



## Memorandum

January 30, 2013

To: Assembly, City & Borough of Sitka  
Jim Dinley, Municipal Administrator  
From: Christopher Brewton, Utility Director  
Subject: Sole Source Contract – Rock Removal Services – S&S General Contractors

I request your approval for a sole source contract to drill, blast, and remove approximately 25,000 yards of rock near the Jarvis Street Diesel Plant in preparation of the Jarvis Diesel Expansion Project. Blasting and removal of this rock is a critical path element of the project and must be removed as soon as possible to enable engineering design and site layout to begin.

S&S General Contractors and Equipment Rentals, Inc. (S&S) has offered to drill, blast, and remove this rock in exchange for making debt payments of \$107,375.21 per the quarry lease assignment that was approved by the Assembly on January 22, 2013.

This is a rare opportunity for the City to take advantage of a confluence of circumstances that will greatly benefit the City and a local contractor. There is limited physical space at the existing Jarvis Diesel Plant to allow expansion of the diesel plant. In fact, that is a factor in our decision to install a single liquid fueled turbine in lieu of multiple reciprocating diesel engines. Therefore, the first critical task for construction of the diesel project is to clear an area large enough for the new infrastructure required for the project; which will include substation modifications, transformer installation, turbine installation, control building installation, and an increase in fuel storage facilities.

The contractor meanwhile can offer this exceptionally good price for rock removal because it has resources available to do the work before the full construction season is upon us, and also the contractor has need for the rock in another Sitka project that will be underway this year. So it is to our mutual benefit to award a sole source contract for the rock removal and to move quickly to allow the contractor to get to work.

As a cost comparison, this work equates to approximately \$4.29 per cubic yard removed, based on the negotiated rate with S&S. The firm bids for the Blue Lake construction project range from \$100 per cubic yard for remote areas to \$4,200 per cubic yard for sensitive areas near the dam.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2013-08

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING AMENDMENT NO. 2 TO THE AGREEMENT FOR MATERIAL SALE FROM MUNICIPALLY OWNED PROPERTY ("AGREEMENT") WITH S&S GENERAL CONTRACTORS AND EQUIPMENT RENTAL, INC. ("S&S") AT SITE 5 OF THE GRANITE CREEK INDUSTRIAL AREA, AND APPROVING THE AGREEMENT TO HAVE S&S PROVIDE CONTRACT SERVICES AS AN ALTERNATIVE FOR CERTAIN PAYMENT OWED UNDER THE AGREEMENT

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** On January 22, 2013, the Assembly passed Ordinance No. 2013-04, approving Amendment No. 1 to the Agreement regarding Granite Creek Gravel Pit Site 5, as well as passed Ordinance No. 2013-03, approving the assignment of the Agreement to S&S.

Based on Amendment No. 1 to the Agreement and the assignment of the Agreement, S&S assumes liability for \$107,375.21 of delinquent royalty and land lease payments plus interest owed to CBS by Southeast Earthmovers, Inc., based on Southeast Earthmovers, Inc.'s prior agreement regarding Granite Creek Gravel Pit Site 5. S&S has also signed the Promissory Note ("Note") and Confession of Judgment Without Action ("Confession") as required by Amendment No. 1.

CBS and S&S have proposed an alternative payment process regarding the Note and Confession. CBS Electric Department intends to install new diesel-fueled generation capacity at its Jarvis Street Diesel Plant. To accommodate physical installation of new generation equipment, significant amounts of rock and overburden must be removed from the site. Rock removed from this site will be used for further CBS projects (i.e., Thomsen Harbor Breakwater Improvements). S&S has extensive experience in rock blasting and removal and is familiar with quantity and quality of rock that is to be removed, approximately 25,000 cubic yards. CBS would like to enter into a contract with S&S as an alternative to payment in accordance with Amendment No. 1. The

44 attached Amendment No. 2 sets out that alternative payment process. Instead of  
45 payment according to the Note and Confession signed by S&S, S&S will perform the  
46 rock work, not exceeding \$107,375.21.

