

CITY OF GUSTAVUS, ALASKA

MATERIAL EXTRACTION CONTRACT

Issuance Date: XXXXXX XX, 2025

Expiration Date: June 30, 2030

CoG FY25-02

Federal Tax I.D.: XX-XXXXXXX

Under AS 38.05.110-38.05.120 and AS 38.05.810(a) and City of Gustavus Ordinance Title 4 and City of Gustavus Ordinance Title 10 and the regulations implementing these statutes, the City of Gustavus, the seller, agrees to sell to XXXXXXXXXXXX, the buyer, whose address is shown in Paragraph 16 of this Material Extraction Contract, and said buyer, as the single exclusive gravel pit operator, agrees to purchase the material designated in this contract, subject to the provisions that follow:

1. Description: Location, Material, and Price:

(a) The material extraction area covered by this contract consists of 40.47 acres designated by the boundaries of Lot 11, Section 31, T39S, R59E, CRM.

(b) The material to be removed is topsoil, sand and gravel. The price the City will be paid for removal of the material will be determined by the City on an annual basis coinciding with the City's fiscal year budgeting process. Note that the fiscal year 2025 price is \$6.00 per cubic yard.

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

(a) The buyer shall remit an earnest money deposit in the amount of \$1000.00 at the time the buyer signs this contract. The deposit will 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 removed as of the date payment becomes due.

(c) Each periodic installment payment becomes due and payable quarterly, without prior notice to the buyer, for the value of material removed as of that date. The installment must be based on records required in Paragraph 3 of this contract and must be submitted to the City no later than the last day of the month following the close of the quarter (March 31, June 30, September 30, December 31).

(d) A final accounting and payment for material removed, and a completion statement, must be submitted no later than thirty (30) working days following contract completion, or when the buyer has completed removal under the contract, or following termination of the contract by the City or by operation of law. Whether completion is satisfactory will be decided by the representative of the City of Gustavus within 90 working 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 City 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 (3X) the unit contract price. Resumption of the lawful taking of materials may be authorized, in writing, by the City of Gustavus only after the payments in arrears plus the penalty provided for in paragraph 2(f) have been paid.

(f) Late Payment Penalty: Interest at the rate set by City of Gustavus Ordinance Section 04.15.070(d) will be assessed on a past-due account until payment is received by the City.

(g) All payments and deposits must be remitted to the City of Gustavus and must be made payable to the City of Gustavus.

(h) Special Provisions. The following special provisions also apply to payments and deposits under this contract.

(1) Whether or not any material is removed during a particular reporting period, the buyer agrees to submit an Accounting Voucher to the City of Gustavus, PO Box 1, Gustavus, Alaska 99826, quarterly by the last day of the month following the dates: March 31, June 30, September 30, December 31 and date of expiration or upon removal of total contract entitlement, whichever is earliest.

3. Sale of Extracted Material

(a) The buyer is responsible for the sale of the material extracted from the gravel pits that is available to the gravel users in an accessible stockpile, which includes communicating with the purchasing party, invoicing and collection of payments due. It will be at the discretion of the buyer to allow gravel users to load their own trucks or the buyer loads the trucks.

(b) The buyer will annually negotiate with the City a unit price per yard as stockpiled for topsoil, sand and gravel. This will be the unit price charged to any party that purchases materials from the buyer. The annual unit price negotiation will ensure that the buyer is selling materials at a fair price to the other parties that may be in competition with the buyer. This annual negotiation will be based on the mining plan for that year and considers the activities expected to be necessary for that year's mining, such as tree removal, topsoil stripping, proportions of shallow and deep mining, re-mining of old ponds, causeway extraction, and reclamation.

(c) The buyer and the City will annually negotiate either

- i. the hourly rate the City will pay the buyer for mining and stockpiling material for the City's use. Or
- ii. a price per yard reduction to what the buyer would otherwise pay to the City for gravel sales to other users.

The timing of this negotiation and choice of pricing option will be outlined in the buyer's proposal and will thereafter coincide with the City's fiscal year budgeting process.

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: Vehicle Bed conversion to loose cubic yards, reported in cubic yards sold.

