

**MATERIAL EXCAVATION AND SALE AGREEMENT**

**SUBSURFACE/MINERAL**

**OWNER:** Bering Straits Native Corporation, an Alaska Corporation  
Attn: Land & Resource Manager  
PO Box 1008  
Nome, AK 99762  
Telephone: (907) 443-5252  
Fax: (907) 443-2985  
Email:

**SURFACE/ACCESS**

**OWNER:** Sitnasuak Native Corporation, an Alaska Corporation  
Attn: Land Manager  
PO Box 905  
Nome, AK 99762  
Telephone: (907) 387-1200  
Fax: (907) 443-3063  
Email:

**BUYER:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_, 20\_\_.

**TERM:** This Material Excavation and Sale Agreement (this "Agreement") shall commence on the Effective Date and expire on the one (1) year anniversary date thereof, unless otherwise extended by the parties in writing.

**MATERIAL SALE AREA:** The real property owned by Owner(s) and the subject of this Agreement upon which Buyer may enter in order to excavate, stockpile and remove the Materials, in accordance with the terms of this Agreement, is legally described and depicted on Exhibit A attached hereto.

**MATERIALS:** The rock, gravel and minerals in such volumes as identified in Exhibit B attached hereto that Buyer may excavate, stockpile and remove from the Material Sale Area under this Agreement.

**SALE OF MATERIALS**

**AND PERMIT:**

Subject to the terms and conditions of this Agreement, including all Schedules and Exhibits, Owner(s) agrees to sell the Materials to Buyer, and solely in connection therewith, Buyer has permission, subject to valid existing rights, to travel over and upon and to excavate, stockpile and remove materials from those portions of the Material Sale Area depicted on Exhibit A.

**SCHEDULES AND EXHIBITS:** This Agreement consists of two cover pages setting forth certain basic terms and definitions; the description of the Material Sale Area and the portions of the Material Sale Area upon which Buyer may travel depicted on Exhibit A; the Materials and the Fee Schedule attached as Exhibit B; the General Conditions attached as Exhibit C; the Insurance Requirements attached as Exhibit D; the Reporting Form attached as Exhibit E; and the Special Conditions attached as Exhibit F; and any other documents specifically identified in any of the foregoing as incorporated herein. In the event of any conflict between Exhibit C and Exhibit F the terms of Exhibit F shall govern.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

**OWNERS:**

**BERING STRAITS NATIVE CORPORATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SITNASUAK NATIVE CORPORATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Hereafter, the owners of the surface/access and subsurface/mineral estates shall be construed as one owner when referenced in following Exhibits.

**EXHIBIT A**  
**MATERIAL SALE AREA**

[LEGAL DESCRIPTION – NOTE: IDENTIFY SURFACE AND/OR SUBSURFACE]

T.11S., R.34W., Section 12, Nome Recording District, Second Judicial District, State of Alaska.

[DEPICT MATERIAL SALE AREA]



**EXHIBIT C**  
**GENERAL CONDITIONS**

1. Plan of Operations. Within fifteen (15) days after the Effective Date and prior to entering the Material Sale Area or commencing any operations, Buyer shall provide to Owner (s), for Owner's approval, a proposed plan of operations ("Plan of Operations"), which must include, at a minimum, the following information:

1.1 a summary of all proposed activities and operations that Buyer proposes to be conducted on the Material Sale Area, including but not limited to (i) locations of excavation or stockpiling areas, locations of access or travel routes across the Material Sale Area, and any site improvements, including access road improvements, identified on maps, photos or site plans; (ii) proposed methods of Materials extraction, transportation and volume determination; (iii) proposed methods of and locations for removal, disposal or stockpile of any surface materials (other than the Materials), such as waste and overburden materials; (iv) proposed methods and areas of reclamation, including replacement of surface materials; and (v) other relevant site and operating information;

1.2 a summary showing the quantities and types of the Materials that Buyer proposes to extract, stockpile and remove on or from the Material Sale Area and a general schedule for extraction, stockpiling and removal;

1.3 a complete list of equipment Buyer proposes to use on the Material Sale Area and the method to be used to address the requirement that inoperable equipment, vehicles and fuels must be removed from and not stored on or within the Material Sale Area;

1.4 a summary of Buyer's proposed plans for waste disposal and fire suppression;

1.5 a list of all permits and authorizations required by regulatory agencies having jurisdiction over Buyer's operations and/or owners of property to be used in connection with Buyer's operations under this Agreement, and if requested by Owner, copies thereof;

1.6 name and full contact information of the supervisor(s) or engineers that will be responsible for operations and receiving instructions from Owner in satisfaction of the obligations set forth in Sections 2.2 and 4.1 below; and

1.7 such other information as is reasonably requested by Owner.

