

**COMMERCIAL QUANTITY MATERIAL CONTRACT**  
**SELDOVIA – ROCKY RIDGE LANDFILL/QUARRY**  
 KPB 17.10.210

Contract # 2022-01SEL

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley St., Soldotna, Alaska 99669-7599 (hereinafter called KPB), hereby contracts with the City of Kenai., whose address is 210 Fidalgo Avenue, Kenai, AK 99611, (hereinafter called Contractor) to move and remove material from the Seldovia Rocky Ridge Landfill/Quarry as more particularly defined herein. Said material site is located within, Township 9 South, Range 14 West, Section 6, Seward Meridian, State of Alaska, Assessor’s Parcel No. 191-130-67.

1. **CONTRACT:**

Subject to the terms and conditions and in consideration of the services prescribed herein the KPB authorizes the City of Kenai to:

- Blast up to 383,000 Cubic Yards of material from the quarry (hereinafter referred to as “Contractor Produced Material”), as needed to yield specified materials for the “Kenai River Bluff Stabilization Project”;
- Remove from the site:

○ 97,000 Tons of Armor Rock		
Weight of Rock (lbs)		Percent Finer by Weight
1600-3200		100
850-1600		50
250-850		15
100-250		<5
○ 29,000 Tons of Filter Rock		
Weight of Rock (lbs)		Percent Finer by Weight
150-250		100
70-150		50
20-70		15
10-20		<5
○ 23,000 Tons of Core Rock		
Weight of Rock (lbs)		Percent Finer by Weight
250-1600		100
150-850		50
70-250		15
20-100		<5

Volumes and specification above are estimates which may vary based on the actual yield suitable for the contractors use.

2. OPERATIONAL CONDITIONS

- A. Contractor shall operate consistent with the attached Mining Plan, relative in scope with the volume of materials produced under this contract.
- B. Contractor shall obtain all permits required to perform under this contract, and maintain such permits in good standing.
- C. Contractor shall, within 90 days of completion, provide a post-removal volumetric survey which shall tie into and update previous survey information for the KPB Solid Waste Department.
- D. Contractor shall, within 90 days of completion, provide measurement records for all materials removed from the site which may include weigh scale logs, truck counts, construction surveys, and/or project receipts.
- E. Contractor shall stockpile on site all waste rock in an orderly configuration convenient for KPB's use.
- F. Contractor shall develop the access roads necessary for material site operations as shown on the mining plan; for which on site material may be used.
- G. Contractor shall not blast materials during the hours of operation for the Rocky Ridge Landfill, which are: Monday and Wednesday 1:00pm – 6:00pm and Saturday 10:00am – 5:00pm. Hauling may occur during Solid Waste hours of operation if appropriate traffic control is provided by CONTRACTOR.
- H. Contractor shall be responsible to implement all measures necessary to ensure safe material production operations and safe ingress and egress.
- I. Contractor shall employ appropriate, industry standard, best management practices to avoid or minimize soil erosion and the transport of sediment into surface waters.
- J. Contractor shall leave the site in a neat, clean and safe condition. Equipment routes shall be graded smooth; drainage patterns shall be well defined and ditched where appropriate; slopes shall be stabilized; solid waste operational area shall be left unobstructed.

3. IN-KIND WAIVER OF PAYMENT

Pursuant to KPB Resolution 2022-XX and in consideration of the mutual benefits resulting from the completion of the authorized work, all costs, royalties, and fees for the materials removed in accordance with the most current version of the Kenai Peninsula Borough Schedule of Rates, Charges and Fees, or market appraisals, are herein waived for the Kenai River Bluff Stabilization Project.

3. **CONTRACT TERM:**

This contract is valid from July 1, 2022 through December 30, 2025, unless extended by written mutual agreement. All conditions and required services under this contract must be completed by the expiration of contract. Extension of material volumes will be at a negotiated rate.

4. **TRANSFER:**

Contractor may assign this contract only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions of this agreement and laws and regulations applicable thereto.

5. **VIOLATION:**

Violation of contract conditions, or the conduct of activities not authorized, will result in contract cancellation and may result in a claim for damages by KPB and/or other civil or criminal penalties as applicable under law. KPB may direct that all activity under this contract cease until a violation of the contract conditions is corrected. Continued activity after notice to cease will be deemed a trespass by KPB. Contractor controls its own activities on the property and retains sole responsibility for ensuring that activities are conducted in a safe manner. The Contractor shall comply with all federal, state and local requirements for its activities and shall obtain all necessary contracts as may be required.

KPB reserves the right to allow other concurrent, compatible uses or to exclude other uses of KPB-owned land in the contracted area. Should circumstances warrant, this contract may be modified or suspended, in writing by KPB to protect resources, health, safety, and the environment.

6. **DEFENSE AND INDEMNIFICATION:**

The Contractor shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Contractor's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The Contractor shall be responsible under this clause for any and all claims of any character resulting from Contractor or Contractor's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough

or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Contractor shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

## 7. **CONTRACTOR'S INSURANCE**

The work performed under this contract is that of an independent contractor.

Contractor and all subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and at a minimum purchase the insurance coverage as specified in Sections 7.1, 7.2, and 7.3 below. This insurance coverage required by Sections 7.1, 7.2, and 7.3 shall be in acceptable form, and for the amounts specified by the Kenai Peninsula Borough, or as required by law, whichever is greater. The insurance policies shall remain in force for the life of the contract and shall be a part of the contract price.

