

PROCEDURES FOR THE PURCHASE OF GRAVEL UNDER ROADS AND ROAD ALLOWANCES

(Pursuant to the Policy entitled Sale of Gravel under Roads TCE-TS-510)

Prepared by:
Bruce Blue, Aggregate Coordinator Lead
Operations and Program Management Branch

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1. Purpose:

This guide is intended for the use of contractors and Municipalities wanting to purchase gravel under roads or road allowances, and to assist department staff process requests.

Alberta Transportation may at its sole discretion, decide to retain or sell aggregate under roads.

2. Application of Procedures

The policy, Sale of Gravel under Roads (TCE-TS-510) came into effect March 12, 2009. This guide applies to aggregate under roads or road allowances that are under the administration of Alberta Transportation including:

- a. Mining of aggregate under roads since March 12, 2009
- b. All surveyed road allowances, highways and surveyed road plans. The road may be developed, or undeveloped.
- c. Municipalities have direction control and management of local roads and road allowances, but do not have ownership of the land.

3. Exclusions

These procedures do not apply to the following:

- a. Road allowances in unsurveyed territory (30 m wide), as they are under the administration of Alberta Environment and Parks (AEP)
- b. Roads on crown land under the administration of AEP, such as Disposition Licence of Occupation (DLO) or haul roads held by Alberta Transportation under Disposition Reservation (DRS),
- c. Road allowances in cities
- d. A road plan recently purchased by a municipality, (roads not within road allowances, or additional land adjacent to the road allowance)
- e. Roads or road allowances transferred to another Ministry
- f. Roads or road allowances under an agreement for gravel purchase by the municipality
- g. Minerals or valuable stones
- h. Roads mined prior to policy establishment
- i. Unregistered roads on privately owned land

4. Process to Purchase Aggregate

a. Temporary road closure

Where there is the potential for a road to be built, obtaining a temporary road closure will provide quicker access to the road allowance for mining. Generally, the processes are as follows:

	<u>Action</u>	<u>Responsibility</u>
1	<ul style="list-style-type: none"> Confirm whether the municipality wishes to purchase aggregate directly confirm process for temporary road closure 	contractor - municipality
2	<ul style="list-style-type: none"> Compile information: legal land description; plan showing extent of tested deposit; satellite image; site photos; aggregate type; quantity estimate; cross-section and profile of the road allowance before and after mining; letter from county (as per #1 above). Submit request by email 	Contractor or Municipality (Purchaser)
3	<ul style="list-style-type: none"> Acknowledge receipt of request within 30 days. Advise if complete or request additional information Confirm lands are under administration of Alberta Transportation Site inspection will be completed. Determine if aggregate should be retained <ul style="list-style-type: none"> IF surplus, determine whether to sell the aggregate to the contractor or municipality. IF adjacent to a highway, review with Alberta Transportation's Development and Planning staff (DPT). Advise Purchaser of decision (within 90 days of the date the request was considered complete) 	Alberta Transportation Regional Aggregates Coordinator (AT)
4	<ul style="list-style-type: none"> Establish municipal conditions for operations and reclamation. 	Purchaser
5	<ul style="list-style-type: none"> Negotiate terms of purchase agreement. Confirm with DPT if roadside development agreement will be issued (if adjacent to highway). 	Purchaser/AT
6	<ul style="list-style-type: none"> Prepare agreement and send to purchaser (90 days from request). 	AT
7	<ul style="list-style-type: none"> Sign and return agreement to AT. 	Purchaser
8	<ul style="list-style-type: none"> Execute agreement as per Authorities Matrix (usually Construction Manager). Send copy to Purchaser. 	AT

b. Permanent Road closure process

Permanent road closures can be very complex and time consuming to complete.

For road allowances that will never be required for a road and adjacent to titled land, it may be possible to obtain ownership and add the land to the adjacent land title. This process will also need to follow the municipal bylaw process. Purchase of the gravel will follow the same process for roads with temporary road closures.

For road allowances that will never be required for a road and adjacent to crown land, closure may be by Ministerial order to transfer administration to AEP. Contact the Alberta Transportation DPT for details. In this scenario, AEP may administer the road allowance as part of a Surface Materials Lease.

5. Agreement Format

Normally the Road Allowance Royalty Agreement (Appendix 1) will be used.

Alternatives to a royalty agreement, such as exchanging gravel at a different location, may be considered. A non-standard agreement may extend the timeline for approval, and requires review by legal counsel.

a. Royalty Rate.

For areas where a market rate has not been previously established by way of an agreement, the royalty rate shall be as follows:

Land ownership on either side of road	Aggregate Value
CROWN-CROWN	Same as royalty charged by AEP ⁱ
CROWN-PRIVATE	2.0 times the royalty charged by AEP
PRIVATE-PRIVATE	2.5 times the royalty charged by AEP

Or

A lower rate may be approved if the purchaser can provide a copy of a current royalty agreement for nearby pit operation (excluding other road allowance agreements), or other justification.

