**1. AUTHORITY:** This ITB is written in accordance with AS 36.30 and 2 AAC 12.

**2. COMPLIANCE:** In the performance of a contract that results from this ITB, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; and be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.

**3. SUITABLE MATERIALS, ETC.:** Unless otherwise specified, all materials, supplies or equipment offered by a bidder shall be new, unused, and of the latest edition, version, model or crop and of recent manufacture.

**4. SPECIFICATIONS:** Unless otherwise specified in the ITB, product brand names or model numbers specified in this ITB are examples of the type and quality of product required, and are not statements of preference. If the specifications describing an item conflict with a brand name or model number describing the item, the specifications govern. Reference to brand name or number does not preclude an offer of a comparable or better product, if full specifications and descriptive literature are provided for the product. Failure to provide such specifications and descriptive literature may be cause for rejection of the offer.

**5. FIRM OFFER:** For the purpose of award, offers made in accordance with this ITB must be good and firm for a period of ninety (90) days from the date of bid opening.

**6. EXTENSION OF PRICES:** In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

**7. BID PREPARATION COSTS:** The State is not liable for any costs incurred by the bidder in bid preparation.

**8. CONSOLIDATION OF AWARDS:** Due to high administrative costs associated with processing of purchase orders, a single low bid of \$50 or less may, at the discretion of the State, be awarded to the next low bidder receiving other awards for consolidation purposes. This paragraph is not subject to the protest terms enumerated in "*INSTRUCTION TO BIDDERS*", "*FILING A PROTEST*" above.

**9. CONTRACT FUNDING:** Bidders are advised that funds are available for the initial purchase and/or the first term of the contract. Payment and performance obligations for succeeding purchases and/or additional terms of the contract are subject to the availability and appropriation of funds.

**10. CONFLICT OF INTEREST:** An officer or employee of the State of Alaska may not seek to acquire, be a party to, or possess a financial interest in, this contract if (1) the officer or employee is an employee of the administrative unit that supervises the award of this contract; or (2) the officer or employee has the power to take or withhold official action so as to affect the award or execution of the contract.

**11. ASSIGNMENT(S):** Assignment of rights, duties, or payments under a contract resulting from this ITB is not permitted unless authorized in writing by the State of Alaska, Department of Administration, Division of General Services. Bids that are conditioned upon the State's approval of an assignment will be rejected as nonresponsive.

**12. SUBCONTRACTOR(S):** Within five (5) working days of notice from the state, the apparent low bidder must submit a list of the subcontractors that will be used in the performance of the contract. The list must include the name of each subcontractor and the location of the place of business for each subcontractor and evidence of each subcontractor's valid Alaska business license.

**13. FORCE MAJEURE** (Impossibility to perform): The contractor is not liable for the consequences of any failure to perform, or default in performing, any of its obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the contractor. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

**14. LATE BIDS:** Late bids are bids received after the time and date set for receipt of the bids. Late bids will not be accepted.

**15. CONTRACT EXTENSION:** Unless otherwise provided in this ITB, the State and the successful bidder/contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least thirty (30) days before the desired date of cancellation.

**16. DEFAULT:** In case of default by the contractor, for any reason whatsoever, the State of Alaska may procure the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

**17. DISPUTES:** Any dispute arising out of this agreement shall be resolved under the laws of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain any relief from or remedy in connection with this agreement may be brought only in the superior court for the State of Alaska.

**18. CONSUMER ELECTRICAL PRODUCT:** AS 45.45.910 requires that "...a person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured after August 14, 1990, unless the product is clearly marked as being listed by an approved third party certification program." Electrical consumer products manufactured before August 14, 1990, must either be clearly marked as being third party certified or be marked with a warning label that complies with AS

45.45.910(e). Even exempted electrical products must be marked with the warning label. By signature on this bid the bidder certifies that the product offered is in compliance with the law. A list of approved third party certifiers, warning labels and additional information is available from: Department of Labor and Workforce Development, Labor Standards & Safety Division, Mechanical Inspection Section, P.O. Box 107020, Anchorage, Alaska 99510-7020, (907)269-4925.

**19. SEVERABILITY:** If any provision of the contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**SPECIAL CONDITIONS:**

**1.ORDER DOCUMENTS:** Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The State is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the State under this ITB. The State of Alaska Purchase Order, Contract Award and Delivery Order are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.

**2.BILLING INSTRUCTIONS:** Invoices must be billed to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order, not to the Division of General Services. The ordering agency will make payment after it receives the merchandise or service and the invoice. Questions concerning payment must be addressed to the ordering agency.

**3.CONTINUING OBLIGATION OF CONTRACTOR:** Notwithstanding the expiration date of a contract resulting from this ITB, the contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance and parts availability requirements have completely expired.

**ALASKA VENDOR & PRODUCT PREFERENCES:**

*State and local preferences will not be applied to federally funded projects.*

**FEDERAL REQUIREMENTS AND CONDITIONS**

**FEDERALLY FUNDED PROJECT(S) / ALASKA BUSINESS LICENSE REQUIREMENTS**

When Federal funds are involved, the Alaska Business License must be obtained prior to the award of a contract.

23 CFR 635.110; "Licensing and qualification of contractors", (c) reads:

"No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract"

Offerors should contact the Department of Community and Economic Development, Division of Occupational Licensing, P. O. Box 110806, Juneau, Alaska 99811-0806, for information on obtaining applicable licenses.

**CERTIFICATIONS**

The Contractor must meet the following Federal certification requirements:

1. Debarment, suspension, and other responsibility matters for primary covered transactions

The Contractor certifies, to the best of its knowledge and belief, that it and its principles:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification: and
- d) Have not within three (3)-year period preceding this certification had one or more public transaction (federal, state, or local) terminated from clause or default.
- e) Contractor also certifies that, if it later becomes aware of any information contradicting the statements of paragraph a) above, it will promptly provide that information to the Alaska Department of Transportation.

#### **DISADVANTAGE BUSINESS ENTERPRISE ASSURANCE**

In accordance with 49 CFR 26.13(a), contractor assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirement of 49 CFR part 26. The recipient assures that it shall take all necessary and reasonable steps under 49CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreement supported with Federal assistance derived from the U.S. Department of Transportation.

**ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES:** Prior to the award of a contract, a bidder must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license at the time designated for bid opening. Bidders should contact the Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing for information on these licenses.

Website: <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing.aspx>  
Phone: (907) 465-2550  
Email: [license@alaska.gov](mailto:license@alaska.gov)

Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

- (a) copy of an Alaska business license;
- (b) certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid (see front page);
- (c) a canceled check for the Alaska business license fee;
- (d) a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- (e) a sworn and notarized statement that the bidder has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time bids are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

At the time designated for bid opening, all bidders must hold any other necessary applicable professional licenses required by Alaska Statute.

**ALASKA BIDDER PREFERENCE:** An Alaska Bidder Preference of five percent will be applied prior to evaluation. The preference will be given to a bidder who:

- (1) holds a current Alaska business license at the time designated for bid opening;

- (2) submits a proposal for goods or services under the name appearing on the bidder's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

**ALASKA BIDDER PREFERENCE STATEMENT:** In order to receive the Alaska Bidder Preference, the bid must also include a statement certifying that the bidder is eligible to receive the Alaska Bidder Preference.

If the bidder is a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner and include a statement certifying that all members or partners are residents of the state.

If the bidder is a joint venture which includes a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner of each LLC or partnership that is included in the joint venture and include a statement certifying that all of those members or partners are residents of the state.

**BIDDERS WITH DISABILITIES:** The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Department of Transportation & Public Facilities at one of the following numbers no later than Ten (10) days prior to bid opening to make any necessary arrangements.

Telephone: (907) 451-5102  
Fax: (907) 451-5238  
TDD: (907) 451-2363

**COMPLIANCE WITH ADA:** By signature of their bid the bidder certifies that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.

Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance with 28 CFR Part 35



Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

**PREFERENCE QUALIFICATION:** In order to qualify for an Alaska Veterans Preference, Employment Program Preference, or Alaskans with Disabilities Preference, a bidder must add value by actually performing, controlling, managing, and supervising the services provided, or a bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

**CONTRACT PERFORMANCE LOCATION:** By signature on their bid, the bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the bidder cannot certify that all work will be performed in the United States, the bidder must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of bids.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the bid as non-responsive, or cancel the contract.

**HUMAN TRAFFICKING:** By signature on their bid, the bidder certifies that the bidder is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/>

Failure to comply with this requirement will cause the state to reject the bid as non-responsive, or cancel the contract

**CONTRACT INTENT:** This Invitation to Bid (ITB) is intended to result in the purchase of produced and stockpiled aggregate, at Mile 48, Nome Kougarok Road, Nome Alaska, for the Department of Transportation & Public Facilities (DOT&PF); Northern Region Maintenance and Operations.

**NOTICE OF INTENT TO AWARD:** After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. This tabulation, called a Notice of Intent to Award, serves two purposes. It lists the name of each company or person that offered a bid and the price they bid. It also provides notice of the state's intent to award a contract(s) to the bidder(s) indicated. A copy of the Notice of Intent will be mailed to each company or person who responded to the ITB. Bidders identified as the apparent low responsive bidders are instructed not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the contracting officer. A company or person who proceeds prior to

receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the contracting officer does so without a contract and at their own risk.

**PAYMENT FOR STATE PURCHASES:** Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

**PROMPT PAYMENT FOR STATE PURCHASES:** The state is eligible to receive a 5% discount for all invoices paid within 15 business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated

**FEDERAL EXCISE TAX:** The State of Alaska is exempt from Federal Excise Tax except for the following:

- Coal - Internal Revenue Code of 1986 (IRC), Section 4121 - on the purchase of coal;
- "Gas Guzzler" - IRC, Section 4064 - on the purchase of low m.p.g. automobiles, except that police and other emergency type vehicles are not subject to the tax;
- Air Cargo - IRC, Section 4271 - on the purchase of property transportation services by air;
- Air Passenger - IRC, Section 4261 - on the purchase of passenger transportation services by air charter.
- Leaking Underground Storage Tank Trust Fund Tax (LUST) - IRC, Section 4081 - on the purchase of Aviation gasoline, Diesel Fuel, Gasoline, and Kerosene.

The State of Alaska is also exempt from State Motor Fuel Taxes. The appropriate exemption forms will accompany a contract(s) resulting from this ITB. The state is not exempt from the Federal Superfund Tax.

**CONTRACT ADMINISTRATION:** The administration of this contract is the responsibility of Henry Cole, Project Manager, Department of Transportation & Public Facilities.

**SHIPPING DAMAGE:** The state will not accept or pay for damaged goods. The contractor must file all claims against the carrier(s) for damages incurred to items in transit from the point of origin to the ultimate destination. The state will provide the contractor with written notice when damaged goods are received. The state will deduct the cost of the damaged goods from the invoice prior to payment. The contractor must file all claims against the carrier(s) for reimbursement of the loss.

**INDEMNIFICATION:** The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the

contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor's work.

**INSURANCE:** Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

**Proof of insurance is required for the following:**

Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the state.

Commercial General Liability Insurance: covering all business premises and operations used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

Failure to supply satisfactory proof of insurance within the time required will cause the state to declare the bidder non-responsible and to reject the bid.

**SUPPORTING INFORMATION:** The state strongly desires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the contracting officer that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the state reserves the right to request supplemental information from the bidder, after the bids have been

opened, to ensure that the products offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the state, will cause the state to consider the offer non-responsive and reject the bid.

**FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER:** Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

**NONDISCLOSURE AND CONFIDENTIALITY:** Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines (i) provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or (ii) acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure ( to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a

reasonable time after the contractor's receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

**CONTRACT PERIOD:** From date of award through August 15, 2017

**CONTRACT PRICES:** Contract prices are to remain firm through the duration the contract(s) and any extension or renewal of the contract.

**PRICE DECREASES:** During the period of the contract all price decreases experienced by the contractor must be passed on to the state. A contractor's failure to strictly and faithfully adhere to this clause, within the time required, will be considered in breach of contract.

**ACCEPTANCE TEST:** The Contractor will be required to submit samples and test results to the State according to the requirements and schedule shown in the attached Special Provisions. The State reserves the right to conduct independent testing for verification of these results. If the product fails to meet the ITB specifications the state will, at its option, reject the bid, cancel the contract, allow the contractor to repair the defective product or allow the contractor to replace the defective product. In no instance will the state pay any cost associated with the remedy for the defective product. The state's acceptance of tested product may not be interpreted as evidence that the product is in perfect working order.

**ALTERATIONS:** The contractor must obtain the written approval from the contracting officer prior to making any alterations to the specifications contained in this ITB. The state will not pay for alterations that are not approved in advance and in writing by the contracting officer.

**DELIVERY:** Indicate, in the space provided under "Bid Schedule", the time required to make delivery after the receipt of an order. Failure to make an entry in the space provided will be construed as an offer to deliver prior to the completion date listed after the receipt of an order. Bids that specify deliveries in excess of the required completion date after the receipt of an order will be considered non-responsive and the bids will be rejected.

**LIQUIDATED DAMAGES:** Late delivery will cause the state to suffer damages. Actual damages will be difficult to assess; therefore, it is mutually agreed that the contractor will pay the state damages per **Section 108-1.07 Failure To Complete On Time** (Page 7 of the Special Provisions) for each calendar day beyond the delivery dates called for in the ITB.