- 7.1 Commercial general liability with minimum coverage of \$1,000,000 and automobile liability insurance with minimum coverage of \$1,000,000 combined single limit bodily injury and property damage per occurrence must be obtained. This insurance shall be primary and exclusive of any other insurance carried by the Kenai Peninsula Borough. The commercial general liability insurance for action or inaction during the contract period shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.
- 7.2 Worker's Compensation and Employers Liability Insurance shall be provided for all employees per Alaska State Statutes who are performing work under this contract.
- 7.3 Environmental liability with minimum coverage of \$1,000,000 per occurrence.
- 7.4 Certificate(s) of Insurance shall be provided by Contractor and all subcontractors, or their insurance companies and/or their agents, naming the Kenai Peninsula Borough, as additional insured for the work specified in this contract. The Certificates of Insurance must reference the specific contract by name and project number. Certificates of Insurance, acceptable in form and content, will be delivered to Owner at the address for notice stated in the Agreement at or prior to presentation of the contract for execution by Owner.
- 7.5 There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this contract, without thirty (30) days' prior written notice to the Owner. Notice of cancellation, material change in coverage, or intent not to renew will be delivered to the address designated in the Agreement.
- 7.6 Upon renewal or change in policies during the contract, Certificates of Insurance shall be

delivered to the address designated in the Agreement.

- 7.7 This provision is inserted to establish the right of Owner, in remote and isolated instances, to purchase insurance that will benefit Owner and in certain instances inure to the benefit of Contractor. This provision does not modify or lessen Contractor's or subcontractors' obligation to provide and maintain the insurance required by other provisions in this contract.

Owner, at its option, may purchase and maintain such insurance as will protect Owner against property losses or liability claims which may arise from operations under the contract. Insurance providing coverage against fire and extended coverage perils may, at Owner's option, provide coverage to the full insurable value of the project and insure the interests of Contractor and all subcontractors as their interests may appear. Any recovery for loss insured pursuant to this Article is to be adjusted to Owner and made payable to Owner as trustee for the insured, as their interests may appear. This section does not modify the Contractor's or subcontractors' responsibility to provide insurance as required herein.

8. LOCATION:

The Contractor shall be responsible for locating themselves within the boundaries of the referenced material site.

9. CULTURAL RESOURCES:

The Contractor shall not disturb historic or prehistoric resources. Should previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance be discovered, the site shall be protected from further disturbance and the Contractor shall immediately cease activities and contact KPB and the State Historic Preservation Office.

10. HAZARDOUS MATERIAL:

The Contractor shall not cause or permit any hazardous material or hazardous waste to be brought upon, kept, or used in or about the Property. The defense and indemnification clause hereunder extends to personal injury, property damage, and economic losses resulting from hazardous material or waste disposal.

11. SUITABILITY:

KPB does not represent or guarantee the safety, suitability, or condition of the PROPERTY.

12. MINING PLAN:

The attached Mining and Operations Plan dated \_\_\_\_\_ shall be the guiding documents for all ACTIVITIES under this contract. The Mining and Operations Plan may be amended by mutual written agreement to serve the purpose and intent of this contract.

13. BOND:

Pursuant to KPB 17.10.210(F) at execution of this contract the Contractor shall submit a bond with KPB in the amount of \$10,000.00. The bond shall be retained until such time as all conditions of this contract have been performed and the site has been left in a safe and workman like condition free of contamination. The Contractor shall submit a written notice of completion, upon receipt of which KPB shall have 90 days to accept or reject in writing. Upon acceptance KPB shall return the bond within 30 days.

14. MODIFICATIONS:

The parties may mutually agree to modify the terms of the contract. Modifications to the contract shall be incorporated into the contract by written amendments.

15. JURISDICTION; CHOICE OF LAW:

Any civil action arising from this contract shall be brought in the superior court for the Third Judicial District of the state of Alaska at Kenai. The law of the state of Alaska shall govern the rights and obligations of the parties.

16. NON-WAIVER:

The failure of KPB at any time to enforce a provision of this contract shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this contract or any part thereof, or the right of KPB thereafter to enforce each and every protection hereof.

17. PERMITS, LAWS AND TAXES:

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable federal, state, and local regulations including, but not limited to, those law related to wages, taxes, social security, workers compensation, nondiscrimination, licenses, and registration requirements. The Contractor shall pay all taxes pertaining to its performance under this contract.

18. INTEGRATION:

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those

contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

19. INTERPRETATION AND ENFORCEMENT:

This contract is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this contract are not to be construed as limitations or definitions but are for identification purposes only.

20. SEVERABILITY:

If any section or clause of this contract is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this contract shall remain in full force and effect.

21. UNDERSTANDING:

The Contractor acknowledges that the Contractor has read and understands the terms of this contract, has had the opportunity to review the same with counsel of their choice, and is executing this contract of their own free will.

22. NOTICES:

Any notice required pertaining to the subject matter of this contract shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

KENAI PENINSULA BOROUGH  
Planning Director  
144 N. Binkley  
Soldotna, AK 99669-7599

CONTRACTOR:  
City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

KENAI PENINSULA BOROUGH

CITY OF KENAI

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Charlie Pierce, Mayor

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Paul Ostrander, City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
A. Walker Steinhage  
Deputy Borough Attorney

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC  
Borough Clerk

ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Paul Ostrander, City Manager of the City of Kenai, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_