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

(c) All measurements are to be made by or under the direct supervision of buyer personnel acceptable to the City, including an Alaska registered professional engineer where the City deems appropriate, with quantities reconciled annually and certified by that person.

4. Operating Requirements.

(a) Boundary Lines and Survey Monuments. No boundary mark of the sale area nor 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 an Alaska registered professional surveyor in a manner approved by the City.

(b) 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, of any kind or any nature, whether ameliorated or otherwise. In addition to complying with all federal, state, and local laws, regulations, ordinances, and orders, the buyer shall maintain the land in a reasonably neat and clean condition, and shall take all precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion or destruction of the land. There shall be no importation of any kind of material to the area, this contract is for exportation of material only. The City may in its sole discretion terminate this agreement upon any violation of this provision.

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

(d) 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.

(e) Roads. No additional roads to extraction ponds will be built without written approval by the Mayor or City Administrator of the proposed location and construction standards of the road from the City.

(f) Supervision. The buyer shall maintain 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.

(g) Agents. The provisions of this contract apply with equal force upon an agent, employee, or any invitee, volunteer, or any other person authorized by the buyer to be in or around the sale area and/or assisting with or performing any of the operations relating to extraction of the materials sold under this contract. The buyer shall defend, indemnify and hold harmless the City for all acts or omissions of any kind and any nature, including death, arising out of or in connection with any act or omission by the buyer and/or any agent, employee, or any invitee, volunteer, or any other person authorized by the buyer to be in or around the sale area.

(h) 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. Buyer shall be solely responsible for the costs of any survey.

(i) Access. The City of Gustavus makes no representations that it will construct or maintain access to or within the city land.

(j) Special Provisions. The following special provisions also apply to operations under this contract:

(1) The buyer shall not conduct any milling or processing, such as crushing, conveying, etc., except for the use of a scalping screen to remove large rocks, wood and trash. The buyer shall comply with the Mine Safety and Health Administration, United States Department of Labor Program Policy Manual, Volume 1, Interpretation and Guidelines on Enforcement of the 1977 Act; Section 4 Mines Subject to the Act; I.4-3 Jurisdiction Over Borrow Pits; Section 6(b)(7) in the MSHA/OSHA Interagency Agreement.

Refer to the attachment with the MSHA description of a "Borrow Pit" that is under the jurisdiction of OSHA. The buyer will not conduct any activities that would cause the jurisdiction to change from a borrow pit under OSHA jurisdiction to a sand and gravel operation under MSHA jurisdiction.

(2) Material extraction and preparation shall at all times be carried out adhering to sound engineering principles. The buyer shall collaborate annually with the City to develop and update the mining and reclamation plan. The plan will maximize the extraction of the gravel resource and leave the areas where mining is

completed in the best practical condition for aquatic wildlife habitat. This includes mining in previously mined areas to extract recoverable gravel left behind by operations where deep gravel mining techniques were not practiced.

(3) The buyer will

(A) submit to the City a statement of qualifications that explains the buyer's capability to mine to a minimum depth of 20 feet below the seasonal low water level. If new equipment has to be purchased, state the lead time necessary to commission the equipment and commence deep mining. Maintaining the deep digging equipment in good operating order is a condition of this contract.

(B) Between April and October, maintain two gravel stockpiles, one for the City's use and one for other gravel users, with a minimum of 200 cubic yards each that is accessible by 10 cubic yard trucks and loading equipment.

(C) The buyer will maintain the access roads to the stockpiles in good order.

(4) Final pit slopes shall be no greater than 2:1. Drainage from the pit must meet state water quality standards before it enters any waters of the state. These conditions will be considered as part of the annual mine plan update.

(5) The City reserves the right to restrict hours of usage in its sole discretion, upon two (2) day written notice to the buyer, unless the City, in its sole discretion, deems an emergency situation such that two-day written notice would not be practical or feasible.

(6) Trees, stumps, overburden and any other debris derived from quarry expansion shall be disposed of in a manner considered suitable by the Mayor of the City of Gustavus.

(7) If any of the topsoil (organic and mineral) disturbed by the mining operation is not promptly redistributed to an area being reclaimed, it must be segregated, protected from erosion and from contamination by acidic or toxic materials and preserved in a condition suitable for later use. Stripped vegetation shall be stacked and stored or used immediately, subject also to Section (j)(4) for reclamation purposes. The buyer may sell excess topsoil that is not needed for reclamation.