**BID GUARANTEE:** Bids must be accompanied by a bid guarantee in the form of a Certified or Cashier's check, or Bid Bond in the amount of **\$5,000.00** made payable to the State of Alaska.

The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond or Individual Surety. If the successful bidder fails to deliver the required Performance Bond or Individual Surety within the time required, the bid guarantee will be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

Bidders must submit their bid guarantee with their bid in order to be considered responsive.

**PERFORMANCE BOND:** Any posted performance bonds will ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to non-compliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the bonding company shall well and truly perform and complete all obligations and work under said contract in accordance with the terms of the performance bond. A performance bond is to be in the amount of **50% of the total awarded price.**

**INDIVIDUAL SURETY:** In lieu of a performance bond, a successful bidder may post an individual surety to ensure performance over the entire term of the contract. In the event it becomes necessary for the state to cancel the contract issued as a result of this ITB due to noncompliance during the term of the contract, regardless of the circumstances or time remaining on the contract, the individual surety will be declared as liquidated damages and become due and payable to the state. By signature on this ITB, the bidder acknowledges this condition and voluntarily relinquishes any and all claims to the entire individual surety. The individual surety may be in any of the following forms:

**CERTIFIED OR CASHIER'S CHECK:** A certified or cashier's check, made payable to the State of Alaska in the amount of **50% of the total awarded price.**

**OR**

**SPECIAL NOTICE ACCOUNT OR CERTIFICATE OF DEPOSIT:** A special notice account book or certificate of deposit, made payable to the State of Alaska in the amount of **50% of the total awarded price.**

Failure to supply this document within the time required will cause the state to declare the bidder non-responsive and to reject the bid.

**F.O.B. POINT:** The F.O.B. point for this ITB will be Mile 48, Nome Kougarok Road. The contractor will be required to prepare the items for shipping and to ship them to the ultimate destination specified in the state's order.

**SITE INSPECTION:** Bidders are encouraged to visit the work site so that they can see the conditions under which the work described in this ITB will be performed. The bidder's failure to visit the work site will in no way relieve the bidder of the responsibility of performing the work in strict compliance with the true intent and meaning of the terms, conditions and specifications of this ITB. The site may be inspected by contacting; Henry Cole, at telephone number (907)

451-2223. The contact person is only empowered to allow bidders to view the work site. Any questions the bidders have must be directed to the contracting officer named on the front page of this ITB. The contact person can not and will not answer bidder questions regarding the work to be performed under this ITB or the terms, conditions and specifications of this ITB.

**INVOICES:** Invoices must be sent directly to the ordering agency's address shown on the individual Purchase Order, Contract Award or Delivery Order. The ordering agency will only make payment after it receives the merchandise or service and the invoice. Question concerning payment must be addressed to the ordering agency.

**THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED:** Because of the additional administrative and accounting time required of state agencies when third party financing agreements are permitted, they will not be allowed under this contract.

**CONTINUING OBLIGATION OF CONTRACTOR:** Regardless of the terms and conditions of any third-party financing agreement, the contractor agrees that none of its responsibilities under this contract are transferable and that the contractor alone will continue to be solely responsible until the expiration date of the contract. Such responsibilities include, but are not limited to, the provision of equipment, training, warranty service, maintenance, parts and the provision of consumable supplies. By signature on the face page of this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this continuing obligation clause.

**WORKMANSHIP & MATERIALS:** All work must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the finished item. The state will reject any item that does not meet the specifications of the ITB. Rejected items will be returned to the contractor at the contractor's risk and expense.

**CONTRACT CANCELLATION:** The state reserves the right to cancel the contract at its convenience upon Thirty (30) calendar days written notice to the contractor. The state is liable only for payment in accordance with the payment provisions of this contract for services or supplies provided before the effective date of termination.

**METHOD OF AWARD:** Award will be made to the lowest responsive and responsible bidder.

## SPECIFICATIONS

Scope of Work (Special Provisions) is listed as Attachment A (9 pages).

## BID SCHEDULE

Bid Schedule is listed as Attachment B (1 page)

## ADDITIONAL DOCUMENTATION

1. Material Sale Contract (15 Pages)
2. Material Site Inspection Report (12 Pages)
3. Required Contract Provisions for Federal Aid Contracts (13 pages).

## BIDDER INFORMATION

Guaranteed Delivery at MP 48 Nome Kougarok Road: \_\_\_\_\_

ORDERING ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Toll Free: \_\_\_\_\_



## Attachment A – Scope of Work

### SECTION 101 DEFINITIONS AND TERMS

#### 101-1.03 DEFINITIONS.

**ENGINEER.** The authorized representative of the Contracting Officer who is responsible for administering the Contract shall be Henry Cole; phone 907-451-2223 or email Henry.Cole@Alaska.gov. This project takes place in the Western Maintenance and Operations District; the Superintendent of which is Evan Booth; phone 97-443-3411, or email Evan.Booth@Alaska.gov.

### SECTION 104 SCOPE OF WORK

**104-1.01 INTENT OF CONTRACT.** The intent of the Contract is to produce and stockpile processed aggregate. The site listed below is the location of the final stockpile only; this does not indicate the source or the quality of the material.

The Contractor must: acquire the material sources and all necessary permits; process and stockpile the required aggregate; and pay all associated fees and royalties. Proof of royalty payments shall be required prior to final payment under this Contract. At least seven days prior to mobilization the Contractor shall submit documentation indicating that the material source meets the quality specifications per Section 703 of the Contract.

The location and quantity required are as follows:

**TABLE 104-1**

Material Site No.	Location	Quantity (CY)	Royalty	Completion Date
141-006-4	Nome-Kougarok Road, mile 48	10,000	\$2,500	8/15/2017
141-006-4	Nome-Kougarok Road, mile 48 (Additive Alternate 1)	5,000	\$1,250	7/31/2017
141-006-4	Nome-Kougarok Road, mile 48 (Additive Alternate 2)	5,000	\$1,250	7/31/2017

The Contractor shall take all necessary precautions not to contaminate the materials. Final gradations and quantity measurements for acceptance and payment will be taken at the final location of the completed stockpile.

All stockpiles shall be stacked so that they are easily accessible on all sides with heavy hauling equipment, and, if located in a State Material Site, situated so as not to impact future mining operations in the site.

Geotechnical reports for State material sites may be available from the Engineer. State material reports and geotechnical data are for informational purposes only, and may not accurately represent the conditions found onsite. Any information provided should not substitute for personal investigation, research and judgment of the bidders.

The bidder is expected to examine carefully the sites of the proposed work and all contract documents before submitting a bid. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and the requirements of the Contract.

## Attachment A – Scope of Work

### SECTION 105 CONTROL OF WORK

**105-1.01 AUTHORITY OF THE ENGINEER.** The Engineer has immediate charge of the engineering details of the project and is responsible for Contract administration. The Engineer has authority to reject defective material and suspend work being performed improperly. The Engineer has authority to accept completed work, issue Directives, issue Interim Work Authorizations, issue Change Orders, and recommend Contract payments.

The Engineer will decide all questions about the quality and acceptability of the materials furnished and the work performed by the Contractor, the Contractor's rate of progress, Contract interpretation and all other questions relating to Contract performance.

The Engineer has authority to suspend work for reasons listed under Subsection 108-1.06. If the suspension is to protect workers or the public from imminent harm, the Engineer may orally order the suspension of work. Following an oral order of suspension, the Engineer will promptly give written notice of suspension. In other circumstances, the Engineer will give the Contractor written notice of suspension before suspension of work. A notice of suspension will state the defects or reasons for a suspension, the corrective actions required to stop suspension, and the time allowed to complete corrective actions. If the Contractor fails to take the corrective action within the specified time, the Engineer may:

1. Suspend the work until it is corrected; and
2. Employ others to correct the condition and deduct the cost from the Contract amount.

The Engineer may, at reasonable times, inspect any part of the plant or place of business of the Contractor or any subcontractor that is related to Contract performance, including private or commercial plants, shops, offices, or other places of business.

The Engineer may audit all books and records related to performance of the Contract, whether kept by the Contractor or a subcontractor.

**105-1.03 CONFORMITY WITH PLANS AND SPECIFICATIONS.** Work performed and materials furnished shall conform to the Specifications and approved Mining Plan and be within specified tolerances. When tolerances are not specified, the Engineer will determine the limits allowed in each case.

All work or material not conforming to the Specifications and approved Mining Plan is considered unacceptable unless the Engineer finds that reasonably acceptable work has been produced. In this event, the Engineer may allow non-conforming work or material to remain in place, but at a reduced price. The Engineer will document the basis of acceptance and payment by Change Order.

The failure of the Department to strictly enforce the Contract in one or more instances does not waive its right to do so in other or future instances.

If the Contractor fails to promptly correct, remove, or replace unacceptable or unauthorized work as ordered by the Engineer, the Engineer may employ others to remedy or remove and replace the work and will deduct the cost from the Contract payment.

### SECTION 106 CONTROL OF MATERIAL

#### 106-1.02 MATERIAL SOURCES.

1. General. The Contractor shall:
  - a. produce a sufficient quantity of materials meeting the specifications to complete the project;
  - b. As a subsidiary cost: clear and grub, strip, drill and blast, excavate, crush, sort, blend, screen, wash, stockpile, haul, and rehandle material as needed to produce and deliver the specified product;
  - c. determine the type of equipment and methods to be used;
  - d. expect variations in material quality within the deposits, and procure material only from acceptable portions of the deposit, regardless of source ownership; and

## Attachment A – Scope of Work

- e. prevent erosion, sedimentation, and pollution within a materials source.

The Contractor agrees that:

- a. the costs to explore and develop material sources, including all production effort, are subsidiary to the cost of providing the specified material;
  - b. the Engineer may order the Contractor to procure material only from certain portions of the source and may reject material from other portions of the source that does not conform to the specifications; and
  - c. all material required may not be procurable from any one source and the Contractor may need to change between sources. That contingency is to be factored into the unit bid price for the Contract Item.
2. Inspection and Acceptance. The Contractor shall perform sampling and testing during materials processing and placement in accordance with its Process Control Plan (Subsection 106-1.03-1) and shall obtain acceptable material samples from locations designated within the source.

The Department will sample and test materials to determine the quality of the source, at its expense, as part of its Acceptance Testing (Subsection 106-1.03.2). The Department will reject materials when the samples do not meet specifications. The Department may reject a proposed materials site when samples do not meet specifications.

3. Awareness Training. The operator of the Contractor's sand and gravel surface mine or other similar materials source shall provide Site-Specific Hazard Awareness Training in compliance with 30 CFR 46.11 for all the Engineer's personnel before beginning operations. All other workers shall be given training in compliance with 30 CFR 46 before exposure to mine hazards. The training must be offered at each surface mine that will be used to supply processed aggregates. A qualified person must provide the training. The training shall be in accordance with the operator's written training plan approved by the Mine Safety and Health Administration, covering the following items:
- a. Site-specific health and safety risks;
  - b. Recognition and avoidance of hazards;
  - c. Restricted areas;
  - d. Warning and evacuation signals;
  - e. Evacuation and emergency procedures;
  - f. Other special safety procedures; and
  - g. A site tour.

The Contractor shall require the Engineer's personnel to sign the Visitor's Log Book upon completion of the training to indicate that training was provided. Training is a subsidiary cost.

4. Type of Sources. The location(s) identified in Section 104-1.01 are to be the site of the finished stockpile only and do not specify the source or quality of the material to be produced. The Contractor shall supply the required material from one or more of the following types of sources:
- a. Department Furnished Material Sites. The Contractor shall obtain approval from the Engineer prior to any construction activities. Existing stockpiles of material in State sites are not available to the Contractor without prior approval from the Engineer. All stockpiled aggregate including rejected material is property of the State and shall be handled or stockpiled as described in the Contractor's approved Mining Plan, unless directed otherwise by the Engineer. At no time does the Contractor have any ownership of material, including reject, produced under this Contract. The materials in this site are not available for any use other than required by this Contract, unless approved by the Engineer. The Contractor shall be responsible for paying any mineral royalty due, as indicated in Section 104-1.01. Geotechnical information may be available, but should not be considered to be authoritative. All work and development in a Department-Furnished material site shall be in line with the Department's existing site-specific Mining Plan.
  - b. Contractor-Furnished Sources. The Contractor is encouraged to use State furnished material sites or work within an approved Right of Way for both mining and for the final stockpile locations. The use of private sources for mining and stockpile storage will require the Contractor to make all necessary agreements (See Subsection 106-1.02.5). When the Contractor elects to use a material

## Attachment A – Scope of Work

site not furnished by the Department, including State-owned land not under the Department's control, the Contractor shall:

- 1) Acquire the necessary rights and permits to obtain material;
- 2) Pay as subsidiary costs all related costs to obtain and use material from the source, including, but not limited to, permit fees, mineral royalties and associated hauling costs;
- 3) Be solely responsible for the quality and quantity of material; and
- 4) Obtain all necessary rights, permits and plan approvals before clearing or disturbing the ground in the material source. The Contractor shall certify in writing to the Engineer that all permits and clearances relating to the use of the material source have been obtained prior to any work in the material source.