Owner shall, within fifteen (15) days of receipt of Buyer's Plan of Operations, either (i) approve in writing Buyer's Plan of Operations or (ii) request additional information or modifications to the plan necessary for Owner's approval. Owner reserves the right to reject any Plan of Operations submitted by Buyer. Either Party shall have the right to terminate this Agreement in the event Owner does not approve Buyer's Plan of Operations. Buyer shall not undertake any operations in the Material Sale Area until the Plan of Operations has been approved by Owner in writing. Any proposed amendment to the approved Plan of Operations must be submitted to and

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approved by Owner in writing in advance. Owner's approval of the Plan of Operations, and any amendments thereto, shall not be construed as Owner's approval or disapproval of any design, safety feature, specification or any other feature of said Plan of Operations and is not a warranty that the Plan of Operations is economic, safe or meets the requirements of any applicable federal, state or local laws, regulations or ordinances (collectively, "Laws") or any permits or authorizations.

2. Price and Payments; Passage of Title.

2.1 During the Term, Buyer shall pay to Owner: (i) a non-refundable fee in the amount identified on Exhibit B hereto on the Effective Date and at such other times as may be identified thereon; and (ii) for all of the Materials extracted, stockpiled or removed from the Material Sale Area, payments at the rates set forth on Exhibit B. All such payments shall be remitted to, and payable to, Owner at the address set forth on the cover page of this Agreement. A late payment penalty equal to one and one half percent (1.5%) of the amount due will be assessed for each month, or portion thereof, that a payment is delinquent. Unless otherwise explicitly stated on Exhibit B, the fee required under clause (i) of this Section 2.1 shall not be applied to amounts payable under clause (ii) of this Section 2.1, or to any other sums payable by Buyer to Owner under this Agreement.

2.2 Any and all right, title and interest in or to any of the Materials shall remain in Owner until Buyer has paid for such Materials in accordance with this Agreement, provided, however, that the right, title and interest in and to any of the Materials that have been paid for but not removed from the Material Sale Area by Buyer during the Term shall vest in the Owner upon expiration or termination of the Term.

3. Method of Volume Determination.

3.1 The method of volume determination, for purposes of computing the Materials sold and payments due to Owner under this Agreement, are: (1) by the cubic yards as reported on "State of Alaska Trip Sheet Reports" which reports will be provided by Buyer to Owner monthly; and (2) by measured 10, 12, 15 or 19 cubic yard dump trucks or belly dumps, each load will be counted as a full load; or (3) as otherwise provided in Exhibit E. During the Term, the Parties may agree in writing to use alternative methods of determining volume if such methods provide a more accurate representation of the volume of the Materials.

3.2 All measurements required under this Section 3 are to be made by, or under the direct supervision of, and shall be certified as true, accurate and complete by a supervisory employee or licensed engineer employed by Buyer, who shall at all times be reasonably acceptable to Owner.

3.3 Buyer shall keep true, accurate and current records of all the Materials extracted, stockpiled or removed from the Material Sale Area which records shall be available and subject to inspection by Owner at any time upon written request without prior notice.

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3.4 At any and all times, Owner may independently verify the quantity of the Materials extracted, stockpiled or removed from the Material Sale Area, and Buyer shall provide any written authorizations necessary for such independent verifications and shall cooperate with Owner and provide reasonably requested records to Owner.

4. Reports.

4.1 Buyer shall make monthly written reports, certified as true, accurate and complete, identifying the quantity and type of the Materials excavated, stockpiled or removed pursuant to this Agreement, to Owner on the accounting form set forth on Exhibit E hereto, on or before the fifteenth (15th) day of each month for the preceding month. Buyer shall render this monthly report to Owner even if no activity has occurred during the prior month.

4.2 Owner shall have access to and the right to audit, at its expense and upon reasonable advance notice, all records and books of Buyer and/or its agents, contractors and subcontractors pertaining to the sale of the Materials under this Agreement, which right shall survive the expiration or termination of this Agreement.

