

ATTACHMENT A

CITY OF BETHEL
D1 GRAVEL SALES CONTRACT

This D-1 Gravel Sales Contract ("Contract") is made and entered into on the date of the last signature at the end of this Contract, by and between the City of Bethel, Alaska, a municipal corporation, P.O. Box 1388, Bethel, Alaska 99559, hereafter referred to as "Buyer," and Knik Construction, [Address], hereafter referred to as "Seller."

Subject to the terms and conditions stated herein, Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, crushed/river run gravel as specified herein:

FRACTURED/CRUSHED GRAVEL
Percent Passing by Weight

Aggregate shall be crushed stone or crushed gravel, and shall consist of sound, tough, durable pebbles or rock fragments of uniform quality. All material shall be free from clay balls, vegetable matter or other deleterious matters. Fractured stone shall have a minimum of two (2) or more fractured faces and a maximum of one (1) rounded face. The percentage of wear of the aggregate shall be a maximum of 50 as measured by AASHTO Test No. T96. Degradation Value shall be a minimum of 45 as determined by Alaska Test Method T-13. Percent Fracture shall be a minimum of 90 when tested in accordance with Alaska Test Method T-4. Gradations shall conform to the following requirements as determined by Alaska Test Method T-7:

| <u>Sieve Designation</u> | <u>C-1</u> | <u>D-1</u> |
|--------------------------|------------|------------|
| 2" | 100 | ----- |
| 1-1/2" | 95-100 | ----- |
| 1" | ----- | 100 |
| 3/4" | 55-75 | 70-100 |
| 3/8" | ----- | 50-80 |
| No. 4 | 35-50 | 35-65 |
| No. 8 | ----- | 20-50 |
| No. 10 | 14-30 | ----- |
| No. 40 | 3-18 | 8-30 |
| No. 200 | 0-8 | 0-6 |

(these specifications having been set out previously in the Invitation to Bid)

1. Term of Contract. The term of the Contract is the period of time from the date of the last signature at the end of this Contract to October 31, 2018.
2. Sales Price. Seller shall be paid \$60.00 per ton for D1 fractured/crushed gravel as specified on Seller's Bid Sheet, provided that funds have been lawfully appropriated and are legally available to pay for the specified gravel and provided further that Seller has complied with all of the terms and conditions of the Contract. Buyer expects to purchase approximately 909 tons of D1 gravel the first year but the actual amount purchased will depend on Buyer's actual requirements for gravel as well as the amount of funds lawfully appropriated and legally available to pay for gravel.

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each subsequent year of the contract (years 2-5) Buyer anticipates purchasing as much as budgeted for by the City Council.

3. Seller's Responsibilities, Inspection, Testing, Delivery, Acceptance, Rejection, and Revocation of Gravel.

A. Seller is solely responsible for all loss, damage, or liability arising from procurement of the gravel prior to sale. Upon acceptance and transfer of the gravel, Buyer will assume all liability for loss or damage to the gravel.

B. Seller shall manufacture and stockpile gravel in Seller's yard. The gravel shall be available for inspection by Buyer at the yard. Seller shall allow Buyer to inspect the gravel, and then Seller shall load the gravel into City trucks at the yard at mutually agreeable times from the time the Contract is entered into through October 31, 2013. The total amount of gravel to be purchased under this Contract is undetermined and will not be known until October 31, 2013.

C. Within forty-eight (48) hours of a request by Buyer for inspection and pick-up, Seller shall make gravel available for inspection. Upon approval of the gravel, seller shall load the gravel into City trucks. Both parties shall act reasonably when making and responding to requests for inspection, loading, pick up and delivery.

D. Gravel will be weighed by Seller in Seller's yard before it is accepted by Buyer. Acceptance of gravel occurs after Buyer inspects it and Seller loads it into City trucks and after the trucks leave Seller's yard.

E. Buyer may inspect and/or test the gravel before or after accepting it, and at any time throughout the term of this Contract. Seller shall make samples of gravel available to Buyer for inspection and testing at any time throughout the term of this Contract.

F. Buyer reserves the right to reject, and/or revoke acceptance of, any gravel that does not meet the specifications provided for in the Instructions for Bidders attached to this Contract in Exhibit 1 either before or after inspection, testing, and/or acceptance, and regardless of whether or not the gravel is inspected or tested prior to acceptance.

4. Billing and Payment. Seller will prepare an invoice for each load of gravel after Buyer accepts a particular load. Invoices shall be sent to the City of Bethel, Attn: Port of Bethel, PO Box 1388, Bethel, Alaska 99559. Payment shall only be made after acceptance by Buyer of a particular load of gravel, and shall be due thirty (30) days after receipt of the invoice by the Buyer. If the City revokes acceptance of a particular load, payment shall not be due until thirty (30) days after Seller completely cures the breach which led the City to revoke acceptance of a particular load. The City shall not be obligated to make payment for any gravel it does not pick up before October 31, 2013.

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5. Warranties. Seller warrants that all gravel delivered to the City conforms to the specifications provided for in the Instructions for Bidders attached in Exhibit 1 to the Contract. Further, Seller warrants that all gravel delivered to the City is fit for its intended use by Buyer's Public Works and Port Departments.