No price adjustment or other compensation will be made for any costs, including increased length of haul, if the Contractor:

- 1) Chooses to change material sources for any reason;
- 2) Is unable to produce a sufficient quality or quantity of materials from Contractor-Furnished sources; or
- 3) Encounters unexpected, unforeseen or unusual conditions within a Contractor-Furnished source.

5. Rights, Permits and Plan Approvals for Material Sources. Before disturbing the site of a material source, the Contractor shall acquire, pay for and provide to the Engineer all necessary rights, permits, and plan approvals indicated in this Subsection and elsewhere in this Contract. For each material site, the Contractor shall:

- a. All other sites: Submit for the Engineer's comment and approval, no fewer than seven (7) days prior to mobilization, a mining and reclamation plan (MRP). During development of each MRP, the Contractor shall consider future activities in the material site and shall maintain access to usable material. The MRP shall include:
  - (1) Approval from the landowner (if a Contractor-Furnished source, see Subsection 106-1.02-4-b-2);
  - (2) A process control plan (see Subsection 106-1.03-1);
  - (3) Plan and cross-sectional views of the site (this includes both the mining and disposal areas);
  - (4) Applicable boundary lines, property lines and buffer zones;
  - (5) Areas and Depths to be developed (note, development of Department-Furnished sources shall be in accordance with the Department's Mining Plan for that site);
  - (6) Locations of access roads, stripping, sorting, waste piles, crushing and plant sites, stockpile sites (including reject material), buffer zones, drainage features, erosion and pollution control features;
  - (7) Condition the Contractor will leave the site in after the materials extraction is completed, including reseeded if necessary;
  - (8) A Construction General Permit-compliant Storm Water Pollution Prevention Plan, if required by Section 641; and
  - (9) Other information as required by any and all attachments included with bid (ie BLM Mining Plan Review checklist, DOT MRP and/or any site-specific stipulations that may be included).
- b. If the material is to be stockpiled in a Contractor-Furnished site or otherwise on private property, the Contractor shall supply the following information in addition to the MRP:
  - (1) A notarized agreement with the property owner allowing the State full and unfettered access to the stockpile until 12/31/2020. The owner shall certify that they have the authority to sell mineral materials from the property, and shall acknowledge the Department's ownership of the stockpiled material;
  - (2) A property map of the material site identifying property boundaries, access routes and stockpile location.

**106-1.03 TESTING AND ACCEPTANCE.** Materials are subject to inspection and testing by the Department at any time before, during or after their incorporation into the stockpile. The Contractor shall remove and replace unacceptable material according to Subsection 105-1.03.

1. Quality Control. The Contractor is responsible for the quality of materials produced under this Contract. Quality Control is process control, and includes all activities needed to ensure that the product meets

## Attachment A – Scope of Work

Contract specifications. Quality control work is subsidiary to the applicable pay items. The Contractor shall perform quality control as follows:

- a. Develop and submit a Process Control plan as part of the MRP (Subsection 106-1.02-5), including testing and frequency, personnel qualifications, equipment descriptions and criteria for corrective actions.
  - b. Sample material during production and perform quality control testing, as needed, to ensure materials produced to Contract Specifications. Document all quality control testing and make the results available to the Engineer within three days of sampling.
  - c. Due to the nature of this work, it is recommended that the Contractor maintain an on-site materials lab and a WAQTC-certified technician to perform process control. If testing will be done off-site, material processing may need to be suspended pending receipt of results.
2. Acceptance Testing. The Department reserves the right to conduct its own testing of the acceptability of the materials. This testing will be performed at the Department's expense, and copies of the test results may be furnished to the Contractor upon request. The Engineer may elect, at his discretion, to retest materials that have failed the Department's acceptance testing.
3. Minimum Testing Requirements. Tests shall be performed at minimum according to Table 106-1 below. Failing test results not in substantial conformance may be the basis of the Engineer's rejection of the represented material, and no payment will be made for unacceptable material, as outlined in Subsection 105-1.03. The Contractor shall produce and test additional material until the Contract quantity has been fully accepted and completed. Failing test results shall not be a basis for any time extension or modification to Contract requirements.

**TABLE 106-1**

Item	Test	Test Number	Specifications	Frequency (min.)
Crushed/ Stockpiled Aggregate	Process Control Gradation & Fracture, by Contractor	AASHTO T27/T11; T335	Refer to 703	1 per 1,000 C.Y.
	Acceptance, by Engineer	AASHTO T27/T11; T335	Refer to 703	1 per 10,000 C.Y.
Pit Run / 3" Minus	Process Control Gradation by Contractor	AASHTO T27/T11	Refer to 703	1 per 2,500 C.Y.
	Acceptance, by Engineer	AASHTO T27/T11	Refer to 703	1 per 25,000 C.Y.

In all cases, a minimum of one test per work item is required.

### **SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

**107-1.07 ARCHAEOLOGICAL OR HISTORICAL DISCOVERIES.** If the Contractor's operation encounters prehistoric artifacts, burials, remains of dwellings, paleontological remains, shell heaps, land or sea mammal bones, tusks or other items potentially of historical significance, the Contractor shall:

1. Immediately cease operations at the site of the find;
2. Immediately notify the Engineer of the find; and
3. Not disturb or remove the finds or perform any further operations at the site until directed by the Engineer.

The Engineer will issue an appropriate Change Order if operations are to be suspended, or extra work is needed to protect the find.

**107-1.10 USE OF EXPLOSIVES.** The Contractor shall obey all laws, regulations and permits applicable to using, handling, loading, transporting, or storing explosives. When using explosives, the Contractor shall take utmost care not to endanger life, property, new construction, or existing portions of the project and facilities that are to remain in place after the project is complete.

The Contractor shall provide notice to property owners, the traveling public, and utility companies in the vicinity before using explosives. The Contractor shall provide notice to the Federal Aviation Administration when required by law. The Contractor shall notify police and fire authorities in the vicinity before transporting or using explosives.

### **SPECIAL PROVISIONS**

**Nome Kougark Road, mile 48 Stockpiling**

## Attachment A – Scope of Work

The Contractor shall provide notice sufficiently in advance to enable all potentially affected parties to take whatever steps they may deem necessary to protect themselves and their property from injury or damage.

The Contractor is liable for all property damage, injury, or death resulting from the use of explosives on the project. The Contractor shall indemnify, hold harmless, and defend the State of Alaska from all claims related to the use of explosives on the project, including claims from government agencies alleging that explosives were handled, loaded, transported, used, or stored improperly.

### 107-1.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.

1. Restoring Areas. Areas used by the Contractor, including haul routes, shall be restored to their original condition after the Contractor's operations are completed. The original condition of an area shall be determined as follows: Prior to commencement of operations, the Engineer and the Contractor shall inspect each area and haul route that will be used by the Contractor and take photographs to document their condition. After construction operations are completed, the condition of each area and haul route will be compared to the earlier photographs. Prior to demobilization the Contractor shall repair damages attributed to its operations. The Contractor agrees that all costs associated with repairs shall be subsidiary to other items of work and will not be paid for directly.
2. Material Disposal Sites. Offsite disposal areas may be at locations of the Contractor's choice, provided the Contractor obtains written permission from the land owner for such disposal and a waiver of all claims against the State for any damage to such land which may result therefrom, together with all permits required by law for such disposal. A copy of such permission, waiver of claims, and permits shall be filed with the Engineer before commencing work on private property. The Contractor's selected disposal sites shall also be inspected and approved by the Engineer prior to use of the sites.
3. Property Marks. The Contractor shall:
  - a. Be responsible for and protect from disturbance all land monuments and property marks until the Engineer has approved the witnessing or otherwise referenced their locations; and
  - b. Not move such monuments or marks without the Engineer's approval.
4. Damage to property. The Contractor shall:
  - a. Be responsible for all damage to public or private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work;
  - b. Be responsible for all damage to public or private property resulting from defective work or materials at any time, before, during, or after project completion; and
  - c. Restore all such damaged property to a condition similar or equal to that existing before the damage occurred, at no additional cost to the Department.
5. Protection of Natural Resources. The Contractor shall:
  - a. Conduct work in a manner that minimizes disturbance to and protects natural resources in compliance with all federal, state, and local laws and regulations;
  - b. When working near designated wetlands, as defined by the Corps of Engineers, place no fill, nor operate equipment outside the permitted area;
  - c. When working in or near designated anadromous fish streams, as defined by AS 41.14.840 and AS 41.14.870, place no fill or dredge material, nor operate equipment, within or on the banks of the stream (including fording) except as permitted by a Alaska Department of Fish and Game Fish Habitat Permit issued for the project;
  - d. Upon completion, all disturbed slopes, cuts, and banked material shall be flattened to a slope no steeper than a 2:1 or as specified in the Material Sales Agreement governing use of the site. No vertical cuts or slopes shall remain;
  - e. Existing approaches to material sites and recreational trails shall not be disturbed or obstructed at any time.
6. Hazardous materials. Hazardous materials include but are not limited to petroleum products, oils, solvents, paints, lead based paints, asbestos, and chemicals that are toxic, corrosive, explosive, or flammable. Except as otherwise specified in this Contract, the Contractor shall:
  - a. Not excavate, nor use for fill, any material at any site suspected of or found to contain hazardous materials or petroleum fuels;

### SPECIAL PROVISIONS

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## Attachment A – Scope of Work

- b. Not raze and remove, or dispose of structures that contain asbestos or lead-based paints;
  - c. Not stockpile, nor dispose of, any material at any site suspected of or found to contain hazardous materials or petroleum;
  - d. Report immediately to the Engineer any known or suspected hazardous material discovered, exposed, or released into the air, ground, or water during construction of the project;
  - e. Report any containment, cleanup, or restoration activities anticipated or performed as a result of such release or discovery;
7. Protected areas. The Contractor shall not use land from any park, recreation area, wildlife or waterfowl refuge, or any historical site located inside or outside of the project limits for excess fill disposal, staging activities, equipment or material storage, or for any other purposes unless permitted by the Contract or unless all permits and clearances necessary for such work have been obtained by the Contractor.
8. Solid waste. The Contractor shall remove all debris, trash, and other solid waste from the project site as soon as possible and in accordance with the Alaska Department of Environmental Conservation Solid Waste Program.

### SECTION 108 PROSECUTION AND PROGRESS

**108-1.03 PROSECUTION AND PROGRESS.** The Contractor shall meet with the Engineer at either the district maintenance and operations station for which the Contract is for (see Subsection 101-1.03 Engineer) or schedule a teleconference with the Engineer 14 days before mobilization to the project site. The Contractor shall submit the following documents to the Engineer at least three working days before the referenced meeting:

1. A progress schedule in a format acceptable to the Engineer, showing the order in which the Contractor proposes to carry out the work and the contemplated dates on which the Contractor and the subcontractor will start and finish each of the salient features of the work, including any scheduled periods of shutdown. The schedule shall indicate the anticipated hours of operation and any anticipated periods of multiple-shift work;
2. A letter designating the Contractor's Project Superintendent, defining that person's responsibility and authority, and providing a specimen signature;
3. A Mining and Reclamation Plan, as outlined in Subsection 106-1.02-5;
4. A SWPPP, if one is required by Subsection 641, and designated field representatives; and
5. A Process Control Plan, as outlined in Subsection 106-1.03-1.

**108-1.07 FAILURE TO COMPLETE ON TIME.** For each calendar day that the work is not substantially complete after the completion date has passed, the Engineer shall deduct the full daily charge corresponding to the original Contract amount shown in Table 108-1 from the remaining value of the Contract.

If no money is due the Contractor, the Department may recover these sums from the Contractor, the Surety or both. These are Liquidated Damages, and not penalties. These charges shall reimburse the Department for additional expenses incurred due to the Contractor's failure to complete the work within the time specified.

**TABLE 108-1:  
DAILY CHARGE FOR LIQUIDATED DAMAGES  
FOR EACH CALENDAR DAY OF DELAY**

Original Contract Amount		Daily charge
From More Than:	Up to and Including:	
\$0	\$100,000	\$300
\$100,000	\$500,000	\$550
\$500,000	\$1,000,000	\$750
\$1,000,000	\$2,000,000	\$1,000
\$2,000,000	\$5,000,000	\$1,500
\$5,000,000	----	\$2,500

Permitting the Contractor to continue work after the completion date has passed does not waive the Department's right to collected Liquidated Damages under this section.

## Attachment A – Scope of Work

### SECTION 305 STOCKPILED MATERIALS

**305-1.01 DESCRIPTION.** Produce and stockpile the specified material at the designated stockpile locations shown in Subsection 104-1.01.

**305-2.01 MATERIALS.** Meet the materials requirements of Subsection 703-2.03.

**305-3.01 CONSTRUCTION REQUIREMENTS.** Clear and grub the stockpile sites and dispose of all trees, stumps, brush and debris in accordance with the approved Mining and Reclamation Plan. Make the floor of each stockpile site flat and uniform in cross-section, compacted and well-drained. Construct the stockpiles to occupy the smallest feasible areas.

Avoid contamination and segregation of the various sizes of aggregate in each stockpile. Do not push up stockpiled material with a track-type dozer; only rubber-tired vehicles are allowed on the stockpile. Make the completed stockpiles neat and generally tent shaped in form with a single ridge. Make the height or depth of the piles not less than 20 feet on average, with side slopes 1-1/2:1 or steeper.