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48 The Assembly determined competitive bid is not required and is waived, based on  
49 the competitive rate for S&S under the contract, its immediate availability for the work,  
50 and its expertise.

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52 The Assembly approves authorizing the Municipal Administrator to sign the  
53 contract between CBS and S&S, and Amendment No. 2 to the Agreement.

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55 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly  
56 of the City and Borough of Sitka that the attached contract between CBS and S&S is  
57 approved, as well as Amendment No. 2 to the Agreement, and the Municipal  
58 Administrator is authorized to sign both documents.

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60 5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after  
61 the date of its passage.

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63 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and  
64 Borough of Sitka, Alaska this 26<sup>th</sup> day of February, 2013.

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\_\_\_\_\_  
Mim McConnell, Mayor

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**ATTEST:**

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\_\_\_\_\_  
Colleen Ingman, MMC, Municipal Clerk

**AMENDMENT NO. 2 TO  
AGREEMENT FOR MATERIAL SALE FROM  
MUNICIPALLY OWNED PROPERTY**

WHEREAS, in February 2012, City and Borough of Sitka ("Sitka") and Southeast Earthmovers, Inc. entered into an "Agreement For Material Sale From Municipally Owned Property" ("Agreement") for payment of royalty fees and land lease for material removed from Granite Creek Gravel Pit Site 5;

WHEREAS, on January 22, 2013, Assembly passed Ordinance No. 2013-4, approving Amendment No. 1 to the Agreement, which Southeast Earthmovers, Inc. has now signed, requiring it to execute a Promissory Note ("Note") with payment schedule and Confession Of Judgment Without Action ("Confession") for \$107,375.21 plus interest for delinquent lease payments under a prior lease for the same property;

WHEREAS, on January 22, 2013, Assembly passed Ordinance No. 2013-03 which allowed Southeast Earthmovers, Inc. to assign this Agreement with its Amendment No. 1 to S&S General Contractors and Equipment Rentals, Inc. ("S&S");

WHEREAS, S&S assumed Southeast Earthmovers, Inc.'s debt to Sitka of \$107,375.21 plus interest for delinquent royalties/land lease payments as part of this assignment, also signing the Note with payment schedule, as well as the Confession to pay Sitka the arrearages in accordance with Amendment No. 1;

WHEREAS, Sitka and S&S agree to amend the Agreement as set out in this Amendment No. 2 to allow for an alternative payment process to Amendment No. 1 (new language underlined; deleted language stricken):

\* \* \*

**SECTION IX. TERMINATION AND SUSPENSION**

\* \* \*

D. This Agreement may be terminated by CBS if Purchaser fails to comply with the Promissory Note ("Note") and Confession Of Judgment Without Action ("Confession"), dated \_\_\_\_\_, made as an attachment to this Agreement as Exhibit A.

As an alternative to payment under the Note and Confession, Purchaser may satisfy the Note and Confession by excavating rock near the Jarvis Street Diesel Plant Jarvis Street as specified in the contract entered into with City and Borough of Sitka, attached as Exhibit B to this Amendment No. 2.

**S&S GENERAL CONTRACTORS AND  
EQUIPMENT RENTALS, INC.**

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
Timothy Eddy, President

\_\_\_\_\_  
James Dinley, Municipal Administrator

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me  
TIMOTHY EDDY, whose identity is personally known to me or proved to me on the  
basis of satisfactory evidence, and who by signing this agreement, swear or affirm that he  
is the President of S&S General Contractors & Equipment Rentals, Inc. and is authorized  
to sign this document, and does so freely and voluntarily.

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

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary  
Public in and for the State of Alaska, personally appeared JIM DINLEY, who is the Municipal  
Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized  
under the laws of the State of Alaska, that he has been authorized by to execute the foregoing  
document, and does so freely and voluntarily.