6. Insurance. Seller shall, throughout the term of this Contract and at its sole expense, secure, maintain, and provide to Buyer evidence of insurance coverage which complies with the provisions of this section. No insurance shall be canceled or altered without at least thirty (30) days prior written notice to Buyer. All required policies of insurance shall be in a form and with companies satisfactory to Buyer. Buyer shall not, by reason of its inclusion under such coverage, incur liability to the insurance carrier for payment of premiums for any insurance required hereunder. All insurance shall be primary insurance over any other valid and collectible insurance available to Buyer. Seller shall furnish Buyer with properly executed certificates of insurance and certified copies of endorsements that cover the entire term of this Contract.

A. Comprehensive (Commercial) General Liability Insurance. Seller shall maintain general liability insurance in limits of not less than Three Hundred Thousand Dollars (\$300,000) combined single limit for bodily injury and property damage per occurrence annual aggregates which will include operations, broad form property damages, and personal injury endorsements, listing Buyer as additionally insured.

B. Comprehensive Automobile Liability Insurance. Seller shall maintain comprehensive automobile liability insurance with coverage of all owned, hired, and non-owned vehicles with coverage limits no less than \$100,000 per person, \$300,000 per occurrence.

C. Worker's Compensation Insurance. Seller shall provide, for all employees, Worker's Compensation Insurance as required by AS 23.30.045 and any applicable federal law.

7. Compliance with All Laws and Contract Documents. Seller, its employees, agents, subcontractors, assigns, successors, or other representatives, shall comply with all applicable federal and state laws, City ordinances, or rules and regulations of all authorities having jurisdiction over performance and all other aspects of the Contract. Failure to comply with any such laws may result in termination of the Contract by the City in accordance with paragraph 9 below. Seller shall insure that its employees, agents, subcontractors, assigns, successors, or other representatives, comply with the terms and conditions of this Contract, and shall provide for such compliance in any written subcontract or other agreement with any employee, agent, subcontractor, assign, successor or other representative.

8. Default or Breach. If Seller is in default or breaches this Contract for any reason whatsoever, Buyer may take any reasonable action, including but not necessarily limited to, procuring gravel from another source, or seeking any other remedy available to it in law or in equity. All costs, including attorney fees and costs,

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incurred by Buyer in seeking any remedy available to it as a result of Seller's default or breach, shall be borne by Seller. Seller shall also be liable to Buyer for any damages available to Buyer in law or equity as a result of Seller's default or breach.

9. Termination. At the sole and exclusive discretion of Buyer, this Contract may be terminated early for any reason, upon twenty (20) day written notice of termination, unless an emergency requires less notice. The determination of what constitutes an emergency shall be made at the sole and exclusive discretion of the Buyer. If the Buyer terminates the Contract due to breach, Seller shall be liable for all of Buyer's costs and expenses (including attorney fees and costs) required to obtain gravel from other sources, or for Buyer to avail itself of any other remedy available to it in law or equity.

10. Indemnity. Seller shall defend, indemnify and save harmless Buyer, its elected and appointed officials, officers, agents, attorneys, contractors, employees, and all other representatives, from and against any and all actions, claims, suits, liabilities, damages, losses, expenses and other costs, including all attorneys' fees and costs, for injury to or death of any person or persons and the loss of or damage to the property of any person or persons in connection with Seller's performance under this Contract, that results, either directly or indirectly, from any act or omission of Seller, its invitees, officers, attorneys, agents, contractors, employees, and all other representatives.

11. Waiver. The waiver by Buyer of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition hereof. The subsequent acceptance of gravel hereunder by Buyer shall not be deemed to be a waiver of any preceding breach by Seller of any term, covenant or condition of this Contract, regardless of Buyer's knowledge of such preceding breach at the time of acceptance of such gravel. No covenant, term or condition of this Contract shall be deemed to have been waived by Buyer, unless such waiver is in writing signed by Buyer.

12. Application of AS 45.02. AS 45.02 governs performance, interpretation, and all other aspects of this Contract unless a term or condition of this Contract conflicts with a provision of AS 45.02. If there is a conflict between a term or condition in this Contract and a provision in AS 45.02, the term or condition of this Contract controls and governs performance, interpretation, and all other aspects of the Contract.

13. Entire Agreement. This Contract sets forth all covenants, promises, agreements, conditions and understandings, either oral or written, between the parties. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Contract shall be binding upon the parties unless reduced to writing and signed by each of them subsequent to the date hereof.

14. Notices. Any notice, demand, request or other instrument which may be or are

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required to be given under this Contract shall be delivered in person, faxed, or sent by United States certified mail with postage prepaid to the persons noted below:

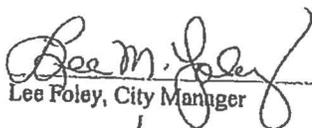
Buyer:
City of Bethel
City Attorney's Office
PO Box 1388
Bethel, AK 99559
(907) 543-2047
(907) 543-2936 [fax]

Seller:

15. **Claims.** Any claim which may arise under this Contract which cannot be resolved through good faith negotiation shall be convened in the trial courts of the State of Alaska, Fourth Judicial District in Bethel, Alaska.

16. **Modification.** This Contract may be modified or amended only in writing signed by the authorized representatives of the Buyer and Seller. Any modifications or Amendments not in writing and not so signed shall have no force and effect, and shall be null and void.

City of Bethel



Lee Foley, City Manager

Dated: 07/08/13



[Signature]

Dated: 7/9/13