The Contractor, in the presence of the Engineer, shall verify material site boundaries, archaeological sites, research areas, crushing location, waste areas and review of the reclamation plan prior to any work. All expenses required for above work to produce the materials specified in this Contract shall be subsidiary to other items of work.

**305-4.01 METHOD OF MEASUREMENT.** Stockpiled quantities shall be measured at the direction of the Engineer, by one of the following methods:

1. Average End Area, by the Engineer;
2. Three-Dimensional, by the Engineer;
3. The Engineer, at his sole discretion, may require the Contractor to conduct a final measurement under the supervision of a registered Professional Land Surveyor, at no additional cost to the Department. A stamped and signed volume report will be required, along with a description of the method used.

No allowance will be made for settlement, swell or shrinkage. If the Contractor chooses to demobilize off of the project site prior to final measurements being taken by the Department the Contractor is responsible for assuring that the quantity and quality of material produced meets those required by the Contract.

**305-5.01 BASIS OF PAYMENT.** All work involved in preparing the stockpile site is subsidiary.

Payment will be made under:

Pay Item	Location	Item Description	Quantity (CY)
1	Nome Kougarok Road, mile 48	Crushed Aggregate E-1	10,000
AA1	Nome Kougarok Road, mile 48	Crushed Aggregate E-1	5,000
AA2	Nome Kougarok Road, mile 48	Select Material Pit Run	5,000

### SECTION 641 EROSION, SEDIMENT, AND POLLUTION CONTROL

*No SWPPP, DOT material site*

**641-1.01 DESCRIPTION.** This Project is not anticipated to require a SWPPP, as all work in the material site(s) should be planned so that no runoff may discharge to Waters of the U.S. Appropriate Best Management Practices (BMPs) should be employed to ensure that no discharge is possible. In the event that runoff discharges occur, the Contractor shall take immediate action to stop them, and shall notify the Engineer. In the event that runoff cannot be prevented from leaving the site, the Engineer may require the Contractor to design and implement a SWPPP under the Alaska Construction General Permit.



## Attachment A – Scope of Work

### SECTION 703 AGGREGATES

**703-2.03 AGGREGATE FOR BASE AND SURFACE COURSE.** Crushed stone or crushed gravel, consisting of sound, tough, durable pebbles or rock fragments of uniform quality; free from clay balls, vegetable matter or other deleterious matters. Meet the following requirements:

**TABLE 703-1**

PROPERTY	THRESHOLD	TEST METHOD
L.A. Wear	45% max	AASHTO T96
Degradation Value	45 min	ATM 313
Fracture %	70% min	ATM 305
Liquid Limit	35 max	ATM 204
Plastic Index	10 max	ATM 205
Sodium Sulfate Loss	9 max (5 cycle)	AASHTO T104

Meet the following gradation(s), as determined by AASHTO T27/T11:

**TABLE 703-2**

Pay Item No.	1, AA1
	Percent Passing by Weight
Sieve	CA E-1
1 in.	100
3/4 in.	70 – 100
3/8 in.	50 – 85
No. 4	35 – 65
No. 8	20 – 50
No. 50	15 – 30
No. 200	8 – 15

**703-2.07 SELECTED MATERIAL (PIT RUN).** Aggregate containing no muck, frozen material, roots, sod or other deleterious matter. Meet the following requirements:

**TABLE 703-5**

PROPERTY	THRESHOLD	TEST METHOD
L.A. Wear	50% max	AASHTO T96
Degradation Value	40 min	ATM 313
Liquid Limit	55 max	AASHTO T89
Plastic Index	6 max	AASHTO T90

Meet the following gradations, as determined by AASHTO T27/T11:

**TABLE 703-6**

Pay Item No.	AA2
	Percent Passing by Weight
Sieve	3" Minus
3 in.	100
No. 200	0 – 6

### SPECIAL PROVISIONS

Nome Kougarok Road, mile 48 Stockpiling

## Crushed Aggregate; Nome Kougarok Road, Mile 48, Federally Funded

<u>Pay Item</u>	<u>Location</u>	<u>Item Description</u>	<u>Required By Date</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
1	Mile 48 Kougarok Road	Crushed Aggregate, E-1	8/15/2017	10,000	Cubic Yard	\$_____	\$_____
AA1	Mile 48 Kougarok Road	Crushed Aggregate, E-1	7/31/2017	5,000	Cubic Yard	\$_____	\$_____
AA2	Mile 48 Kougarok Road	Select Material Pit Run	7/31/2017	5,000	Cubic Yard	\$_____	\$_____
Total Basic Bid						\$_____	

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER**

**X Northern Region**  
**3700 Airport Way**  
**Fairbanks, AK 99709**  
**(907) 451-2740**

☐ **Southcentral Region**  
**550 W 7th Ave., Suite 900C**  
**Anchorage, AK 99501-3577**  
**(907) 269-8552**

☐ **Southeast Region**  
**400 Willoughby, #400**  
**Juneau, AK 99801**  
**(907) 465-3400**

**MATERIAL SALE CONTRACT  
AS 38.05.550 – 38.05.565**

**Issuance Date: July 18, 2013**

**Expiration Date: July 17, 2023**

**ADL #419942**

Under AS 38.05.550-38.05.565 (Disposal of Materials) and AS 38.05.810(a) (Public and Charitable Use) and the regulations implementing these statutes, the State of Alaska, **Department of Natural Resources** (DNR), the seller, whose address is 3700 Airport Way, Fairbanks, Alaska 99709, agrees to sell, and the State of Alaska, **Department of Transportation and Public Facilities** (DOT&PF), the buyer, whose address is 2301 Peger Road, Fairbanks, Alaska 99709, agrees to buy the material designated in this contract, subject to the provisions that follow:

**1. Description: Location, Material, Quantity, and Price.**

(a) The material sale area covered by this contract consists of approximately **9.64** acres. This area is designated by the boundaries shown on the attached sale area map, which is made a part of this contract, or as designated on the ground by the seller, and described as follows:

**MS 141-006-4 located northwest of MP 47.5 Nome-Kougarouk Road, 47 miles north of Nome within the N½NW¼ Section 16, Township 6 South, Range 30 West, KRM.**

(b) The material to be removed and the price are:

<u>Type of Material</u>	<u>No. of Units</u>	<u>Unit Price **</u>	<u>Total Price **</u>
<b>Alluvial sand &amp; gravel</b>	<b>300,000 cy</b>	<b>\$0.50</b>	<b>**</b>

**\*\* 11 AAC 05.010(e)(16) requires state, federal and local agencies to pay for materials used in constructing, reconstructing or maintaining a public project as follows: 1) no charge for the first 5,000 cy of material to be used on a project (each year of maintenance constitutes a separate project); and 2) material in excess of 5,000 cy will be charged at the unit price listed in the annual base price schedule established under 11 AAC 71.090 (currently \$ 0.50 cy).**

**2. Payments and Deposits.** No part of the materials sold under this contract may be extracted from the sale area by the buyer except in accordance with the following terms:

(a) The buyer shall remit an earnest money deposit in the amount of **\$ N/A** (consistent with 11 AAC 71.045 or 11 AAC 71.065, and no less than \$250) along with the bid for a competitive sale contract or at the time a negotiated sale buyer signs this contract. The seller will retain the deposit to cover administrative costs incurred in offering the material sale, except that if the buyer removes and pays for at

least 75% of the material volume covered by this contract, the deposit may be applied, in whole or in part, to the final payment that becomes due under this contract.

(b) Additional periodic installment payments as required in paragraph 2(c) must be made for material extracted as of the date payment becomes due but may not exceed the total purchase price.

(c) Each periodic installment payment becomes **due and payable on January 31 of each year** without prior notice to the buyer, for the value of material extracted during the calendar year of January 1 through December 31. The installment must be based on records required in paragraph 3 of this contract and must be submitted to the seller no later than January 31 of each year.

(d) **An annual report is due by January 31 of each year**, without prior notice to the buyer that details the volume of material removed during the calendar year of January 1 through December 31. This report shall be filed regardless of whether material was removed during the reporting period. Failure to file the report by the deadline may result in suspension of the contract and financial penalties. A final accounting and payment for material removed, and a completion statement, must be submitted no later than 30 days following contract completion, or when the contractor has completed removal under the contract, or following termination of the contract by the seller or by operation of law. Whether completion is satisfactory will be decided by the Director of the Division of Mining, Land & Water (DMLW) within 30 days after receiving the final accounting report and completion statement.

(e) If the buyer fails to make a payment provided for in this contract, the seller may, under paragraph 8(b) of this contract, order all material extraction suspended immediately. Materials extracted by the buyer during any period of suspension are considered taken in trespass and are to be charged to and paid for by the buyer at triple the unit contract price. Resumption of the lawful taking of materials may be authorized, in writing, by the DMLW only after the payments in arrears plus the penalty provided for in paragraph 2(f) have been paid.

(f) Material extraction in excess of the contract amount will be considered taken in trespass and at the discretion of the Director, DMLW, Lands Section, charged to and paid for by the buyer at no less than triple the current unit fair market value as established periodically by the Northern Regional Office or up to three times the pecuniary gain realized by the buyer as a result of the trespass. Said trespass penalties are in addition to any other administrative or legal proceedings imposed by state law.

(g) Late Payment Penalty will be the greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the seller.

(h) All payments and deposits must be remitted to the DMLW and must be made payable to the Alaska Department of Revenue.

(i) The following special provisions also apply to payments and deposits under this contract:

Should the administrative base price be changed during the term of this contract, the new price will be effective and apply to the material remaining to be extracted under this contract as of the effective date of the price adjustment.

### **3. Method of Volume Determination.**

(a) The method of volume determination for purposes of payment under this contract, along with any special provisions applicable to volume determination, is:

(1) Based on a loose cubic yard quantity as determined by an "in-place" measurement multiplied by a factor of 1.3; or,

(2) Based on a loose cubic yard quantity as determined by a daily vehicle count designating type of vehicle and vehicle capacity.

(b) The buyer shall keep accurate and up-to-date records of all materials extracted. These records are subject to verification by check measure and inspection of the buyer's books by the seller at any time without notice.

(c) All measurements are to be made by or under the direct supervision of buyer personnel acceptable to the seller, including a qualified engineer where the seller deems appropriate, with quantities certified by that person.

#### **4. Operating Requirements.**

(a) Boundary Lines and Survey Monuments. No boundary mark of the sale area or any survey line or witness tree for any survey corner or monument may be severed or removed, nor may any survey corner or monument be damaged or destroyed. Any violation of this clause requires the buyer to bear the expense of re-establishing the line, corner, or monument by a registered surveyor in a manner approved by the seller.

(b) Location. The buyer is responsible for the accurate location of operations under this contract, including any survey that may be necessary for accurate location unless otherwise specified in this contract.

(c) Survey. An as built survey of the material site is not required at this time.

(d) Extraction Area. This contract authorizes removal of material only from the area defined in Section 1(a) of this contract. The buyer is responsible for properly locating the material site and the working limits within that area, as shown on the attached map.

(e) Potential Processing Activities and Other Authorizations. The issuance of this authorization does not alleviate the necessity of the purchaser to obtain authorizations required by other agencies for this activity. Any asphalt processing or related activities and associated structures will not be allowed without prior approval from DNR, the Department of Environmental Conservation and other agencies that require authorizations from the buyer.

(f) Standard of Operations. The buyer shall properly locate the buyer's operations and buyer's improvements within the sale area, and may not commit waste, whether ameliorated or otherwise. In addition to complying with all laws, regulations, ordinances, and orders, the buyer shall maintain the land in a reasonably neat and clean condition. No construction material, fill, waste asphalt, damaged culverts or any other debris shall be stockpiled within pit boundaries. Stockpiled material and/or overburden shall not be placed in wetlands. After completion, expiration, or termination of the contract, the site will be left in a condition that is acceptable to the seller, and reclaimed in accordance with the approved reclamation plan.

(g) Erosion Control and Protection of Waters. Operations in connection with this contract must be conducted so as to avoid damage to streams, lakes, or other waters and land adjacent to them. Vegetation and materials may not be deposited into any stream or other waters. Locations and improvements necessary for stream crossings for haul roads must be approved in advance by the seller. All roads to be abandoned must be treated with measures necessary to prevent erosion in a manner acceptable to the seller. Any damage resulting from failure to perform these requirements must be repaired by the buyer to the satisfaction of the seller. Waters include waters defined in 5 AAC 95.010, Protection of Fish and Game Habitat.

(h) Roads. Before constructing any main haul, secondary or spur road across state land, the buyer shall obtain written approval of the proposed location and construction standards of the road from the seller.

Road construction must be conducted so as to avoid damage to streams, lakes, or other waters and land adjacent to them.

(i) Water Quality. The buyer shall comply with the State of Alaska water quality standards pursuant to 18 AAC 70, including discharge standards when conducting material washing operations.

(j) Other Authorizations. The issuance of this authorization does not alleviate the necessity of the purchaser to obtain authorizations required by other agencies for this activity.

(k) Fire Protection. The buyer shall take all necessary precautions for the prevention of wildfires and is responsible for the suppression, and must bear the suppression costs, of all destructive or uncontrolled fires occurring in or outside the sale area resulting from any of the buyer's operations under this contract. The buyer shall comply with all laws, regulations, and ordinances promulgated by all governmental agencies responsible for fire protection in the area.