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

# **AGREEMENT TO PROVIDE CONTRACT SERVICES TO CITY AND BOROUGH OF SITKA BY S&S GENERAL CONTRACTORS AND EQUIPMENT RENTALS, INC.**

The City and Borough of Sitka (“CBS”) and S&S General Contractors and Equipment Rentals, Inc. (“Contractor”) individually referred to as “Party” and collectively referred to as “Parties,” enter into this “Agreement to Provide Contractual Services to the City and Borough of Sitka” The terms, conditions, and consideration regarding this Agreement are set out below.

This Agreement consists of:

- Professional Services Agreement
- Appendix A: Scope of Work – Jarvis Street Rock Blasting and Removal
- Appendix B: Compensation
- Appendix C: Communication
- Appendix D: Work Products
- Appendix E: Schedule

## **SECTION 1. DEFINITIONS**

For the purpose of this Agreement, the terms used herein shall have the following meaning:

- A. The term “CBS” shall mean “City and Borough of Sitka”.
- B. The term “Contractor” shall mean “S&S General Contractors and Equipment Rentals, Inc.”
- C. “CBS” Authorized Representative shall be the person listed in Section 21(B)(2) of this Agreement.
- D. “Days” shall mean calendar days.

## **SECTION 2. AGREEMENT TIME PERIOD**

- A. This Agreement becomes effective when signed and dated by both Parties, and covers the time period when contract services are provided by Contractor.
- B. Contractor shall perform for and on behalf of CBS regarding the services set out in the Scope of Services (attached as Appendix A, and in accordance with the Schedule at Appendix E). Except as expressly allowed under this Agreement, CBS need not grant the Contractor any extension in the time provided to complete the work under this Agreement. If the Contractor progress falls behind the project schedule, the Contractor shall commit additional resources to complete the work, or take such other additional steps as are reasonably necessary to assure the completion of the work at no additional cost to CBS.

- C. Contractor shall perform for and on behalf of CBS the scope of work in an expedient and reasonable manner.

**SECTION 3. RESPONSIBILITY OF THE CONTRACTOR**

At all times during the Contractor's performance under this Agreement, the Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

Contractor must certify that the firm is authorized to do business in Alaska and provide proof of insurance and licensing.

**SECTION 4. SCOPE OF SERVICE**

The services to be performed by the Contractor shall include all services required to complete the scope of work set forth in Appendix A and shall be in accordance with all applicable statutes, ordinances, rules and regulations.

**SECTION 5. OWNERSHIP OF DOCUMENTS**

All plans, drawings, calculations, supporting data and specifications, originals and tracings (Work Products) as set forth in Appendix D, shall become the property of CBS. Such documents shall be transmitted to CBS prior to the time of final payment for the work under this Agreement. The Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

**SECTION 6. TERMINATION**

This Agreement may be terminated:

- A. By mutual consent of the Parties;
- B. For the convenience of CBS, provided that CBS notifies the Contractor of its intent to terminate under this paragraph in writing at least 10 days prior to the effective date of the termination; or
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Agreement; provided, however, that as a condition of the exercise of its right of termination under this subsection, the terminating Party shall notify the other Party of its intent to terminate this Agreement in writing, state with reasonable specificity the grounds, and allow the defaulting Party to cure the default within thirty (30) days of receiving the notice.
- D. Termination pursuant to this Section shall not affect the Parties continuing obligations under this Agreement.

**SECTION 7. DUTIES UPON TERMINATION**

- A. If CBS terminates this Agreement for convenience, CBS shall pay or credit Contractor for the reasonable value of any services satisfactorily rendered prior to termination in accordance with Appendix C. Payment under this Section shall never exceed the total compensation

possible under Section 9. CBS may terminate the work upon ten (10) days written notice to Contractor. Within ten (10) days after the Agreement terminates, Contractor shall deliver to CBS all finished and unfinished notes, reports, drawings and materials prepared by the Contractor which shall become the property of CBS.