5. Operating Requirements. During the Term, Buyer shall operate in strict accordance with the operating requirements set forth in this Section 5, and for all purposes under this Section 5, the term "Buyer" shall include Buyer and any and all of Buyer's contractors, subcontractors, vendors, suppliers or agents performing any work under this Agreement or entering the Material Sale Area, on behalf of or at the request of Buyer.

5.1 Buyer shall conduct its operations in a workmanlike manner in accordance with the terms of this Agreement, the approved Plan of Operations, and all Laws, and shall, at its sole cost and expense, obtain any and all necessary governmental permits, licenses and authorizations and approvals. Buyer shall maintain direct supervision of the Material Sale Area and its operations at all times during the Term by a supervisory employee or licensed engineer on the payroll of Buyer who shall at all times be reasonably acceptable to Owner to ensure compliance with all provisions of this Agreement and who shall be authorized to receive instructions from Owner in connection with this Buyer's operations under this Agreement.

5.2 Buyer shall maintain the Material Sale Area in a reasonably neat and clean condition, including removing all garbage and debris resulting from Buyer's operations, and take steps to prevent erosion or destruction of land. Buyer shall not commit waste. All solid and petroleum waste material of whatever nature shall be removed from the Material Sale Area and disposed of according to Laws.

5.3 Buyer shall secure the Material Sale Area from unauthorized use resulting from Buyer's activities or operations at all times during the Term, and agrees that that hunting, fishing and other similar activities on or from the Material Sale Area are strictly prohibited.

5.4 Buyer shall take all necessary precautions for the prevention of fires and is responsible for the suppression of all destructive or uncontrolled fires occurring in or outside the Material Sale Area resulting from Buyer's activities.

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5.5 Buyer may only locate operational machinery or equipment directly related to Buyer's operations herein on the Material Sale Area. Non-working machinery or equipment may not be stored. Buyer is solely responsible for locating itself and its machinery and equipment and any improvements within the Material Sale Area, including the cost of obtaining any survey that may be necessary for accurate location. If such survey is necessary, Buyer shall furnish Owner with a certified copy of such survey.

5.6 Buyer shall take all reasonable steps to minimize blowing dust, including but not limited to reclaiming areas in which extraction is complete. Buyer shall conduct operations so as to avoid damage to streams, lakes or other water areas and adjacent lands.

5.7 Buyer shall, to the maximum extent allowable under law, use its best efforts to hire, in connection with its operations under this Agreement, qualified shareholders of Bering Straits Native Corporation.

5.8 Buyer shall conduct all operations and activities under this Agreement in such a manner as to insure that no hazardous substances are placed, spilled, dumped or otherwise disposed of, on, under or within the Material Sale Area. The term "hazardous substances" refers to any substance, material, chemical, petroleum product or waste defined, classified, listed or designated as hazardous, toxic, dangerous or radioactive by any Law presently in effect or that may be enacted or promulgated in the future. In addition to any other indemnity provided herein, Buyer shall indemnify, defend and hold harmless Owner (including Owner's affiliates, employees, agents, successors and assigns) from and against all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, and all costs, expenses (including attorneys' fees) arising, directly or indirectly, from or out of (i) the existence of a hazardous substance on, under or within the Material Sale Area, other than those placed there solely by Owner (or its affiliates, employees, agents, successors or assigns), or (ii) any failure of Buyer to comply with any and all Laws and administrative and judicial orders. Buyer shall, at its sole cost and expense, perform all required cleanup and remediation to the satisfaction of Owner any government agency or agencies having jurisdiction thereof. This Section 5.9 shall survive the expiration or termination of this Agreement.

5.9 Buyer will not exceed maximum load requirements established by Laws and will not exceed the haul vehicles' specified load capacity.

5.10 If Buyer requires subcontractor for hauling, Buyer shall give Stampede Ventures, Inc., first right of refusal to provide such services.

5.11 No grave site or archeological site shall be in any way disturbed, removed or damaged. If Buyer discovers or encounters any grave or archeological site, Buyer shall immediately cease work in the vicinity of the site and shall immediately notify Owner.

5.12 Buyer shall keep the Material Sale Area free and clear of any and all liens.

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5.13 Buyer shall take all reasonable and necessary precaution to prevent disturbance and destruction of survey monuments and shall be responsible for the replacement and bear all replacement costs for monuments disturbed as a result of any operations undertaken by Buyer, its representatives, agents or employees. Buyer shall notify Owner and other appropriate public officials and private parties as soon as possible after Buyer becomes aware of the disturbance of any monuments.