(l) Supervision. The buyer shall maintain adequate supervision at all times when operations are in progress to ensure that the provisions of this contract and all applicable federal, state, and local laws, regulations, and ordinances governing the operations are enforced. At all times when operations are in progress, the buyer, or a person authorized by the buyer to assume the responsibilities imposed by this contract, shall be present on the sale area.

(m) Agents. The provisions of this contract apply with equal force upon an agent, employee, or contractor designated by the buyer to perform any of the operations relating to extraction of the materials sold under this contract. The buyer is liable for noncompliance caused by any such agent, employee, or contractor.

(n) Access. The seller makes no representations that it will construct or maintain access to the land. Access over any route not under the seller's control is the responsibility of the buyer. The buyer agrees that any permanent access or right-of-way obtained over privately owned property will provide a permanent easement to the seller.

(o) Alaska Historic Preservation Act. The buyer will consult the Alaska Heritage Resources Survey (907) 269-8721 so that known historic, archaeological and paleontological sites may be avoided. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation (907) 269-8721 and will be notified immediately.

(p) Vehicle Maintenance. Vehicle maintenance will be performed only over an effective impermeable barrier.

(q) Fuel and hazardous substances. No fuel or hazardous substances are to be stored on the subject parcel. Prior written approval from the seller is required for a change in this restriction. Such approval may include additional operating requirements and a change in the amount required for the performance guarantee. The disposal of hazardous substances or hydrocarbons is prohibited.

(r) Notification. The buyer will immediately notify the Department of Natural Resources and the Department of Environmental Conservation by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax

number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. DNR and DEC will be supplied with all follow-up incident reports.

(s) Reclamation. Upon completion, expiration, or termination of the contract, the site will be left in a condition that is acceptable to the DMLW and reclaimed in accordance with the DNR approved Mining and Reclamation plan. Reclamation shall be to the standards of the DMLW and shall include repair of access roads to and within the site, disposal of remaining stockpiles, other procedures that will be used to stabilize and reclaim the area and any other site specific measures that may be necessary. This contract is subject to the attached approved reclamation plan in accordance with AS 27.19.

(t) SWPP and APDES. The buyer shall comply with the requirement of the Alaska Pollutant Discharge Elimination System (APES) and if applicable, to maintain and operate the site in accordance with an approved Storm Water Pollution Prevention Plan (SWPP).

(u) Use of Material. This contract authorizes the excavation and use of material for the express purpose of providing material for construction and maintenance of public projects.

**5. Indemnity of Seller and Bonding. Not applicable.**

(a) The buyer shall indemnify and hold the seller harmless from:

(1) all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection with the use or occupancy of the land or operations by the buyer or the buyer's successors, or at the buyer's invitation; and

(2) any accident or fire on the land; and

(3) any nuisance on the land; and

(4) any failure of the buyer to keep the land in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and

(5) any assignment, sublease, or conveyance, attempted or successful, by the buyer that is contrary to the provisions of this contract.

The buyer will keep all goods, materials, furniture, fixtures, equipment, machinery, and other property on the land at the buyer's sole risk, and will hold the seller harmless from any claim of loss or damage to them by any cause.

(b) At the seller's discretion, a buyer may be required to file a bond designed to ensure the buyer's performance and to help protect the seller against any liability that may arise as a result of the activities of the buyer. If required, a bond acceptable to the seller in the amount of **\$N/A** must be filed with the seller at the time of execution of this contract to ensure the buyer's performance and financial responsibility.

**6. Improvements and Occupancy.**

(a) Any improvements or facilities including crushers, mixing plants, buildings, bridges, roads, etc., constructed by the buyer in connection with this sale and within the sale area must be in accordance with plans approved by the seller.

(b) The buyer must, within 60 days after contract completion or termination of the contract by the seller or by operation of law, remove the buyer's equipment and other personal property from the sale area. After removal, the buyer must leave the land in a safe and clean condition that is acceptable to the seller. If the buyer can demonstrate undue hardship, the time for removal of the improvements under this paragraph may be extended at the seller's discretion.



(c) If any of the buyer's property having an appraised value in excess of \$10,000, as determined by the seller, is not removed within the time allowed, that property may, upon 30 days' notice to the buyer, be sold at public auction under the direction of the seller. The proceeds of the sale will inure to the buyer after satisfaction of the expense of the sale and deduction of all amounts then owed to the seller. If there are no other bidders at the sale, the seller may bid on the property, and the seller will acquire all rights, both legal and equitable, that any other purchaser could acquire through a sale and purchase.

(d) If any of the buyer's property having an appraised value of \$10,000 or less, as determined by the seller, is not removed within the time allowed, title to that property automatically vests in the seller.

(e) Special provisions. Special provisions applicable to improvements and occupancy under this contract are listed in paragraph 4 of this contract.

#### **7. Inspection.**

(a) The seller must be accorded access, at all times, to the sale area and to the books and records of the buyer, the buyer's contractors, and any sub-contractors relating to operations under this contract for purposes of inspection to assure the faithful performance of the provisions of this contract and other lawful requirements.

(b) At all times when construction or operations are in progress, the buyer shall have a representative readily available to the area of operations who is authorized to receive, on behalf of the buyer, any notices and instructions given by the seller in regard to performance under this contract, and to take appropriate action as is required by this contract.

#### **8. Termination and Suspension.**

(a) The seller may terminate the buyer's rights under this contract if the buyer breaches the contract and fails to correct this breach within 30 days after written notice of the breach and an opportunity to be heard.

(b) If the buyer fails to comply with any of the provisions of this contract, the seller may shut down the buyer's operations upon issuance of written notice, until corrective action, as specified by the seller in its notice, is taken. If this corrective action is not taken within 30 days after written notice is served upon the buyer, the seller may terminate the contract under paragraph 8(a) of this contract. The buyer's failure to take immediate corrective action when ordered to remedy dangerous conditions or unwarranted damage to natural resources may be corrected by the seller to prevent danger or additional damage. Any cost incurred by the seller as a result of this corrective action, or by the buyer's failure to take corrective action, must be paid by the buyer.

(c) This contract may also be terminated by mutual agreement of both parties on terms agreed to in writing by both parties.

**9. Reservations.** The seller reserves the right to permit other compatible uses, including the sale of materials, on the land in the sale area if the seller determines that those uses will not unduly impair the buyer's operations under this contract. Under AS 38.05.125 the seller further expressly reserves to itself, and its successors, forever,

(a) all oil, gas, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every kind, that may be in or upon the land described above, or any part of it; and

(b) the right to explore the land for oil, gas, coal, ores, minerals, fissionable materials, geothermal resources, and fossils; and

(c) the right to enter by itself or its agents, attorneys, and servants on the land, or any part of it, at any time for the purpose of opening, developing, drilling, and working mines or wells on this or other land and



taking out and removing from it all oil, gas, coal, ores, minerals, fissionable materials, geothermal resources, and fossils; and

(d) the right by itself or its agents, attorneys, and servants at any time (1) to construct, maintain, and use all buildings, machinery, roads, pipelines, powerlines, and railroads; (2) to sink shafts, drill wells, and remove soil; and (3) to occupy as much of the land as may be necessary or convenient for these purposes; and

(e) generally all rights to and control of the land, that are reasonably necessary or convenient to make beneficial and efficient the complete enjoyment of the property and rights that are expressly reserved.

**10. Inclusion of Applicable Laws and Regulations.** The buyer shall comply with all laws and regulations applicable to operations under this contract, including the provisions of AS 27.19 and 11 AAC 97 regarding mining reclamation, the provisions of AS 41.15 for wildfire prevention and control, the provisions of AS 38.05.550 - 38.05.565, material sale regulations 11 AAC 71, state fish and game regulations pertaining to the protection of wildlife and wildlife habitat, and state regulations pertaining to safety, sanitation, and the use of explosives. These laws and regulations are, by this reference, made a part of this contract, and a violation of them is cause for termination or suspension of this contract in addition to any penalties prescribed by law. These laws and regulations control if the terms of this contract are in conflict with them in any regard.

**11. Assignment.** This contract may not be assigned by the buyer without the seller's prior written consent to the assignment.

**12. Permits.** Any permits necessary for operations under this contract must be obtained by the buyer before commencing those operations.

**13. Passage of Title.** All right, title and interest in or to any material included in the contract shall remain in the State until it has been paid for; provided, however, that the right, title and interest in or to any material that has been paid for but not removed from the sale area by the buyer within the period of the contract or any extension thereof as provided for in this contract shall vest in the seller.

**14. Expiration and Extension.** This contract expires on the date stated at the top of the contract unless an extension is granted by the seller in accordance with 11 AAC 71.210 (material sale regulations).

**15. Warranties.** This sale is made without any warranties, express or implied, as to quantity, quality, merchantability, profitability, or fitness for a particular use, of the material to be extracted from the area under contract.

**16. Valid Existing Rights.** This contract is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land, in existence on the date the contract is entered into.

**17. Notices.** All notices and other writings required or authorized under this contract must be made by certified mail, postage prepaid, to the parties at the following address:

To the Seller: Alaska Division of Mining, Land and Water  
3700 Airport Way  
Fairbanks, Alaska 99709-4699

To the Buyer: Alaska Department of Transportation and Public Facilities  
2301 Peger Road  
Fairbanks, Alaska 99709

**18. Integration and Modification.** This contract, including all laws and documents that by reference are incorporated in it or made a part of it, contains the entire agreement between the parties. This contract

may not be modified or amended except by a document signed by both parties to this contract. Any amendment or modification that is not in writing, signed by both parties, and notarized is of no legal effect.

**19. Severability of Clauses of Sale Contract.** If any provision of this contract is adjudged to be invalid, that judgment does not affect the validity of any other provision of this contract, nor does it constitute any cause of action in favor of either party as against the other.

**20. Construction.** Words in the singular number include the plural, and words in the plural number include the singular.

**21. Headings.** The headings of the numbered paragraphs in this contract shall not be considered in construing any provision of this contract.

**22. "Extracted," "Extraction".** In this contract, use of the terms "extracted" and "extraction" encompasses the severance or removal, as well as extraction, by the buyer of any materials covered by this contract.

**23. Waiver.** No agent, representative or employee of the seller has authority to waive any provision of this contract unless expressly authorized to do so in writing by the director of the DMLW.

ADL 419942 Material Sale Contract

BY SIGNING THIS CONTRACT, the State of Alaska, as seller, and the buyer, agree to be bound by its provisions as set out above.

BUYER: State of Alaska  
DOTPF

SELLER: State of Alaska  
Department of Natural Resources

Address:

2301 Reper Rd  
FDK4 AK 99709

Seanne Poulx  
Director, Division of Mining, Land and Water

STATE OF ALASKA

4<sup>TH</sup> Judicial District

)  
) ss.  
)

THIS IS TO CERTIFY that on July 18, 2013, before me appeared John F. Bennett known by me to be the person named in and who executed this Material Sale Contract and acknowledged voluntarily signing it as buyer.



[Signature]  
Notary Public in and for the State of Alaska  
My commission expires: WITH OFFICE

Please do not write below this line. This space reserved for Department of Natural Resources.

STATE OF ALASKA

4<sup>TH</sup> Judicial District

)  
) ss.  
)