- B. If this Agreement is terminated for cause, CBS shall pay or credit Contractor in accordance with Appendix C the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by CBS because of the Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials shall become the property of CBS at its option. Under no circumstances shall payment under this Section exceed the total compensation possible under Section 9.
- C. If the Contractor has received payments or credits in accordance with Appendix C prior to termination in excess of the amount to which he is entitled under Subsection A or B of this Section, the excess amount shall be remitted to CBS within 30 days after receipt of CBS's notice to that effect.
- D. The Contractor shall not be entitled to final compensation or credit in accordance with Appendix C under this Section until the Contractor has delivered to CBS all documents, records, work products, materials and equipment owned by CBS, related to this Agreement and/or requested by CBS, as further provided in Subsection A and B of this Section.
- E. CBS need not recognize any claim by the Contractor for reimbursable expenses or costs incurred after the time which the Contractor receives notice of termination under this Section.

#### **SECTION 8. INDEMNIFICATION**

- A. The Contractor shall indemnify, defend, save, and hold CBS harmless from any claims, lawsuits or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.
- B. The Contractor shall not indemnify, defend, save, and hold CBS harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising from wrongful or negligent acts, errors or omissions solely by the City and Borough of Sitka occurring during the course of or as a result of the performance of this Agreement.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both CBS and the Contractor, the Contractor shall indemnify, defend, save and hold CBS harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from the Contractor's wrongful or negligent acts occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.



## **SECTION 9. PAYMENT**

- A. For the Contractor's services, as described in Appendix A of this Agreement, compensation will be paid as defined in Appendix B, unless otherwise mutually agreed upon by both Parties prior to commencing additional work.
- B. The Contractor shall present invoice(s) to the CBS's Authorized Representative at 100 Lincoln St. Sitka Alaska 99835. Such invoice(s) shall describe the work for which payment is sought and shall document expenses and fees to the satisfaction of the CBS's Authorized Representative. Invoices shall not be submitted more frequently than once every 30 days.
- C. CBS's Authorized Representative shall approve, or not approve, and make payments or credits on invoices within 30 days of receipt of invoice. If invoice is not approved the CBS must notify the Contractor and may withhold payment on the portion not approved, payment must be made on the approved portion.
- D. The Contractor shall be entitled to no compensation under this Agreement beyond the amount of the CBS's express obligation under Subsection A above.
- E. For the purposes of Section 9 the invoices shall be presented to the CBS designated contacts.

## **SECTION 10. AUDIT: ACCESS TO RECORDS**

- A. The Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Agreement. CBS's Authorized Representatives shall have the right to examine such records and accounting procedures and practices.
- B. CBS's Authorized Representative shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing and performance Agreement, and any change or modification for the purpose of evaluating the accuracy, completeness and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations and projections used.
- C. The materials described in this Section shall be made available at the business office of the Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of three (3) years from the date of final payment under this Agreement and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.
- D. If this Agreement is completely or partially terminated, records relating to the services terminated shall be made available to CBS by the Contractor for a minimum of three (3) years from the date of any resulting final settlement.
- E. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Agreement shall be made available to CBS by the Contractor until such claims or litigation have been concluded.

### **SECTION 11. RELATIONSHIP OF PARTIES**

The Contractor shall perform the obligations in this Agreement as an independent Contractor of CBS. CBS may administer the Agreement and monitor the Contractor's compliance with its obligations. CBS shall not supervise or direct the Contractor other than as provided in this Section.

### **SECTION 12. ASSIGNMENTS**

Unless otherwise allowed by this Agreement or in writing by CBS, any assignment by the Contractor of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by the Contractor to assign any part of its interest or delegate duties under this Agreement shall give CBS the right immediately to terminate this Agreement without any liability for work performed.

CBS reserves the right to approve any subcontractor agreements.