5.14 Buyer shall comply with any and all special conditions set forth on Exhibit E.

6. Non-Exclusivity. This Agreement does not grant or confer any exclusive rights to occupy or use the Material Sale Area. Owner reserves the right to engage in, or to permit third parties to engage in, any and all other uses of the Material Sale Area which will not unreasonably interfere with Buyer's activities hereunder. With respect to Buyer's travel routes over those portions of the Material Sale Area described in this Agreement, Seller may, in its discretion and upon reasonable advance notice to Buyer, change the location of such routes providing that Buyer's activities hereunder are not materially and adversely impaired.

7. Insurance; Indemnification.

7.1 At all times during the Term, Buyer shall have the insurance required by Exhibit D and shall comply with all terms and conditions thereof.

7.2 Buyer shall indemnify, defend and hold Owner and its affiliates, and their respective officers, directors, employees and agents harmless from and against any and all claims, actions, demands, damages, penalties, fines, costs, liens, liabilities or losses (including without limitation injury or death to any person or persons (including without limitation the employees, invitees, agents, contractors and subcontractors of Buyer and its contractors and subcontractors), and the damage to or loss of any property, diminution in value of the Material Sale Area, damages for loss or restriction of use of such estate, attorneys' fees, consulting fees and expert fees), directly or indirectly, arising out of or related to or in any way connected with activities or operations under this Agreement, condition of the Material Sale Area, or the use of the Material Sale Area, or any acts or omissions of Buyer, its contractors, subcontractors, employees, suppliers or agents.

Buyer further agrees to indemnify, defend and hold Owner and its affiliates and their respective officers, directors, employees and agents harmless from any and all claims, actions, demands, damages, penalties, fines, costs, liens, liabilities or losses (including without limitation injury or death to any person or persons (including without limitation the employees, invitees, agents, contractors and subcontractors of Buyer and its contractors and subcontractors), and the damage to or loss of any property, diminution in value of the Material Sale Area, damages for loss or restriction of use of such estate, attorneys' fees, consulting fees and expert fees), arising out of or related to the contamination of the surface or subsurface estate or any surface or subsurface resources or materials, of, on or in, the Material Sale Area by any hazardous substance brought to the Material Sale Area or the surface or subsurface estate thereof, or discharged, leaked or emitted thereon by Buyer or any of its contractors, agents or employees,

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including without limitation, costs incurred in connection with any investigation of the Material Sale Area or any cleanup, remediation, removal or restoration work required by any federal, state or local government agency or political subdivision.

Buyer's obligations under this Section 7.2 shall survive any termination or expiration of this Agreement.

8. Inspection. Owner, its agents, representatives or contractors may enter the Material Sale Area at all times for the purpose of inspection to determine whether Buyer is complying with its obligations hereunder, provided that Owner shall not unreasonably interfere with Buyer's operations. At all times when operations are in progress, Buyer shall have readily available to Owner a representative who is authorized to receive, on behalf of Buyer, any notices and instructions given by Owner in regards to performance under this Agreement and other Laws.

9. Material Sale Area Reports and Data. Buyer shall provide Owner with copies of all geological, geophysical and engineering data, maps, results of sampling and similar data and any other reports concerning the Material Sale Area secured by Buyer.

10. Taxes. Buyer shall be solely responsible for the payment of any and all taxes and assessments, including but not limited to property, sales or resources taxes levied upon the Materials, improvements and/or the Material Sale Area, as a result of Buyer's operations, and shall promptly cause said taxes and assessments to be paid when due and prior to delinquency.

11. Default and Remedies. Without limiting any other provision of this Agreement,

11.1 If Buyer fails to deliver any required report in accordance with the provisions of this Agreement or make any payment due to Owner hereunder, Owner may, by written notice to Buyer, order Buyer to immediately cease operations in the Material Sale Area, whereupon Buyer shall immediately suspend all operations hereunder, and Owner may, in its sole discretion, terminate this Agreement.

11.2 The failure of Buyer to comply with any term or condition of this Agreement other than Section 11.1 above, shall be deemed a default under this Agreement. In the event Buyer is in default, and unless otherwise provided herein, Owner shall provide Buyer with ten (10) days written notice of default and the opportunity to cure; provided, however, that Buyer shall commence promptly obligations which Owner has declared to be of an emergency nature. If, after the applicable notice period has expired, Buyer has failed to cure the default, Owner may, at its sole option, terminate this Agreement.