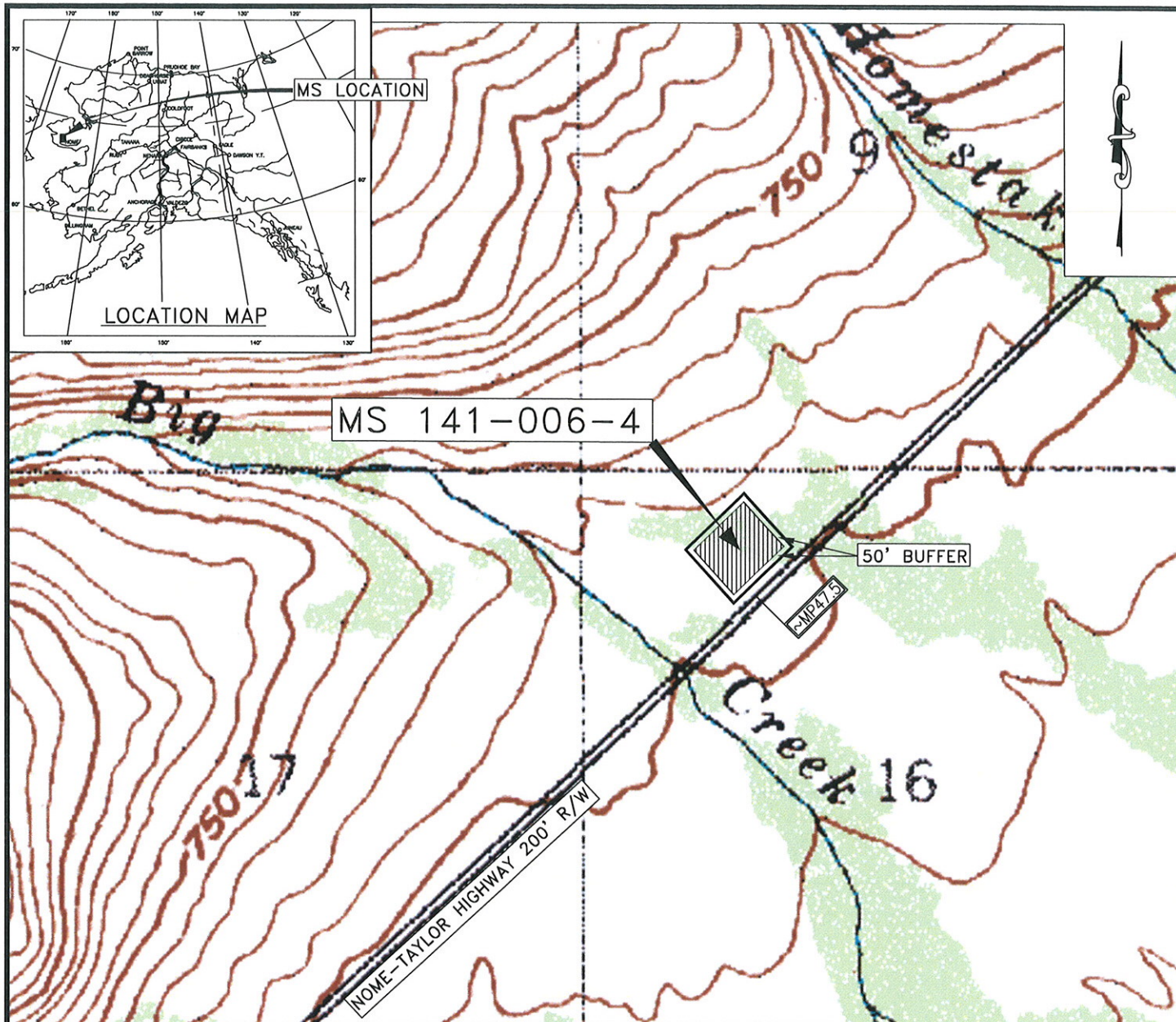
THIS IS TO CERTIFY that on July 18, 2013, before me appeared Seanne Poulx known by me to be the representative of the Division of Mining, Land and Water, Department of Natural Resources, who executed this Material Sale Contract on behalf of the State of Alaska, Department of Natural Resources, and who is fully authorized by the State to do so.



[Signature]  
Notary Public in and for the State of Alaska  
My commission expires: with office







M.S. 141-006-4

T6N, R30W, KRM

Section 16: Within the N $\frac{1}{2}$  NW $\frac{1}{4}$  lying north of the Nome-Taylor Highway.

Material site contains ~9.64 acres.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

MATERIAL SITE PLAN

M.S. 141-006-4

NORTHERN REGION	DATE: 5/02/13
-----------------	---------------

SCALE NTS	
DRAWN BY: EJM	

**State of Alaska**  
**Department of Transportation & Public Facilities**

**Mining and Reclamation Guidelines**  
**Material Site 141-006-4**  
**Nome-Taylor Highway MP 47.5**

These guidelines are subject to the Alaska Department of Natural Resources (DNR) Material Sale Contract, ADL \_\_\_\_, and stipulations contained therein. For each new use or project, the user or contractor shall submit a Project Mining and Reclamation Plan to DNR for approval, subject to DOT&PF review, prior to any mining activities.

This is a designated material site, Master Material Site ADL 419441, under AS 38.05.550 (b).

**Legal Description**

T6S, R30W, KRM, Sect 16: within N½ NW¼ lying north of the Nome-Taylor Highway R/W (9.64 acres).

**General Information**

This site is located at 47.5 mile of the Nome-Taylor Highway, on the north side of the road, just east of Big Creek. The site is situated within an alluvial fan deposit on the lower slopes of the Kigluaik Mountains. Material consists of alluvial sand and gravel with cobbles. Mining is anticipated to be mined by conventional methods, above the water table. This site has been used for construction and maintenance of the highway since 1960 though limited material has been extracted to date. Limited site information is available at the DOT&PF Materials office, 2301 Peger Road, Fairbanks, Alaska 99709.

**Mining Guidelines**

The Project Mining and Reclamation Plan will adhere to the following guidelines.

1. The contractor or user shall locate the material site boundaries to verify work areas are within the designated site. Clearly mark site boundaries on the ground.
2. Maintain a 50-foot-wide undisturbed buffer around the site. Establish and clearly mark buffer lines on the ground in work areas. Do not disturb or place strippings or overburden in buffers.
3. Pit perimeter slopes (i.e. adjacent to buffers) and final reclaimed slopes shall not exceed 3H:1V.
4. For any new clearing, stockpile surface vegetation and organic soils adjacent to buffers or use directly for reclamation of depleted areas.
5. Stockpile overburden separately from vegetation/organics for future reclamation or use directly for reclamation.

6. Do not place organics or overburden in future mining area, where it would need to be moved again.
7. After each use, grade pit floor level or slope gently to blend with earlier depth limits. Do not allow runoff to exit the site.
8. After each use, remove all equipment and man-made debris or waste from the site. No damaged culverts or any other construction debris may be placed, stored, or abandoned in the site.
9. All mining and stockpiling activities shall be in accordance with applicable Construction General Permits (CGP) and Storm Water Pollution Prevention Plans (SWPPP).

### **Reclamation Objectives and Guidelines**

The reclamation plan has several objectives:

1. To not preclude or hinder future development of un-mined areas.
2. To blend with previous reclamation and surrounding topography.
3. To prevent erosion and sediment transport to surrounding, undisturbed areas.
4. To allow reestablishment of native vegetation and wildlife habitat.
5. To leave the site in a safe condition that does not endanger people or wildlife.

Reclamation activities will include:

1. Grading slopes adjacent to perimeter buffers, or where future development is not anticipated at 3H: 1V or flatter.
2. Spread available overburden and then organic material on reclaimed slopes. Allow to revegetate naturally.

### **Project Mining and Reclamation Plan**

Prior to use of the site for any project, the contractor or user shall submit a Project Mining and Reclamation Plan, in accordance with A.S. 27.19 and 11 AAC 97 to DNR for approval, subject to DOT&PF review. The Plan describes the proposed plan of operation and shall be in compliance with guidelines listed here. Upon approval, the Plan will be followed by the contractor or user and if applicable, the DOT&PF Project Engineer. The plan should include the following:

#### **Sketch Map**

The sketch map shall include:

1. Site boundaries and buffers
2. Proposed working limits, to be marked on the ground
3. Organic debris and overburden stockpile areas
4. Access road, work pad, stockpiles, processing facilities
5. Scale of drawing, north arrow, and specific dimensions as appropriate

#### **Narrative**

The narrative shall include:

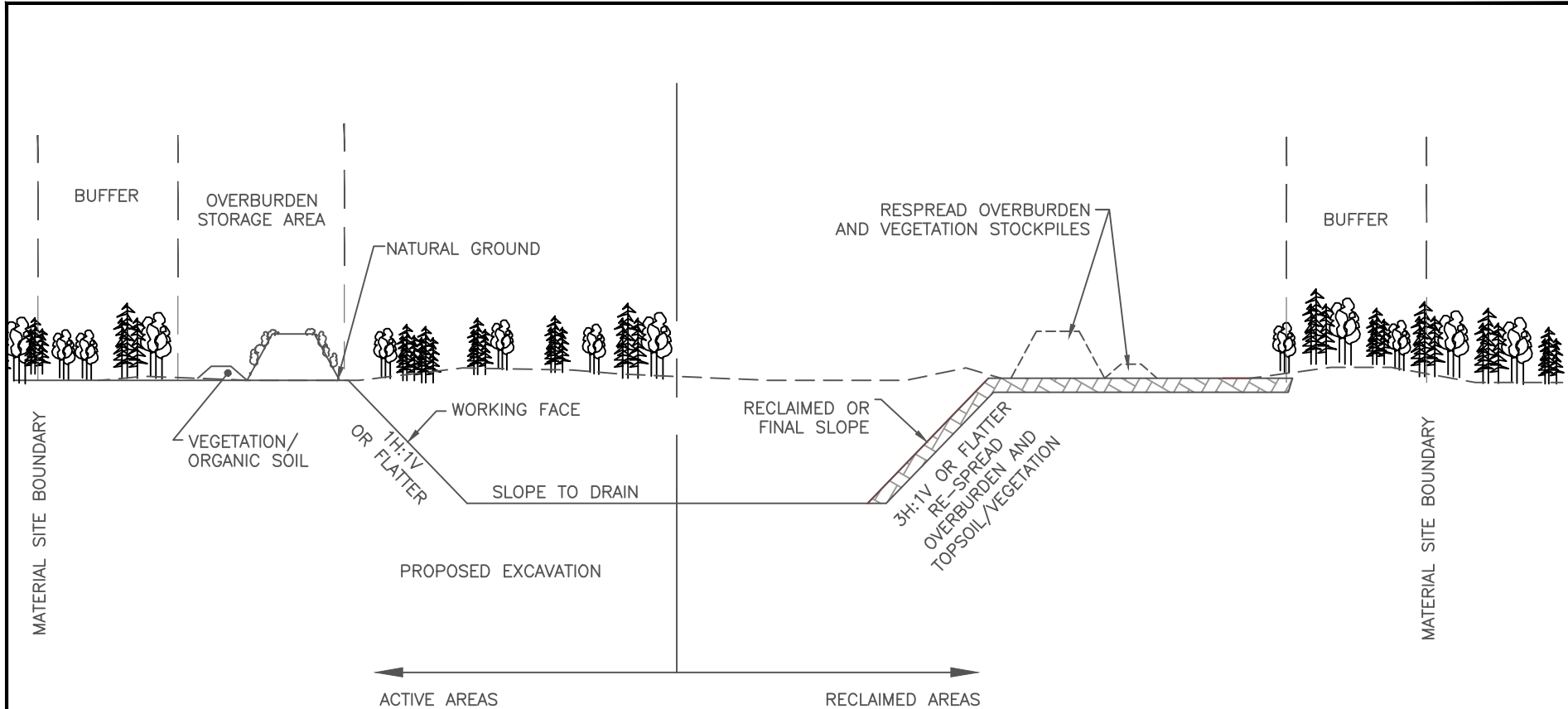
1. Methods of operation
2. Estimated quantities for removal
3. Estimated areal extents (acreage)
4. Length and times of operation (day, month, year, and working hours) – user shall make reasonable efforts to reduce noise disturbance and mitigate noise complaints
5. Air and water pollution control measures
6. Reclamation measures

### **Supplements and amendments**

Supplements and amendments to an approved mining and reclamation plan may be initiated by the contractor, user or the DOT&PF Project Engineer, when conditions warrant such action. Supplements and amendments must be mutually agreed upon and proper approval obtained prior to commencement of work of a changed nature.

1. Minor changes are those that affect details of the operation, but remain in compliance with the development guidelines. These changes may be authorized by the DOT&PF Project Engineer.
2. Major changes are those which cause the final outcome of the site to be significantly different from the approved mining and reclamation plan or are not in compliance with the development guidelines. These require approval by DNR NRO and the appropriate regulatory agencies prior to approval by the DOT&PF Project Engineer.





TYPICAL CROSS SECTION OF EXCAVATION ABOVE WATER TABLE  
NOT TO SCALE

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

DATA: jr	MINING RECLAMATION TYPICAL SECTION
DRAWN: JR	
APPROVED:	PROJECT NO.
DATE: 2011	

# **STATEWIDE MATERIAL SITE INVENTORY**

## **MATERIAL SITE** **INSPECTION REPORT**

**Federal Project No. STP-000S(823)**  
**AKSAS Project No. 76149**

**KOUGAROK ROAD/NOME - TAYLOR HIGHWAY**

**MS 141-006-4**

**Big Creek Pit**

June 15, 2014

<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
COVER SHEET.....	1A & 1B
LOCATION MAP .....	2
SITE MAP .....	3A & 3B
INSPECTION FORM.....	4 thru 10

### **CATEGORY:**

#### **ACTIVE – OPEN**

According to information found in the DOT&PF EDMS system in January 2009 and BLM and DNR case file abstracts, this site lies on private land owned by Bering Straits Native Corporation and the site is managed by DNR. The site lies within Section 16, T6S, R30W, KRM. A FUP was issued to Bureau of Public Roads for the site in 1959, which expired in 1963 (F-23119). In 1961, an indefinite right-of-way grant (F-26009) was issued to DOT&PF by BLM. The right-of-way was closed in 1987 when the land was transferred to the State of Alaska.

The land was tentatively approved to the State of Alaska in 1982 (FF-44485 / TA 1982-0189 / GS 4102). A material sale contract, ADL 415035, was issued to DOT&PF in 1993 that expired in 2003. The land was re-conveyed to BLM in 1998 by Quitclaim Deed 1353 (ADL 413062 / Records Office Book 349, Pages 11 to 14). The quitclaim deed was in fulfillment of the Settlement and Release agreement entered into by BLM, SOA and Bering Straits Native Corporation (201-1998-000735-0 / Records Office Book 349, Pages 952 to 958). The agreement has an unusual stipulation for a conveyance “the State

saves, accepts, and reserves the following easements, reservations, exceptions, and restrictive covenants from the conveyance”. The land was apparently then patented to Bering Straits Native Corporation subject to ADL 415035 (PA 50-2010-0225). DNR closed ADL 415035 in 2012. DOT&PF currently has a material sale contract from DNR that expires on July 17, 2023 (ADL 419942). This all apparently means that the site is on Bering Straits land but is managed by DNR until the site is closed.