### **SECTION 13. NONDISCRIMINATION**

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex or marital status or mental or physical handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical handicap. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.
- B. The Contractor shall state in all solicitations or advertisements for employees to work on jobs relating to this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, or marital status or mental or physical handicap.
- C. The Contractor shall include the provisions of Subsection A of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Contractor under this Agreement.
- D. The Contractor shall comply with all applicable Federal, State and Municipal laws concerning the prohibition of discrimination.

**SECTION 14. COPYRIGHTS AND RIGHTS IN DATA**

All documentation, including notes, drawings, reports and other technical information, hereinafter referred to as work products, produced under this Agreement, except items which have pre-existing copyrights, are the property of the CBS. Payments to the Contractor for services hereunder include full compensation for all work products produced by the Contractor and its subcontractor.

All such subject data furnished by the Contractor pursuant to this Agreement are instruments of the Contractor's services in respect to this particular project. It is understood that the Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the CBS reuses the subject data without the Contractor's specific written verification of adaption, such reuse will be at the risk of CBS, without liability to the Contractor. Any such verification of adaption requested in writing by CBS at CBS's sole option will entitle the Contractor to further compensation at rates agreed upon by CBS and Contractor.

**SECTION 15. NOTICES**

Any notice required pertaining to this Agreement shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses and in accordance with Appendix C:

**CITY AND BOROUGH OF SITKA:**

Attn: James Dinley (Administrator)  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, Alaska 99835

**CONTRACTOR:**

Attn: Timothy Eddy (President)  
S&S General Contractors and  
Equipment Rentals, Inc.  
PO Box 1440  
Sitka, Alaska 99835

**SECTION 16. CLAIMS AND DISPUTES**

If the Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, the Contractor shall immediately notify in writing the CBS's Authorized Representative. If the matter cannot be resolved within seven (7) days, the Contractor shall, within the next fourteen (14) days, submit a written notice of the claim. The Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Agreement under which the claim is made. This procedure covers all claims by the Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Agreement. The Contractor agrees that unless these written notices are provided, the Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

**SECTION 17. SUCCESSORS AND ASSIGNS**

CBS and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement.

**SECTION 18. INSURANCE**

A. The Contractor shall at all times during the term of this Agreement, maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Agreement, the Contractor shall furnish the CBS with proof of insurance in accordance with Subsection B of this Section in a form acceptable to the CBS; such proof of insurance shall be incorporated as part of this Agreement.

B. Type of coverage:

1.	<u>General Liability</u>	\$1,000,000
2.	<u>Workman's Compensation</u>	Statutory
3.	<u>Comprehensive Automotive Liability</u>	\$500,000
4.	<u>Professional Errors and Omissions</u>	N/A

C. Insurance Notes

1. CBS shall be named as an additional named insured on the required general liability. CBS shall also be granted a full waiver of any rights of subrogation under all required policies including Workmen's Compensation policy. These requirements extend to all subcontractors.
2. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to CBS by certified mail.

**SECTION 19. PERMITS, LAWS AND TAXES**

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Agreement. All actions taken by the Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Agreement.

**SECTION 20. NON-WAIVER**

The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any

part of the Agreement, or the right of such Party to enforce each and every provision of the Agreement.

**SECTION 21. AMENDMENT**

- A. This Agreement shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Agreement as an Appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Agreement, the only authorized representatives of the Parties are:
  - 1. For Contractor – Timothy Eddy (President)
  - 2. For CBS – Jim Dinley, Municipal Administrator
- C. Any attempt to amend, modify or change this Agreement by either an unauthorized representative or unauthorized means, shall be void.

**SECTION 22. SEVERABILITY**

Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Agreement.

**SECTION 23. JURISDICTION - CHOICE OF LAW**

Any civil action rising from this Agreement shall be brought in the Alaska Superior Court First Judicial District at Sitka. The law of the State of Alaska shall govern the rights and obligations of the Parties under this Agreement.

