

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

☐ **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
P.O. Box 111020
Juneau, AK 99801
(907) 465-3400

**MATERIAL SALE CONTRACT
AS 38.05.550-565; AS 38.05.810(a)**

Issuance Date: 5-2-17

Expiration Date: 12-31-17

ADL # 232889

Federal Tax I.D.

Under AS 38.05.550-565(Material Sales) and AS 38.05.810(a) and the regulations implementing these statutes, the State of Alaska, the seller, agrees to sell and Mega Trucking, LLC, the buyer, whose address is shown in paragraph 17 of this Material Sale Contract, 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 is identified as ADL 231471 located at:

The NE ¼NE ¼ of Section 11, Township 9 South, Range 6 West, Copper River Meridian. 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:

A 450' x 120' area south of the Copper Avenue Erosion Protection Excavation Area.

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

<u>Kind of Material</u>	<u>No. of Units</u>	<u>Unit Price</u>	<u>Total Price</u>
Gravel, sand and cobble	20,000	\$1.50	\$30,000

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 \$3,000 (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 at the end of each calendar year, without prior notice to the buyer, for the value of material extracted as of that date. The installment must be based on records required in paragraph 3 of this contract and must be submitted to the seller no later than the fifth working day following the date the installment is due.

(d) 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 and Water within 45 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 Division of Mining, Land and Water only after the payments in arrears plus the penalty provided for in paragraph 2(f) have been paid.

(f) Late Payment Penalty: 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.

(g) All payments and deposits must be remitted to the Division of Mining, Land and Water and must be made payable to the Alaska Department of Revenue.

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

N/A

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:

Volume shall be measured in cubic yards of truck load capacity of a gravel truck(s) multiplied by the number of loads removed. Another volume accounting method may be approved by the seller. Accounting vouchers detailing the dates and amounts of material removed must be submitted to the Southcentral Regional Office by 30 days following contract completion the end of each calendar year.

(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 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 a registered surveyor in a manner approved by the seller.

(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, 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, and shall take all prudent precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion or destruction of the land.

(c) Erosion Control and Protection of Waters. Road construction or 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.

(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. Before constructing any mainhaul, 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.

(f) 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.

(g) 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.

(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.

(i) 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.

(j) Mining Reclamation. This contract is subject to the attached approved reclamation plan and/or attached letter of intent under AS 27.19.

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

- 1) All work shall be confined within the authorized extraction area within the designated material site. The purchaser is responsible for the accurate location of all activities within the area authorized by this contract. A site diagram that is tied to an existing survey monument will be submitted to DNR before any operations begin on the area authorized by this contract. Any

survey(s) that may be necessary or requested by the regional manager shall be submitted within nine months from the date of the regional manager's request.

- 2) The permittee or their agent shall carry a copy of the executed contract while operating in the material site. No gravel will be removed without the issued contract in hand.
- 3) Representatives and personnel of interested State agencies may inspect this site at any time.
- 4) This contract authorizes activity only on lands under the management jurisdiction of the State of Alaska. The issuance of the contract does not preclude the contractors need to acquire any necessary state, federal, or local authorizations as may be required and to be in compliance with these authorizations. Failure to do so shall be considered a breach of the terms and conditions of the contract and may be cause for contract revocation.
- 5) Historic and archeological objects are part of Alaska's cultural heritage and are protected under AS 41.35. If in connection with activities authorized under this material contract, the buyer, its officers, agents, employees, contractors, subcontractors, or their personnel encounter any paleontological, archeological or historic sites or artifacts, the buyer shall suspend all field activities on the affected portion of the parcel, and shall immediately notify the State Historic Preservation Officer (SHPO) at 269-8721. The buyer shall not resume field activities within the affected portion of the parcel until obtaining authorization from the SHPO.
- 6) The buyer shall conduct all operations in a manner, which will prevent unwarranted erosion. Any such erosion shall be repaired in a manner satisfactory to ADNR at the purchaser's expense.
- 7) The extraction area will be cleaned to the satisfaction of the Division of Mining, Land and Water (DMLW) upon termination of this contract.
- 8) Road construction or operations in connection with this project must be conducted so as to avoid damage to streams, lakes, or other water areas and land adjacent to them
- 9) Vegetation and materials may not be deposited into any stream or other water area. Location and improvements necessary for stream crossings for haul roads must be approved in advance by DNR.
- 10) No material of any type, including excavated material or vegetation, shall be placed, stockpiled, discarded, or otherwise disposed of in such a way as to block access to the material site.
- 11) Material removal and site restoration shall be done as follows; the topsoil and overburden will be stockpiled according to an approved site diagram at the edge of the material site; the material will be removed from the material site; the site will be reclaimed with slopes no steeper than 2:1 grade or equivalent to the existing natural topography of the surrounding area. If the authorized extraction area is exhausted of material, the topsoil and overburden will be spread over the graded landscape to a minimum 2-inch depth.
- 12) Exclusive use of the material site is not granted by the issuance of this contract. There shall be no interference with other operators in the material site. ADNR retains the right of use and ingress to and egress from any portion of the material site.
- 13) Storage of equipment and materials as well as processing operations may require a Land Use Permit from the ADNR.
- 14) Pursuant to 11 AAC 96.065 the contractee shall secure or purchase at its own expense, and maintain in force at all times during the term of this contract, the following policies of insurance to protect both the State and the contractee (the State, its officers, agents and employees). If

