

MATERIAL SALES AGREEMENT

THIS IS AN AGREEMENT between Ernie Charley ("the Owner") and the State of Alaska, Department of Transportation and Public Facilities (also referred to herein as "the State"). It pertains to the sale of road building and maintenance materials in situ from the Owners' material site (hereinafter "the material site") to the State.

1. The material site is located at Milepost 36.7 of the Tok Cutoff Highway; Lot 2, Tract B, USS 3676, Section 35 and 36, T10N, R4E, Copper River Meridian.

2. The Owner covenants that it/he/she/they have sufficient title to the material site to enter into this agreement, adhere to its provisions, and will provide the State with the quiet enjoyment of the rights granted herein.

3. For the purposes of this agreement, the term "materials" means sand, rock, earth and gravel, other than slash and overburden, which is useable for roadwork and removed from the excavated area of the site. It may be "pit run" gravel or "processed materials."

4. Any other terms used herein shall have the ordinary meaning attributed to them unless defined in section 101 of the 2004 edition of the Department of Transportation and Public Facilities' Standard Specifications for Highway Construction¹

5. All State rights or duties established in the agreement may be performed either by State employees or one or more contractors of the State's choosing.

6. This Agreement will become effective on the date of its endorsement by both the Owner and the State. It will terminate on 12/31/2017.

7. The Owner understands that the State may award one or more contracts over the life of this agreement for crushing/processing material from the material site for use by the State.

8. If any provision of this Agreement is ruled invalid, illegal, unconstitutional, or otherwise unenforceable, the remainder of the Agreement shall not be affected by such ruling and shall remain in full force and effect.

9. This agreement is governed by the laws of the State of Alaska. The parties agree that any action relating to this agreement may be brought in the courts of the State of Alaska in Fairbanks unless a non-waiveable state or federal law requires otherwise.

10. This written agreement constitutes the entire agreement of the parties and supersedes any prior or unwritten agreements. Amendments or alterations must be in writing and endorsed by both parties.

¹ This document is available for review at:

http://www.dot.state.ak.us/stwddes/dcspcs/pop_hwyspecs_english.shtml

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11. A failure of either party to insist on compliance with a provision herein does not constitute a waiver of the right to insist upon future compliance.

12. The parties acknowledge that the State is self-insured. AS 09.50.250-.270 may provide a basis for the Owner's recovery from the State in the event of State negligence or misconduct, subject to the limitation on available funds set forth in AS 37.05.170. AS 46.03.822(k) may, in addition, provide a basis for the Owner's recovery from the State in the event that the State "has caused or contributed to the release of a hazardous substance" on the Owner's property. Nothing in this document shall be interpreted as an indemnity, nor does this provision expand, diminish, or alter any rights the Owner may otherwise have under the laws of the State of Alaska.

THE OWNERS AGREE:

- 13. to sell the State material from the above-described material site;
- 14. to allow the State to access and develop the material site, and to allow the State to maintain the access road to the site in a drivable condition;
- 15. to allow the State to operate and maintain equipment at the material site necessary to excavate and/or process the material within that material site;
- 16. to allow unrestricted access for the State to any and all stockpiled material at the material site owned by the State;
- 17. to maintain gates at all access points to the material site;
- 18. to allow the State to stockpile pit run and processed materials on the material site for the entire term of this Agreement. The Owners hereby confirm their understanding that all of said stockpiled materials are for "State Of Alaska Use Only," and are not available for personal use or for use by third parties;
- 19. not to engage in or allow third parties to engage in activities at the material site which interfere with the State's use under this agreement; and,
- 20. to allow the State to purchase additional material under this Agreement, for the Agreement's duration, at a royalty rate of \$3.50 per cubic yard. The Owners hereby agree that all access and storage fees are included in this royalty fee.

THE STATE AGREES:

- 21. to initially purchase a minimum amount of 5,000 cubic yards of material from the Owners at a royalty rate of \$3.00 per cubic yard, subject to the material site's capacity to reasonably produce that amount;
- 22. to measure material for payment as follows:

A. Processed materials: By average end area (survey of the processed stockpile) or, if requested by the Owners, by an alternative method approved by a State engineer. The State hereby agrees to provide the Owners with quantity calculations upon request; and,

B. Pit run: By cubic yardage of the individual truck box. The State hereby agrees that the truck count will be provided to the Owner upon request;

23. that payment for material will be made by the State to the Owner within 45 days of the State's extraction of said material;

24. to maintain the access road to the material site throughout the term of this Agreement while in use by the State;

25. to consult with the Owner on the suitable location for the State's stockpile(s) prior to the processing of material;

26. to cause its contractors to procure and maintain general liability insurance, under terms set forth in Section 103-1.06 (Insurance Requirements) of the 2004 edition of the Department of Transportation and Public Facilities' Standard Specifications for Highway Construction. All such policies shall name the Owners as an additional insured;

27. to require its contractors and employees to conduct their operations at the material site in a fashion which is consistent with state and federal environmental law and good environmental practice;

28. to maintain the material site in accordance with the General Mining and Reclamation Plan in place during the contract term, and to comply with all applicable statutory and regulatory requirements;

.....
The Owner agrees to the terms above.



Ernie Charley

Dated this 11th day of March, 2014.

ACKNOWLEDGMENT OF OWNER

STATE OF ALASKA)
 :
3RD Judicial District)

On this 11 day of MARCH, 2014 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared ERNIE C. CHARLEY.

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the Grantor __, known to me to be the identical person __ who executed the foregoing instrument and who acknowledged to me that he __ signed the same freely and voluntarily, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

POSTMASTER / NOTARY PUBLIC
PERmit # 11244
GAYONA AK 99586



Barbara J. Dring
Notary Public in and for the State of Alaska
My Commission Expires: N/A

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, acting by and through its Commissioner, hereby accepts for public purposes this temporary interest in real property under the terms described above.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of OCTOBER 2014

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By:

For the Commissioner

Filed for Record at the
Request of and Return to:

State Business-No Charge