(8) Materials excavated under this agreement shall be stockpiled in a separate area and shall not be mingled or mixed with any other material so as not to be readily measured in the pile.

(9) If potential cultural or paleontological archeological resources are discovered, they should not be disturbed and the DNR Office of History and Archeology should be contacted.

(10) The buyer shall furnish certificates of insurance, according to the attached insurance requirements, Exhibit 2, to the Gustavus City Treasurer prior to beginning operations under this authorization, and must provide for thirty (30) days prior written notice of cancellation, non-renewal and/or material change. Failure to

furnish satisfactory evidence of insurance or lapse of policy shall be a material breach and grounds for immediate termination of the contract in the sole discretion of the City. The buyer shall cease and desist operations if they are operating under a workers' compensation insurance exemption and are then observed to be utilizing a worker. Operations may not resume until proof of workers' compensation insurance is furnished to the City Treasurer.

5. Indemnity of City and Bonding.

(a) The buyer shall defend, 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 lands; 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 provision of this contract;

(6) Any environmental spill, discharge, or contamination of any kind and any nature involving any hazardous materials as hazardous materials are defined in any federal or state law.

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 defend, indemnify and hold the City of Gustavus harmless from any claim of loss or damage to them by any cause by any person.

(b) A buyer shall be required to file a bond designed to ensure the buyer's performance and to help protect the City of Gustavus against any liability that may arise as a result of the activities of the buyer. A bond in the amount of \$1,000.00 must be filed with the City 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 buildings, suction dredges, bridges, roads, etc. constructed by the buyer in connection with this contract and within the contract area must be in accordance with plans pre-approved in writing by the City of Gustavus.

(b) The buyer must, within 60 days after contract completion or termination of the contract by the City or by operation of law, remove the buyer's equipment and other personal property from the contract area. After removal, the buyer must leave the land in a safe and clean condition that is acceptable to the City of Gustavus in its sole discretion.

(c) If any of the buyer's property having an appraised value in excess of \$10,000, as determined by the City, 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 City of Gustavus Municipal Code 10.12.010. 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 City, including legal fees and costs. If there are no other bidders at the sale, the City may bid on the property, and the City will acquire all rights, both legal and equitable that any other buyer 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 City, is not removed within the time allowed, title to that property shall automatically and immediately vest in the City.

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

7. Inspection.

(a) The City shall be accorded access, at all times, to the sale area and to the books and records of the buyer, the buyer's buyers, and any sub-buyers 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 City in regard to performance under this contract, and to take appropriate action as is required by this contract.

8. Termination and Suspension.

(a) The City of Gustavus 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.

(b) If the buyer fails to comply with any of the provisions of this contract, the City may shut down the buyer's operations upon issuance of written notice, until corrective action, as specified by the City in its notice, is taken. If this corrective action is not taken within 30 days after written notice is served upon the buyer, the City may terminate the contract under paragraph 8(a) of this contract in the sole discretion of the City. 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 City to prevent danger or additional damage. Any cost incurred by the City as a result of this corrective action, or by the buyer's failure to take corrective action, shall be paid by the buyer.

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

9. 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 38.05.110 – 38.05.120, 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 regards.

10. Assignment. This contract may not be assigned by the buyer without the City's prior written consent to the assignment.

11. Permits. Any permits necessary for operations under this contract must be obtained by the City before commencing those operations.

12. Passage of Title. All right, title and interest in or to any material included in the contract shall remain in the City of Gustavus 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 City of Gustavus.

13. Expiration and Extension. This contract expires on the date stated at the top of the contract unless an extension, amendment, or renewal is granted by the City. The request for renewal may begin three (3) months prior to existing contract.

14. Warranties. This contract 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 removed from the area under contract.

15. 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.

16. 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 City: City of Gustavus
 PO Box 1
 Gustavus, Alaska 99826

To the Buyer: XXXXXXXX
 PO Box XXX
 Gustavus, AK 99826

17. 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. The mayor, city council members, employees, and representatives of the City do not have any actual or apparent authority to orally modify any of the terms and conditions of this contract.