the contractee'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 State of Alaska prior to the issuance of this contract and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The contractee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions of the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this contract and shall be grounds, at the option of the State, for termination of the permit. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the contractee on or in conjunction with the contracted premises, referred to as ADL 231638. In the event the contractee becomes aware of a claim against any of its liability coverage, the Permittee shall notify, and provide documentation and full disclosure of the claim to the AO within 20 days.

- 15) The contractee shall immediately notify Alaska Department of Environmental Conservation by telephone, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail, informing Alaska Department of Environmental Conservation of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the lessee or permittee shall report the discharge within 48 hours, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. The provisions of 18 AAC 75.310 (Scope and Duration of Initial Response Actions) and other reporting requirements of 18 AAC 75.300 - 18 AAC 75.396 also apply. The lessee or permittee shall supply Alaska Department of Environmental Conservation and ADNR with all follow-up incident reports.

Notification of a discharge must be made to the nearest Alaska Department of Environmental Conservation Area Response Team during working hours: Anchorage (907) 269-3063, fax (907) 269- 7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The Alaska Department of Environmental Conservation oil spill report number outside normal business hours is (800) 478-9300. All fires and explosions must also be reported. The DNR 24-hour report number is (907) 451-2678; the fax number is (907) 451-2751.

- 16) The use of hazardous substances by Permittee must be done in accordance with existing federal, state and local laws, regulations and ordinances. Hazardous substances must be removed from the site and managed in accordance with state and federal law. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be recovered from the site and managed and disposed of in accordance with state and federal law.
- 17) "Hazardous substances" are defined under AS 46.03.826(5) as;

- (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation;
- (b) oil; or

(c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

- 18) During equipment maintenance operations, the site shall be protected from leaking or dripping hazardous substances or fuel. The contractee shall place drip pans or other surface liners designed to catch and hold fluids under the equipment or develop a maintenance area by using an impermeable liner or other suitable containment mechanism.). "Surface liner" means any safe, non-permeable container (e.g., drips pan, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

5. Indemnity of Seller and Bonding.

(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 \$300 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, if any, applicable to improvements and occupancy under this contract are listed in paragraph 4(j) 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 38.05.110 - 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 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**
Address that is checked on page 1 of this contract

To the Buyer: **Mega Trucking, LLC**
P.O. Box 1808
Valdez, AK 99686

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 Division of Mining, Land and Water.

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:

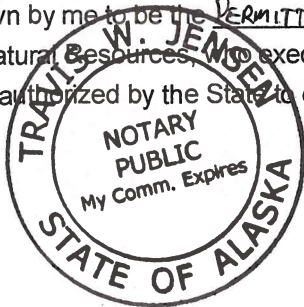
[Signature] Date: 5/18/17

SELLER: STATE OF ALASKA
Jusdi McDonald
Natural Resource Manager II, SCRO

[Signature] Date: 5/23/17

STATE OF ALASKA)
)ss.
3RD Judicial District)

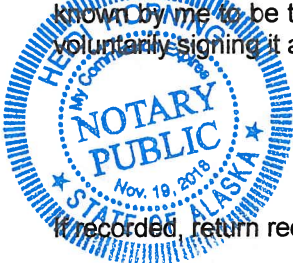
THIS IS TO CERTIFY that on MAY 23RD, 2017, before me appeared JUSDI McDONALD, known by me to be the PERMITTING UNIT MANAGER of the Division of Mining, Land and Water, Department of Natural Resources, who executed this Material Sale Contract on behalf of the State of Alaska, and who is fully authorized by the State to do so.



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

STATE OF ALASKA)
)ss.
3rd Judicial District)

THIS IS TO CERTIFY that on May 18th, 2017, before me appeared Jesse Passin, 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: Nov. 19, 2018

If recorded, return recorded document to (name and address): _____

Sale Area Map