DOT&PF filed for an expansion of the existing pit in October of 2014 (ADL 420333). After a determination that the expansion was not on State land, DOT&PF apparently withdrew the application. The site in the contract issued for MS 141-006-4 was described as covering approximately 9.64 acres and this is the acreage mentioned in the Settlement and Release agreement. Apparently any expansion of the site beyond these limits would require purchasing the material from Bering Straits Native Corporation.

There is a native allotment to the southeast of the pit (USS 10941). The allotment was patented to Lawrence Davis in 1996 (F-19305 Parcel C / PA 50-96-0437). It was not subject to ADL 415035.

A 8.07 acre parcel of land (Tract 37) shown on the BLM MTP adjoining the northeast side of USS 10941 was patented to Bering Straits Native Corporation in 2012 (F-40300 / PA 50-2012-0001). PA 50-2012-001 was subject to ADL 415035 but not ADL 419942. The site laid out on the Site Maps 3A and 3B appeared to encompass all of Tract 37. The portion of the site outside of Tract 37 was on the mountainside and assumed unsuitable at this time. Monumented site corners for Tract 37 were observed in the field in 2014 and all working areas of the site at that time appeared to be within Tract 37.

The site is currently a DMLW Northern Region Office (NRO) Designated Master Material Site (ADL 419441) under AS 38.05.550(b) for the use and operation for long-term sale and extraction of materials until closed by DNR.

The site adjoins the Kougarok Road/Nome – Taylor Highway right-of-way and there is an access road into the pit. The site appears to contain significant quantities of sand and gravel and should be retained by DOT&PF for future use.



# LOCATION MAP



**MS 141-006-4  
BIG CREEK PIT**

T5S  
T6S

R30W  
R31W

GPS COORDINATES FROM GOOGLE EARTH  
UTM (WGS84-METERS)  
ZONE 3: N 7,205,399 E 511,031  
AK STATE PLANE (NAD83-US SURVEY FT)  
ZONE 8: N 4,011,775 E 1,831,529

U.S.G.S. QUADRANGLE: BENDELEBEN (A-6),  
SOLOMON (D-6)

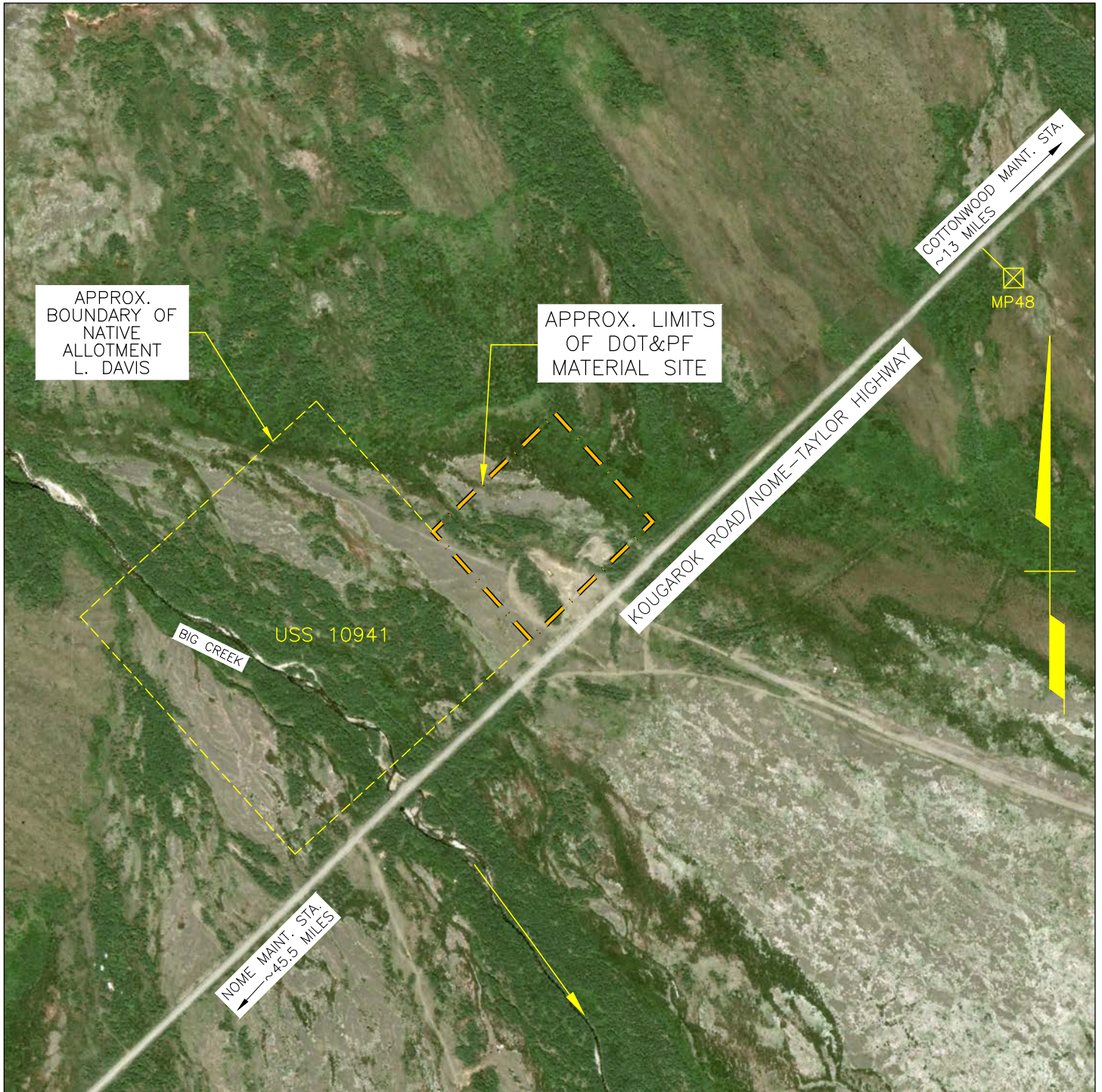
**ACTIVE - OPEN**



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES			
STATEWIDE MATERIAL SITE INVENTORY			
MS 141-006-4			
SCALE AS SHOWN	DESIGNED CHECKED P.K.H. C.H.R.	DRAWN DATE P.K.H. JUNE 2014	PAGE 2



# SITE MAP



BASE MAP IS JULY 6, 2012 DIGITALGLOBE SATELLITE IMAGERY.  
THIS IS A PLANNING DOCUMENT ONLY. THE MATERIAL SITE BOUNDARIES SHOWN ON THIS  
DRAWING ARE APPROXIMATE. OWNERSHIP OF THE LANDS ADJACENT TO THIS SITE ARE  
UNKNOWN. THE ACCESS ROW SHOULD BE VERIFIED.

## ACTIVE - OPEN



BASE MAP FROM GOOGLE EARTH PRO 6/3/14

Prepared By:  
R&M CONSULTANTS, INC.

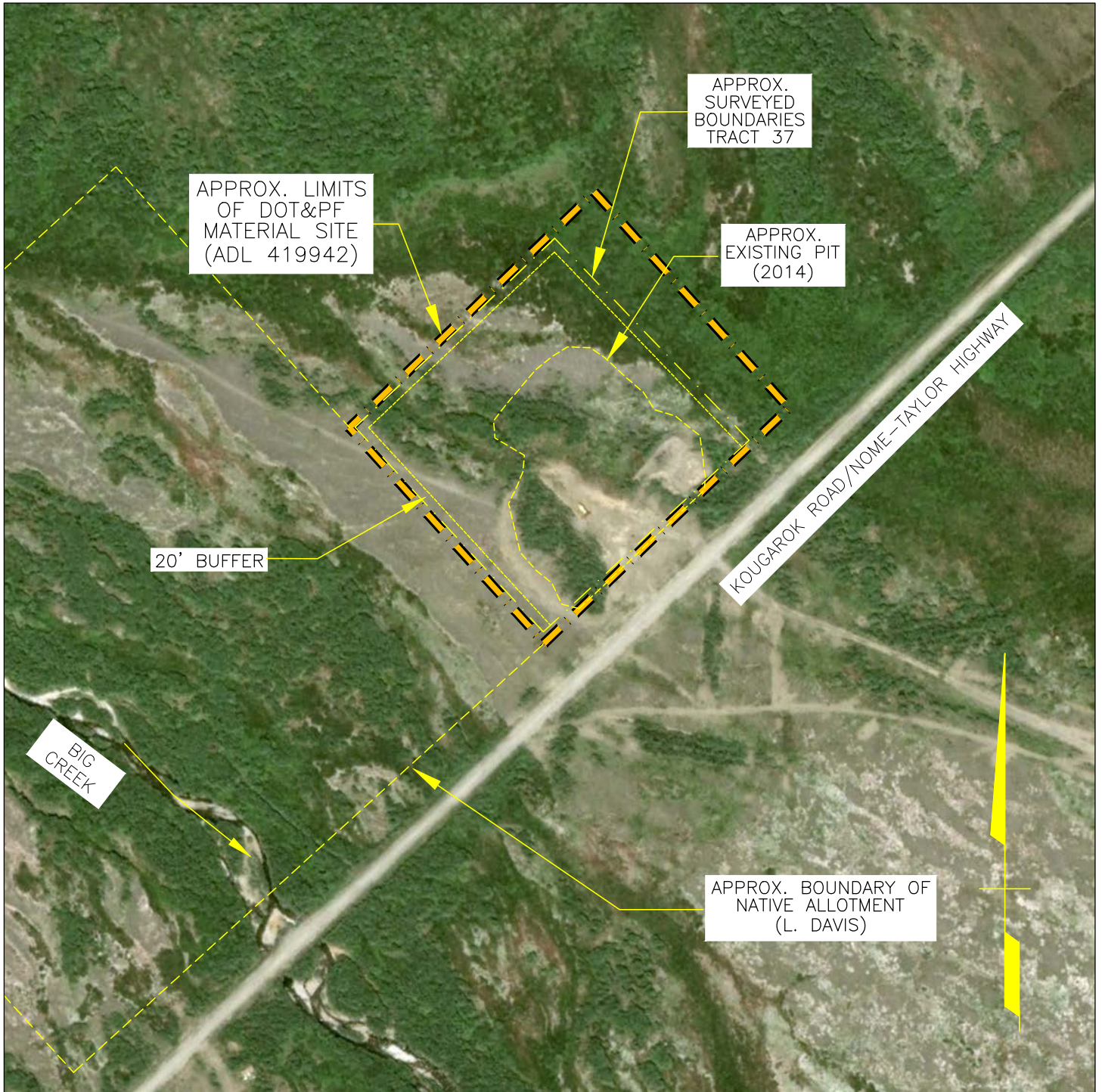
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES			
STATEWIDE MATERIAL SITE INVENTORY MS 141-006-4			
SCALE AS SHOWN	DESIGNED P.K.H. CHECKED C.H.R.	DRAWN P.K.H. DATE JUNE 2014	PAGE 3A

Z:\project\1443.03\141\_Nome\_Taylor\_Road\MS 141-006-4-A\acad\MS\_Site\_Map\_141-006-4.dwg

Plotted 8/25/2015 9:29 AM by Pete Hardcastle



# SITE MAP



BASE MAP IS JULY 6, 2012 DIGITALGLOBE SATELLITE IMAGERY.  
THIS IS A PLANNING DOCUMENT ONLY. THE MATERIAL SITE BOUNDARIES SHOWN ON THIS  
DRAWING ARE APPROXIMATE. OWNERSHIP OF THE LANDS ADJACENT TO THIS SITE ARE  
UNKNOWN. THE ACCESS ROW SHOULD BE VERIFIED.

## ACTIVE - OPEN



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES			
STATEWIDE MATERIAL SITE INVENTORY MS 141-006-4			
SCALE AS SHOWN	DESIGNED P.K.H. CHECKED C.H.R.	DRAWN P.K.H. DATE JUNE 2014	PAGE 3B

**STATEWIDE MATERIAL SITE INVENTORY  
MATERIAL SITE INSPECTION FORM**

**THIS REPORT IS BASED ON A REVIEW OF EXISTING DATA AND BRIEF FIELD INSPECTIONS. THUS THE DATA CONTAINED HEREIN SHOULD BE CONSIDERED PRELIMINARY AND USED FOR PLANNING PURPOSES ONLY. USERS OF THIS DATA SHOULD VERIFY THE INFORMATION PRIOR TO USING IT FOR DESIGN OR CONSTRUCTION PURPOSES.**

**IF OTHER IS SELECTED FOR A SECTION, EXPLAIN IT IN SECTION 44. NOTES.  
IF AN ANSWER IS UNKNOWN SELECT "UNKNOWN" OR LEAVE BLANK**

1. **MS\_ID** 141-006-4  
Enter the full material site number e.g.. 31-3-045-2
2. **DATE\_INSPECT** 7/7/2014  
Date of field inspection
3. **FLD\_INSPEC\_ORG** ABE SCHMIDT / R&M CONSULTANTS  
Name of inspector / Organization or Company

4. **REGION** NORTHERN
5. **LOCATION** NOME - TAYLOR HIGHWAY KOUGAROK ROAD  
Name of Highway Enter Name of Facility or Secondary Route Name (i.e. Kotzebue Airport, Nash Road, etc.)
6. **MILEPOST** 47.5  
List the closest main highway milepost
7. **NAME** BIG CREEK PIT  
Enter commonly used name (s), e.g. Hess pit, Gobblers Knob, Midway. List all that apply separated by commas.
8. **MAINT\_DIST/STAT** District WESTERN Station COTTONWOOD  
Highway Maintenance District and Station, for locations not on highways select other.
9. **QUAD** SOLOMON D-6  
U.S.G.S. Quad. Map
10. **TOWNSHIP/RANGE** T#S R#E T6S R30W & Meridian KRM  
Section 16
11. **COOR\_UTM** ZONE 3  
NORTHING 7,205,399  
EASTING 511,031  
UTM WGS84 - Meters
12. **COOR\_STATE\_PLANE** ZONE 8  
NORTHING 4,011,775  
EASTING 1,831,529  
Alaska State Plane NAD83 - Survey Feet
13. **BOROUGH/CITY** UNORGANIZED **TAX ID NO.** NA
14. **DNR\_LAND\_USE\_PLAN** NORTHWEST AREA PLAN

15. **CATEGORY** (To be filled in the office)
- 15a. **CLASSIFICATION** ACTIVE
- 15b. **STATUS** OPEN

# STATEWIDE MATERIAL SITE INVENTORY

## MATERIAL SITE INSPECTION FORM

### 16. **POTENTIAL\_STATUS** SIGNIFICANT

Estimated quantity of material in the site at the time of inspection.