If the municipality owns the land on both sides of the Road, and the gravel will be used for public works, the royalty rate will be set at zero.

Royalty charged by AEP in 2017 was \$1.20/yd³ (\$0.96/t). The rate was established in Ministerial Order 28/2015-the Public lands Rents and Other Amounts Payable Order.

The rates will change from time to time. Go to <http://aep.alberta.ca/> to check for updates

b. Additional Conditions

Article VIII provides the flexibility to add negotiated conditions to address various pit specific circumstances. Typical conditions are shown in the example.

c. Measurement

All aggregate removed shall be weighed prior to leaving the site. Alternatively, the crushed aggregate can be surveyed in pile, or before and after cross section/drone survey. Regardless of the method agreed to, the survey must be completed as soon as crushing is completed because the material has been removed from the lands. Payment based on calculated volumes may be acceptable in some situations.

d. Expiry date

A maximum five-year term is recommended unless there is an additional condition that the rate will change based on the effective date AEP changes their royalty rate.

6. Royalty Payments

Royalty payments are due as soon as mining operations cease, or annually for ongoing operations. A removal report, plan and photos of the site must be submitted to AT.

AT will provide the agreement and removal report to Financial Operations, Financial Services office in Edmonton, who will issue the invoice. If the regional office issues the invoice, a copy of all above noted information must be sent to the Financial Services office in Edmonton.

Payments are due upon receipt of the invoice.

7. Frequently Asked Questions

- a. Why can't Alberta Transportation provide the temporary road closure on road allowances that do not have a road developed yet?
 - i. Direction, control and management of local roads have been delegated to the municipality. They need to determine if the road allowance will ever be developed, when it will be developed, and the rough grade to be established during reclamation, prior to granting a temporary road closure.

- b. Can the municipality refuse to issue the temporary road closure?
 - i. Yes. But only if there is a defined safety risk to the public that cannot be mitigated or if the reclaimed profile will not support the development or redevelopment of a local road (For example a pond will remain or the road profile and side slopes are too steep).

- c. Who is responsible to obtain the Temporary Road closure?

The pit operator.

- d. Is there a requirement to share the road allowance gravel or pay a separate royalty to the municipality?
 - i. Alberta Transportation has no requirement to enter into other voluntary agreements with municipalities. However, selling the crushed product to the municipality will accelerate the use and reclamation of the road allowance.
 - ii. If the municipality wishes to purchase the aggregate, they need to meet all procedure requirements and be able to provide an agreement to access the site.

- e. Who is responsible for the payment of the Community Aggregate Payment (CAP)?
 - i. The purchaser is responsible to make payment if the municipality has a CAP levy bylaw.

- f. Is an agreement required to purchase Sand?
 - i. Yes, however that sand component will be assessed a value of zero.
 - ii. Often sand deposits contain gravel. In the agreement, “Gravel “ is defined as follows “Aggregate such that, on average, half or less by weight of the constituent particles will pass an opening 1.6 mm (about 1 sixteenth of an inch) square. If there is insufficient information available to confirm the aggregate type, an agreement will be required. Alberta Transportation will confirm if an agreement is required.

8. Disclaimer:

The information presented in this guide was carefully researched, compiled and presented. However, no warranty, expressed or implied, is made on the accuracy of the contents or their extraction from referenced publications. Alberta Transportation assumes no

responsibility for errors or omissions or possible misinterpretation that may result from use and interpretation of the material herein contained.

REFERENCES

Application of the Acts applied in the development of the policy and these procedures:

- a. Mines and Minerals Act RSA 2000, Chapter M-17
- b. Public Lands Act RSA 2000, Chapter P-40
- c. Public Highways Development Act RSA 2000, Chapter P-38
- d. Highways Development and Protection Act RSA 2004, Chapter H-8.5
- e. Municipal Government Act RSA 2000, Chapter M-25 (2015- under review)
- f. Government Organization Act RSA 2000, Chapter G-10
- g. Law of Property Act RSA 2000, Chapter L-7