**SECTION 24. INTEGRATION**

This Agreement and all appendices and amendments embody the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement.

This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the Parties.

**IN WITNESS**, the Parties execute this Agreement in duplicate on the date shown below, and by their signatures, confirm they are authorized to sign this Agreement.

**CITY AND BOROUGH OF SITKA**

**CONTRACTOR**

\_\_\_\_\_  
James Dinley, City Administrator

\_\_\_\_\_  
Timothy Eddy, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EIN NO. \_\_\_\_\_

**ATTEST:**

**CERTIFIED FUNDS AVAILABLE:**

\_\_\_\_\_  
**COLLEEN INGMAN, MMC**  
Municipal Clerk

\_\_\_\_\_  
Fund Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

Date: \_\_\_\_\_

Amount of Contract: **NTE \$107,375.21**

\_\_\_\_\_  
Jay Sweeney, Finance Director

**APPROVAL OF CONTRACT FORM**

Date: \_\_\_\_\_

\_\_\_\_\_  
Theresa Hillhouse  
Municipal Attorney

Date: \_\_\_\_\_

**Jarvis Street Rock Excavation**  
**S&S General Contractors and Equipment Rentals, Inc. (S&S)**  
**Contract Services Agreement**  
*Appendices*

**General**

CBS intends to install new diesel-fueled generation capacity at the existing Jarvis Street Diesel Plant. To accommodate the physical installation of the new generation equipment, a significant amount of rock and overburden must be removed from the site. S&S has extensive experience in rock blasting and removal and specifically is familiar with the quantity and quality of rock that must be removed for this project. In that S&S is familiar with the area, has demonstrated experience in rock excavation, is immediately available for this project, will perform work at a reduced rate, and the removed rock is anticipated to be used for further CBS projects (Thomsen Harbor Breakwater Improvements), CBS is contracting with S&S to perform all work necessary to remove approximately 25,000 cubic yards of rock as indicated in the following appendices.

## Appendix (A): Rock Excavation - Scope of Work

### PART 1 GENERAL

#### 1.01 WORK INCLUDED

- A. Perform all Work required for the excavation, scaling, disposal, and cleaning of rock surfaces as shown and specified in this Contract.

#### 1.02 REFERENCE STANDARDS

- A. United States Army Corps of Engineers EM-1110-2-3800: "Systematic Drilling and Blasting for Surface Excavations".
- B. International Society of Explosives Engineers (ISEE): "Field Practice Guidelines for Blasting Seismographs", Copyright 1999.

#### 1.03 SUBMITTALS

- A. Submit for review, an overall Rock Excavation Plan of proposed methods and sequence for open-cut excavation as part of the Work Plan. Details of the plan shall meet all the requirements as outlined under these Specifications. The plan shall include proposed equipment and crews; rock spoil removal and disposal strategy; typical depths of blast holes; the typical type, strength, amount, and distribution of explosives to be used per hole, per delay and per blast; the normal sequence and pattern of delays, controlled perimeter blasting procedures; the description and purpose of any special methods to be adopted by Contractor; copies of licensed blaster's certificate and safety and warning procedures; at least three original copies of the company safety plan and a site specific hazard analysis plan; any certificates of special training including blasting certificates, and monitoring plan including types of instruments, proposed location for monitoring and method of reporting monitoring results. If the plan fails to meet the requirements of these Specifications, a new plan, in whole or in part, shall be submitted by Contractor.
- B. The Rock Excavation Plan shall also include all Contractor proposed excavation support materials, such as:
  - 1. Shotcrete information.
  - 2. Wire mesh information.
  - 3. All rock support accessories information.
  - 4. Certified mill lists for steel, material lot and heat numbers.
- C. If, in a specific area, a plan which has been previously adopted does not produce rock surface conditions in accordance with the requirements of



these Specifications, Contractor shall submit a revised plan before continuing excavation in adjacent areas.