NONE	There appeared to be no useable material in the site.
LIMITED	There appeared to be less than 25,000 c.y. available within the developed site.
SIGNIFICANT	There appeared to be greater than 25,000 c.y. available within the developed site.
EXPANDABLE	There was limited material within the developed site, but there appeared to be significant material outside existing site limits.
UNDEVELOPED	The pit has not been mined/explored (used only for proposed sites).
CLOSED	There may be useable material left in the pit but it is not available.
UNKNOWN	
OTHER	The site does not fit any of the categories above. Explain in Section 44, Notes.

### 17. **PRESENT\_USERS**

17a. **PRESENT\_USER\_1** DOT&PF MAINTENANCE

17b. **PRESENT\_USER\_2** DOT&PF CONSTRUCTION

17c. **PRESENT\_USER\_3** \_\_\_\_\_

18. **PERMITTED\_ACREAGE** 9.64

Area within site permit or R.O.W. boundaries, from permit application or property plat.

19. **DEVELOPED\_ACREAGE** 3.4

Area within an existing pit, excluding spoil berms lying outside the pit, access roads etc. Explain below.

9.64 is the approved acreage. The developed acreage includes the existing pit within the site limits, but does not include the access road or gravel road passing through the site.

20. **ACREAGE\_COMP\_METHOD** FROM MAP/PHOTO

Method used to determine developed acreage.

21. **EST\_QUAN\_AVAIL** 90,000 ROUGH ESTIMATE

Estimated quantity available (b.c.y.), may be based on acreage computed above plus expansion area.

Explain computation assumptions and calculations below.

Area	Existing Pit	Undeveloped Area	Other Area
Acres	<u>3.4</u>	<u>3.0</u>	<u>0.0</u>
Est. Depth (ft.)	<u>10</u>	<u>19</u>	
Factor (b.c.y. / acre-foot)	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
Est. Quant. (c.y.)	<u>34,000</u>	<u>57,000</u>	<u>0</u>

Estimated quantities are based on the surveyed boundaries for Tract 37 or approximately 8 acres (most of the area outside the 8 acre site is mountainside). Estimated quantity assumes that the existing pit can be worked an average of 10 feet in additional depth. The estimated quantity also assumes that the undeveloped portion of the site has an average working depth 20 feet, with an average overburden depth of 1 foot. A 20-foot buffer was applied along the boundary to avoid surrounding private property. It is assumed that about 85 percent of the undeveloped area is minable with areas next to the mountains covered by colluvium being undesirable.



**STATEWIDE MATERIAL SITE INVENTORY  
MATERIAL SITE INSPECTION FORM**

22. **ACCESS\_TYPE** EXISTING ROAD / OPEN

NONE	No access road has been built.
EXISTING ROAD / OPEN	Drivable. May have gate.
EXISTING ROAD / REVEG	Can be reopened with little effort.
EXISTING ROAD / CLOSED W/BERMS	Can be reopened with little effort.
EXISTING ACCESS / REMOVED	Can be reopened with much effort.
SNOW ROAD	Can only be accessed during winter.
ICE ROAD	Requires crossing river or lake ice in the winter.
BARGE	Material can only be moved by barge.
OTHER	The site does not fit any of the categories above. Describe in Section 44, Notes.

23. **ACCESS\_LENGTH** 75  
Approx. length from edge of pit to highway/secondary route (ft.)

24. **VEGETATION**

Vegetation consisted of areas of low-lying tundra moss as well as areas of thick willow and alder. The willow and alder were up to 10 feet in height. One low-lying area within the existing pit was revegetated with alder up to 4 feet in height.

25. <b>TYPE_1</b>	<u>BORROW PIT</u>	26. <b>TYPE_2</b>	<u></u>
Dominant type		Subordinate type	
General Types of Materials Available		Enter data in Type_2 only if two types of material site available	
QUARRY	Bedrock sources requiring blasting		
BORROW PIT	Soils or soft bedrock (rippable), above water table		
BAILING	Requires production below the water table		
RIVER BAR	Sand/gravel bars in active channels		

27. <b>OB_CLASS_1</b>	<u>&lt;3 FT.</u>	28. <b>OB_CLASS_2</b>	<u>NONE</u>
New Site or expansion Area		Existing Pit (Spoil)	
A site may have both. Data should be based on actual subsurface exploration, otherwise unknown.			
Estimated average depth over the area.			
NONE	3 TO 6 FT.	UNKNOWN	
<3 FT.	>6 FT.	OTHER	

29. <b>OB_TYPE_1</b>	<u>SILT</u>	30. <b>OB_TYPE_2</b>	<u>NONE</u>
New Site or expansion Area		Existing Pit (Spoil)	
A site may have both.			
SILT	PEAT	SOLID WASTE	OTHER
COLLUVIUM	SPOIL	UNKNOWN	

**STATEWIDE MATERIAL SITE INVENTORY  
MATERIAL SITE INSPECTION FORM**

<b>31. MAT_TYPE_1</b> Dominant type	<b>FLUVIAL</b>	<b>32. MAT_TYPE_2</b> Subordinate type
BEDROCK WEATHER. BEDROCK FLUVIAL GLACIAL COLLUVIAL EOLIAN SILT	Bedrock sources requiring blasting Bedrock sources requiring ripping Water deposited sand and gravel, includes glaciofluvial Glacial till Talus slopes, etc. Sand Dunes, etc. Silt deposits, loess, fluvial, etc.	

<b>33. PERMAFROST_1</b> New Site or Expansion Area	<b>UNKNOWN</b>
---	----------------

<b>34. PERMAFROST_2</b> Existing Site  DETECTED IN MOST TEST HOLES DETECTED IN SOME TEST HOLES DETECTED IN IMMEDIATE VICINITY DETECTED IN NO TEST HOLES DATA OUTDATED UNKNOWN OTHER	<b>UNKNOWN</b>
--	----------------

<b>35. GROUNDWATER</b>	<div style="border: 1px solid black; padding: 10px; min-height: 100px;">         The depth to groundwater underlying the site is unknown.       </div>
------------------------	--

# STATEWIDE MATERIAL SITE INVENTORY

## MATERIAL SITE INSPECTION FORM

### 36. LITHOLOGY\_1

### ALLUVIAL

### 37. LITHOLOGY\_2

Dominant type

Subordinate type

IGNEOUS ROCK

Undifferentiated Igneous Rocks

GRANITIC

Granite/Monzonite/Granodiorite

DIORITE/GABBRO

Diorite/Gabbro

BASALT

Dark colored fine-grained Igneous Rocks

GREENSTONE

Altered Volcanic Rocks w/green tint

METAMORPHIC ROCK

Undifferentiated Metamorphic Rocks

SCHIST/PHYLLITE

Includes rocks ranging from slate to schist

GNEISS

Includes hard schistose rocks

MARBLE

CATACLASTIC

Incl. Valdez Formation Rocks, Kenai Penn.

MÉLANGE

Incl. McHugh Formation Rocks, Kenai Penn.

SEDIMENTARY ROCK

Undifferentiated Sedimentary Rocks

CONGLOMERATE

SANDSTONE

Includes greywacke, etc.

SHALE/MUDSTONE

LIMESTONE

FLUVIAL

River and stream deposits (floodplain), includes outwash.

ALLUVIAL

Alluvial / Debris Fan deposits

GLACIOFLUVIAL

Eskers, kames, etc.

GLACIAL

Till

COLLUVIAL

Talus, etc.

EOLIAN

Sand Dunes, etc.

SILT

Loess, fluvial silts, etc.

OTHER

Explain in Section 44.

### 38. MATERIAL\_CLASSIFICATION

ASTM Classification, generally they should range from coarse to fine.

38a. GP

38c. SP

38e. \_\_\_\_\_

38g. \_\_\_\_\_

38b. GW

38d. SM

38f. \_\_\_\_\_

38h. \_\_\_\_\_

# STATEWIDE MATERIAL SITE INVENTORY

## MATERIAL SITE INSPECTION FORM

### 39. COBBLES\_AND\_BOULDERS

Test Boring Callout / ASTM Classification, either a. or b. and c. not both (Can use ranges i.e. 0 to 20)

39a.	CONTAINS		
39b.	Est. % by VOL.	5 to 15	(Est. From Visual Observations)
39c.	MAX. SIZE (in.)	36	(Observed Size)

### 40. AGG\_TEST\_RESULTS

Year of test or report- Test result / Year of test or report- Test Results

40a. SG APP COARSE	
40b. SG APP FINE	
40c. ABSORPTION CRSE	
40d. ABSORPTION FINE	
40e. NORDIC ABRASION	
40f. L.A. ABRASION	
40g. DEGRADATION (T-13)	
40h. NASO4 LOSS COARSE	
40i. NASO4 LOSS FINE	

### 41. POTENTIAL\_USABILITY

### TYPES A AND B MATERIAL AVAILABLE

Best known potential use of the material, based on records, exploration and laboratory data.

CONCRETE AGGREGATE PRODUCED	The site has produced concrete aggregate
PAVING AGGREGATE PRODUCED	The site has produced paving aggregate
CRUSHED PRODUCTS PRODUCED	Base, Surface Coarse, Subbase, etc. has been produced.
TYPE A AND B MATERIAL AVAILABLE	0 to 10 percent passing 200
TYPE C AVAILABLE	Compactable material
TYPE C NOT AVAILABLE	Uncompactable material (Lower Kuskokwim and Yukon River, etc.)
UNKNOWN	
OTHER	Explain in Section 44.

### 42. SPECIAL\_PROBLEMS

Special problems encountered or anticipated with use of the material, based on records, exploration and laboratory data.

ORGANIC CONTENT	The material is very difficult to compact.
HIGHLY WEATHERED GRAVEL	The gravel is highly weathered and may break down when handled.
BREAKS DOWN UNDER USE	Material breaks down on grade.
SENSITIVE TO WATER CONTENT	Material is sensitive to water content, i.e.. some glacial tills, soft bedrock.
VARIABLE MATERIAL	Deposit contains mixture of suitable and unsuitable material.
POSSIBLE CONTAMINATION	Site may be contaminated by petroleum products or hazardous materials.
CONTAINS ASBESTOS	Site contains naturally occurring asbestos.
POTENTIAL ASBESTOS	Site in area where naturally occurring asbestos is mapped.
ACID ROCK DRAINAGE	Site contains rock susceptible to producing acid rock drainage.
OTHER	Explain in Section 44, Notes.

**STATEWIDE MATERIAL SITE INVENTORY  
MATERIAL SITE INSPECTION FORM**

**43. RIPRAP**

**NOT POSSIBLE**

Class II or larger. Does not include production for erosion control riprap for ditches or culverts.

PREVIOUS PRODUCTION

There is a record of production.

POSSIBLE FURTHER INVESTIGATION NEEDED

The site is a bedrock quarry containing hard rock

NOT POSSIBLE

The site has soft rock or soil.

UNKNOWN

OTHER

Explain in Section 44, Notes.

**44. NOTES**

Note number of item being discussed.



STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
**REQUIRED CONTRACT PROVISIONS**  
**for**  
**FEDERAL-AID (FHWA) CONSTRUCTION CONTRACTS**

FHWA-1273 -- Revised May 1, 2012  
Supplement , Cargo Preference Act – Effective February 15, 2016

**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27)

and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of

employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should



represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for

determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that

the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed,

as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**SUPPLEMENT to Form FHWA -1273**  
**CARGO PREFERENCE ACT REQUIREMENTS**

This provision requires compliance with the Cargo Preference Act (CPA) and its implementing regulations in 46 CFR 381 for all Federal Aid Projects awarded after February 15, 2016.

In accordance with 46 CFR 381.7, the following language must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of 46 CFR 381.7 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

(a) Agreement Clauses. Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) Contractor and Subcontractor Clauses. Use of United States-flag vessels: The contractor agrees—

(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."