Appendix 1- Policy Document TCE-ts-510

DEPARTMENT POLICY STATEMENT

TITLE	Sale of Gravel Under Roads	
Division/Branch	Transportation and Civil Engineering/Technical Standards Branch	
Version Number	Replaces Previous Policy Number	Effective Date
		March 12, 2009
Purpose	To clarify ownership of gravel under department owned roads and the process to purchase same by commercial users or municipalities.	
Principles	<p>All roads and road allowances in surveyed territory are titled to this department. Ownership of the gravel lies with the title holder. Municipalities only have direction, control and management of the roads.</p> <p>Municipalities may, upon Alberta Transportation approval, obtain ownership of the gravel by permanently closing the road and creating title to the land. Alternately, they may enter into a royalty agreement for purchase with the department.</p> <p>Commercial users can obtain ownership of the gravel by entering into a royalty agreement with the department. They will be required to obtain municipal approval also.</p>	
Criteria	<p>An agreement to purchase the gravel is required whether or not the road is permanently closed.</p> <p>If the gravel is in an area where the department requires gravel or near a department controlled gravel source, the department may negotiate to have the gravel stockpiled for our future use. If not, the department may declare the gravel surplus and sell it at market value plus GST. The minimum market value shall be tied to the provincial royalty rate. There shall be no charge for sand or other soil types.</p> <p>If the municipality owns the land parcels on both sides of the road, and the gravel will be used for public works, the agreement shall be issued with a market value of zero.</p> <p>The Purchase Agreement shall be approved by the Regional office in accordance with the Department Authority Matrix.</p>	
Definitions	<p>Road- means land used or surveyed for use as a public highway or road in a municipality, other than a city.</p> <p>Commercial user- A user other than the province or municipality, i.e. contractor or adjacent gravel pit owner.</p> <p>Market Value- a negotiated rate based in part on the average rate paid to landowners in the vicinity and the provincial royalty rate.</p>	

TITLE	Sale of Gravel Under Roads	
Reference	Municipal Government Act, Chapter M-26 ;Public Highways Development Act, Chapter P-38; Law of Property Act, Section 58; Public Lands Act, Chapter P-40 Expenditure Officer Authorities Matrix, Contract-Other agreements	
Approved by	Original Signed by Gary G Boddez	Mar 12, 2009
	<hr/> Gary G. Boddez, Deputy Minister	Date

Appendix 2- Agreement Example

(form: Apr.2018)

This **NON-EXCLUSIVE AGREEMENT** is made as of this _____ Day of _____ Month, A.D. _____ Year

BETWEEN

HER MAJESTY THE QUEEN in right of the
Province of Alberta, herein represented by the
Minister of Transportation (hereinafter
referred to as "the Minister")
and

(Full Names or Full and Complete Names of Company)

(Full Names or Full and Complete Names of Company)

(Full Names or Full and Complete Names of Company)

(Full Postal Address)

Contact Person (Telephone 1) (Telephone 2)
(hereinafter referred to as "the Purchaser")

WHEREAS the Minister is the _____ Registered Owner of the Road adjacent to

(Legal Land Description, Part Quarter Section, Township, Range & West of Meridian)

(hereinafter referred to as "the Lands") shown outlined on the plan contained herein and said to contain 0.00 Hectares (0.00 Acres) more or less,

AND WHEREAS the Purchaser requires Aggregates,

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual terms and conditions hereinafter contained, the
Minister and the Purchaser agree as follows:

ARTICLE I DEFINITIONS

In this Agreement:

1. "Aggregates" means, with respect to naturally occurring unprocessed materials considered in bulk as mixtures of particles of different sizes, those materials commonly referred to as boulders, cobbles, gravel, sand and silt and all other granular materials of little or no plasticity such as are commonly used in the surfacing of roads and the construction of drainage works.
2. "Gravel" means that type of Aggregate such that, on average, half or less by weight of the constituent particles will pass an opening 1.6 mm (about one sixteenth of an inch) square.
3. "Sand" means that type of Aggregate such that, on average, more than half by weight of the constituent particles will pass an opening 1.6 mm (about one sixteenth of an inch) square.
4. "Machinery" means excavation equipment, crushers, screening equipment, mobile asphalt and soil-cement mixing plants, portable testing laboratories, weigh scales and storage tanks and shall include such other machinery, trucks, temporary structures and conveniences the Minister deems necessary for the prospecting, testing, getting, processing and hauling out of Aggregates, but shall exclude any structures whose primary purpose is residential in nature.

ARTICLE 11 ACCESS TO AGGREGATES

The Minister agrees to allow the Purchaser, his agents, servants and workmen full and free access at all times to and from the Lands, and agrees that the Purchaser may, at his own expense:

1. Do all such acts as may be necessary for the purposes of effectually exploring, prospecting for, testing, getting, processing and disposing of Aggregates contained in the Lands.
2. Take upon the Lands and use without hindrance such Machinery as the Purchaser deems necessary, and

ARTICLE 111 TEMPORARY FENCING, CATTLEGUARDS AND WEED CONTROL

The Purchaser will erect and maintain such temporary fences located near the perimeter of the area of operations as may be required to prevent livestock from straying into or escaping from the area of operations.