- D. Maintain accurate records of all rock scaling. Make available to Owner copies of all rock scaling records. Include any unusual occurrence, but not limited to, rockfalls, unstable or soft ground and inflows of water.
- E. Revisions to plans: If, in a specific area, a plan which has been previously adopted does not produce rock surface conditions in accordance with the requirements of these specifications, Contractor shall submit a revised plan before continuing scaling in adjacent areas.
- F. As construction progresses, Contractor shall re-inspect as often as necessary to verify the adequacy of his construction methods for prevention of damage. If any changes are necessary, this shall be formally submitted to Owner in writing.

#### 1.04 DEFINITIONS

- A. "Rock" shall mean sound material of hardness and texture such that it cannot be readily loosened or removed by backhoe, clamshell, or hand shoveling. This definition shall not include frozen material.
- B. "Rock excavation" shall mean the removal of all rock which requires drilling, barring, wedging or ripping for removal; and the removal of boulders, pieces of detached rock, and buried shotcrete two cubic yards or more in volume, each piece.
- C. "Line drilling" shall mean the drilling of a row of drill holes along the excavation limit spaced no more than three times the hole diameter or 6 inches on centers, whichever is greater. It is suggested that Contractor line drill 3-inch diameter holes; however, it remains Contractor's responsibility to successfully line drill and split the rock based on his experience and equipment.
- D. "Scaling" shall mean removal of loose, detached rock, which naturally occurs or results from mechanical rock excavation, to prevent unsafe conditions. Such rock removal is generally accomplished by the use of hand tools to provide a sound, finished rock surface.
- E. "Smooth blasting" shall mean a controlled blasting technique where the neat line holes are detonated after the bulk has been blasted and removed.
- F. "Pre-splitting" shall mean the formation of cracks along the final excavation faces by firing a single row of holes prior to the initiation of the rest of the holes of the blast pattern.
- G. A "round" shall mean a single cycle of drilling, loading and blasting to excavate rock, including scaling, mucking and moving equipment in and out.

- H. "Overbreak" shall mean the volume of rock removed beyond the neat lines for the excavation As Shown.
- I. "Peak particle velocity": The greatest of the three peak velocity components measured at any point, with the three components being measured in the vertical and mutually perpendicular horizontal directions.

1.05 ROCK EXCAVATION AND SCALING RECORDS

- A. In addition to other records, Contractor shall maintain accurate records of all rock excavation and blasting operations performed under this Contract.
  - 1. As-built details of the location and elevation of blast, the drilling pattern, number, locations and sizes of drill holes and the type and amount of explosives used in each round or lift, the type, location and firing pattern of detonators and the time of each blast.
  - 2. Any unusual occurrence including, but not limited to, rockfalls, unstable or soft ground and inflows of water.
  - 3. Contractor shall make available to Owner copies of all rock excavation and blasting records as requested.

1.06 SAFETY

- A. Safety within the excavation is the responsibility of Contractor.
- B. Maintain haul roads and access roads in stable and safe conditions.
- C. Provide warning to site personnel and public of blasting.

1.07 PRE-BLAST SURVEY

- A. Prior to the start of construction, conduct a Pre-blast Survey. The purpose of the Pre-blast Survey is to obtain sufficient evidence of structure condition to verify the adequacy of methods for prevention of damage and for use in defense against possible claims for damage.
- B. The pre-blast survey shall be made by qualified specialists approved by Owner and retained for this purpose by Contractor to observe the condition of existing structures and facilities in the vicinity of the work. The survey shall include inspections of all structures and facilities located entirely or partially within 300 ft of areas to be blasted. The pre-blast survey shall include diagrams, sketches, photographs, videos of all walls, partitions, floors and ceilings showing existing cracks, or damage and other data as applicable to locate and define the amount and extent of existing structural deficiencies. The pre-blast survey shall be signed by those who witnessed and/or took part in the inspections. All existing structural deficiencies, major or minor, shall be shown.