18. 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.

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

20. Headings. The headings of the numbered pages in this contract shall not be considered in construing any provision of this contract.

21. “Extracted”, “Extraction”, “Mining” and “Mined”. In this contract, use of the terms “extracted”, “extraction”, “mining” and “mined” encompasses the severance or removal by the buyer of any materials covered by this contract.

22. Waiver. No agent, representative or employee of the City of Gustavus has authority to waive any provision of this contract unless expressly authorized to do so by the Mayor or Mayor’s designee of the City of Gustavus, Alaska.

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

BUYER:

CITY OF GUSTAVUS:

XXXXXXXXXXXXX

Mayor, City of Gustavus, Alaska

Exhibit 2

INSURANCE REQUIREMENTS

During the term of the contract, the BUYER shall obtain and maintain in force the insurance coverage specified in this section with an insurance company rated “Excellent” or “Superior” by A.M. Best Company or specifically approved by the City Council.

Limits: The BUYER shall obtain insurance for not less than the following limits:

- Commercial General Liability: Coverage written on an occurrence basis with limits of not less than \$1,000,000.00 per occurrence;
- Comprehensive automobile liability: \$1,000,000.00 combined single limit;
- Workers’ Compensation: \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.

Automobile Liability Insurance: All vehicles or all owned, non-owned, and hired vehicles must be insured when the BUYER is using them to do work under this Agreement. If the BUYER submits insurance covering only scheduled vehicles, then the BUYER must assure that any additional vehicles are insured before using them in the work under this Agreement.

Workers’ Compensation: Any employee of the BUYER must be covered by workers’ compensation insurance during the term of the Agreement. This policy must be endorsed with a waiver of subrogation in favor of the CITY. The BUYER is not required to provide a certificate of workers’ compensation covering the owner(s) of the BUYER’s business under the following circumstances:

Corporations – If the executive officer(s) claims an exemption, then the BUYER must provide an Executive Officer Waiver for each officer from the Alaska Department of Labor and also provide the corporate filing with the State showing the person(s) named on the waiver is an owner. Only the person or persons who have the State Executive Officer Waiver and who are an owner shall be permitted to do any work or be on the work site or work area. If the BUYER permits any other person on the work area or work site or to do any work, and that person is injured, the BUYER shall defend, indemnify, and hold harmless the City from any and all claims and liabilities for workers’ compensation benefits of any kind and any nature, including costs and legal fees.

Sole Proprietors, Partnerships, or LLCs – If the sole proprietor, partner, or member claims an exemption, then the BUYER must provide the City with the business permit filing with the State of Alaska showing the person(s) are the owner, sole proprietor, partner, or member. Only the person or persons who are an owner, sole proprietor, partner, or member shall be permitted to do any work or be on the work site or work area. If the BUYER permits any other person on the work area or work site or to do any work, and that person is injured, the BUYER shall defend, indemnify, and hold harmless the City from any and all claims and liabilities for workers’ compensation benefits of any kind and any nature, including costs and legal fees.

Alternate Coverage: A combination of primary and excess/umbrella policies may be used to fulfill the insurance requirements of this section.

Additional Insured: During the contract term, the BUYER shall add and maintain the CITY as an additional insured in the Buyer’s commercial general liability policy. This policy will provide primary coverage for the CITY, and it will provide that a policy treats each additional insured as though the insurer had issued separate policies.

Certificate of Insurance: Prior to commencing any work under this Agreement, the BUYER will provide a certificate of insurance in a form acceptable to the CITY showing that the BUYER has the required insurance coverage.

Cancellation: The BUYER must assure that the CITY receives notice if the Buyer's insurance is going to be canceled, not renewed, or changed. The certificate of insurance must say that the insurer will notify the CITY at least 30 days before the insurer cancels, refuses to renew, or materially changes the coverage.

Increased Coverage: If during the Agreement term the CITY requires higher limits of insurance than those listed in this section, and if the insurer increases the premium as a result of the higher limits of insurance, then the CITY will pay the BUYER the difference between the new and old premiums.

Subcontracting: The Buyer is responsible to the CITY to verify insurance on all subs and furnish copies of it to the CITY upon request. All subs must carry and show proof of the minimum limits of liability indicated above.