The Purchaser may also, at his discretion, install and maintain a temporary cattleguard at the entrance to the area of operations when the scale of operations warrants such an installation in lieu of a gate.

Any temporary fences erected and any temporary cattleguard installed may be removed by the Purchaser at the completion of individual projects or at expiry of this Agreement.

Overburden and waste material will be disposed of or piled in such a manner as to facilitate weed control wherever such disposal or piling is practicable.

ARTICLE IV ROYALTY RATES ESTABLISHED

1. The Purchaser shall pay to the \$00.00 per TONNE of accepted Gravel removed from the Lands.
Minister

Such payments shall in all cases be compensation in full for Aggregates removed from the Lands. **Said payments are not subject to the Goods and Services Tax (GST).** The Purchaser is responsible to pay to the municipality, the Community Aggregate Payment levy, if applicable.

The Purchaser shall maintain and forward to the Minister on an annual basis accurate records, photos and survey drawings of all the Purchaser's operations, disturbances and the volumes of gravel excavated from the Lands. The Minister shall issue invoices based on the records. The Purchaser shall make payment in accordance with the invoice, to the Government of Alberta.

ARTICLE V MEASUREMENT OF AGGREGATES

Aggregates will normally be measured by weight for the purposes of Royalty Payment unless, in the Minister's opinion, to do so would be impractical, in which case measurement shall be by volumes determined by cross-section, truck-box, Drone or other survey methods. Where necessary, conversions from volume to weight, and vice versa shall be made using a factor of 1.632 tonnes per cubic metre for gravel.

ARTICLE VI ITEMS NOT TO BE PAID FOR SEPARATELY

The Minister agrees that there shall be NO COMPENSATION for:

1. Unaccepted materials stripped from the Lands or rejected during processing.
2. The right of access to and from the Lands.

ARTICLE VII LEGISLATION

1. The Purchaser undertakes to follow all environmental requirements and make any necessary application to Alberta Environment and Parks, and Local Authorities insofar as the Purchaser's operations ONLY are concerned.
2. The Purchaser shall carry out reclamation of the Lands as may be directed by the Minister and detailed in ARTICLE VIII ADDITIONAL CONDITIONS.
3. The purchaser undertakes to follow the requirements set out in the Municipal Government Act for the Temporary or Permanent road closure prior to excavating any aggregate.

ARTICLE VIII ADDITIONAL CONDITIONS (Change, add or delete as required)

- The reclaimed ground level shall be returned to a minimum of 1.0 m above the seasonal high water level.
- The Purchaser shall stockpile for the Minister ,000m³ at a location agreed to by the Minister.
- The backslope along the road allowance shall be sloped to a minimum of 2:1 for areas to be mined in the future, and 4:1 for those faces to be reclaimed
- On completion of operations the Purchaser shall construct a Class B fence along the toe of the slope, in accordance with the Ministers Standard Specifications for Highway Construction most current Edition.
- All royalty shall be paid in advance of mining. If quantities mined exceed royalty paid, additional payment shall be made.

ARTICLE IX REMAINING STOCKPILES

The Purchaser shall remove from the lands, all material that has been produced in connection with this Agreement. All processed aggregate remaining at the date of Expiry of this Agreement shall become the full and rightful property of the Minister.

ARTICLE X TERM OF THIS AGREEMENT

The term of this Agreement shall be for a period commencing on the date hereof and ending at 24.00 hrs on the December 31, _____ A.D. at which time this Agreement shall expire. However, the Minister may cancel this agreement for not adhering to the terms of the agreement or if payments are not made within 30 days of the invoice date, or under mutual agreement with the Purchaser.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto:

SIGNED, SEALED AND DELIVERED
by the **MINISTER** in the
presence of:

Executed on behalf of the
MINISTER OF TRANSPORTATION
by:

(Title: enter title and name)

SIGNED , SEALED AND DELIVERED
by the **PURCHASER** in the
presence of:

Executed by the
PURCHASER:

(Signature of Witness)

(Title: enter title and name)

_____ (enter name)

(Full Name of Witness)

NOTES FOR INFORMATION ONLY

ONE ACRE is approximately **FOUR TENTHS of a HECTARE (0.404 685 6)**

ONE HECTARE is approximately **TWO AND ONE HALF ACRES (2.471 054)**

ONE CUBIC METRE is approximately **ONE AND ONE THIRD CUBIC YARDS (1.307 950 56)**

ONE CUBIC YARD is approximately **THREE QUARTERS of a CUBIC METRE (0.764 554 895)**

ALTERATION INSTRUCTIONS

Alterations and additions to the Agreement proper (In Article IX and elsewhere) are to be check-marked and initialed by ALL signatories.

Initialing is not required for original entries in blank spaces on the form (with the exception of Article VIII).

PLANS and CROSS SECTIONS