11.3 Termination of this Agreement shall not operate to relieve Buyer from the payment of any sum due Owner or from any claim for damages previously accrued or then accruing against Buyer. In addition to termination, Owner shall be entitled to any and all remedies provided by law or equity to which Owner may resort cumulatively or in the alternative. Failure of Owner to strictly enforce at any time any of the provisions of this Agreement or to exercise any option which is herein provided, or to require at any time any of

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the provisions of this Agreement or to exercise any option which is herein provided, or to require at any time strict performance by Buyer of any of the provisions hereof, shall in no way be construed to be a waiver thereof, nor in any way affect the validity of this Agreement or any part thereof, or the right of Owner thereafter to enforce the same strictly.

11.4 Upon termination of this Agreement, any right, title and/or interest, if any, of Buyer in the Materials on the Material Sale Area, shall terminate.

11.5 This Agreement may also be terminated by mutual agreement of the Parties on terms agreed to in writing by the Parties.

12. Assignment. This Agreement may not be assigned by Buyer without Owner's prior written consent, which consent may be withheld in Owner's sole discretion. Absent the consent of Owner, any purported assignment is void.

13. No Warranties. Owner makes no representation or warranty regarding the presence, quantity, quality, nature or type of the Materials present or that may be present in the Material Sale Area, the ease or difficulty of accessing or extracting the Materials, the suitability of the Materials or the Material Sale Area, the presence or absence of hazardous substances or other dangerous conditions, or the ability, cost or feasibility of Buyer performing its obligations under this Agreement. The Materials are sold "as is, where is" and with all faults. Owner does not warrant that the Materials are merchantable or fit for any particular purpose. Owner shall not be liable for any damages relating to the use of the Materials or for any consequential or incidental damages. Owner makes no representation or warranty regarding the nature of Owner's right to provide access to the Material Sale Area. Buyer shall be solely responsible for obtaining any additional authorizations Buyer may deem necessary from the owner(s) of any affected surface estate. Access to the Material Sale Area via any route not under Owner's control is Buyer's responsibility. Buyer represents that it has inspected the Material Sale Area and made such investigations of such sites as Buyer deems appropriate, and has decided to enter this Agreement without reliance on any representation or warranty by Owner regarding the Materials or the Material Sale Area. Buyer assumes any and all risks presented by the condition of the Material Sale Area, whether natural or improved.

14. Valid Existing Rights. This Agreement is subject to all valid existing rights, including but not limited to, easements, rights-of-way, reservations or other interests in land, in existence as of the Effective Date.

15. Miscellaneous.

15.1 Notices. Any notice, demand or other communication required or permitted to be given to either party hereunder shall be in writing, and shall be deemed to have been delivered when actually received if delivered personally, or: (i) on the second day after delivered, postage pre-paid to a nationally recognized overnight courier, (ii) upon transmission by electronic communication (including e-mail or fax, with machine generated confirmation or confirmed in writing), or (iii) on the third day after having been deposited in the United States mail, postage pre-paid, and, in any such case, addressed to the respective party at the address

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indicated on the coverage page, or to such other address as may hereafter be indicated by written notice delivered in accordance with the terms hereof to the other party.

15.2 Severability. If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

15.3 Venue and Governing Law. This Agreement shall be interpreted and construed in accordance with, and governed and enforced in all respects by, the laws of the State of Alaska. All legal proceedings arising as a result of this Agreement shall be brought only in the Alaska Superior Court, Second Judicial District, Nome, Alaska.

15.4 Waiver. The failure of either Party to exercise any provision hereunder shall not constitute a waiver of the right to exercise that provision.

15.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one (1) Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange, by facsimile copy transmission or otherwise, counterparts of the signature page(s).

15.6 Amendments. This Agreement may not be amended unless evidenced in a written instrument executed by both Parties.

15.7 Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings. In the event of a conflict between this Agreement and any approved Plan of Operations, the terms of this Agreement shall control, unless the approved Plan of Operations specifically and expressly states that it constitutes an amendment to this Agreement.

**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

**EXHIBIT E  
REPORTING FORM**

**EXHIBIT F**  
**SPECIAL CONDITIONS**