- C. Prepare and deliver to Owner prior to the start of construction two (2) bound copies of the Pre-blast Survey containing all field notes taken, sketches, and diagrams prepared, photographs obtained, video tapes taken, descriptions and reports, all signed and witnessed by those taking part in the inspection. Thereafter, as construction progresses, re-inspect as often as necessary to verify the adequacy of construction methods for prevention of damage. Data obtained from each re-survey shall be promptly delivered to Owner.
- D. Nothing contained herein shall relieve Contractor of responsibility for claims arising from his construction operations. Failure to inspect any structure, whether or not required by these Contract Documents, or inadequacy of the inspections, shall not relieve Contractor of his responsibility.

1.08 PERMITS

- A. Obtain all necessary permits to perform the blasting.
- B. Contractor will be responsible for all Traffic Control requirements.

PART 2 PRODUCTS

2.01 GENERAL

- A. Furnish all products necessary for the completion of the Work covered by this Section.
- B. Use of non-explosive (chemical) demolition agent such as Bristar or approved equal may be considered for some of the excavation activities.

PART 3 EXECUTION

3.01 EXCAVATION METHODS

- A. Secure the services of a qualified blasting consultant with at least 10 years experience in blasting close to sensitive structures. The specialist shall plan and assist in the execution of the Rock Excavation Plan.
- B. Rock excavation shall be accomplished by blasting, line drilling, cutting, wedging, barring, hammering, mechanical ripping, or non-explosive (chemical) demolition agent, or a combination thereof. Contractor shall select and be responsible for methods and procedures to be used, except as hereinafter provided.

- C. Contractor shall do all excavation work in accordance with good modern practice and according to local, state and federal regulation, using methods and techniques that will minimize overbreak beyond the limits shown on the drawings, and that will preserve the rock beyond these limits in the soundest possible condition. Particular care shall be taken to avoid damage to existing structures which are to remain. Any excavation beyond what is shown on the drawings or repair of damage to materials that are to remain shall be at Contractor's expense. Damage shall mean any structural defect, crack, deformation, or other change to the structure or slope caused by the blasting.
- D. Contractor shall be responsible for the stability and safety of all his excavations until final acceptance, and shall do all remedial work required for the duration of the Contract to ensure that all excavated rock surfaces are maintained in a stable and safe condition.

### 3.02 EXCAVATION LIMITS

- A. Rock excavation will be based on the neat lines, and consists of an area approximately 248 feet by 58 feet, as shown. No payment will be made for rock excavation beyond these neat lines. Any rock projecting inside the neat lines shall be removed. Care shall be taken in removing this under excavated rock to avoid disturbance of the rock mass which might cause subsequent over excavation.

### 3.03 CONTROLLED BLASTING

- A. Use controlled blasting on all surfaces excavated by the best methods of blasting. Controlled blasting techniques may include presplitting smooth blasting and line drilling as agreed upon with the Owner.

### 3.04 BLASTING PROCEDURES

- A. Drilling and Blasting:
  - 1. All blasting and use of explosives shall be in strict compliance with the latest federal and state regulations.
  - 2. Perform blasting in a manner such that limits for PPV and air overpressure are not exceeded at all site structures.
  - 3. Prepare Blast Reports for each blast. These reports shall include the location, depth and area of the blast; diameter, depth, pattern and inclination of blast holes; type, strength, amount, column load, and distribution of explosives per hole and per delay; sequence and pattern of delays; and description and purpose of any special methods to be used. As excavation proceeds, Contractor shall adjust his techniques as necessary to maintain acceptable excavation results and minimize overbreak.

4. Plan at least 24 hours in advance before placement of any explosives for blasting.
5. Protect all sensitive structure areas from fly rock by using blasting mats which are in good condition or other suitable measures.
6. Initiation of all blasting materials and explosives shall be by non-electric means

B. Explosives – Handling and Use:

1. All explosives onsite shall be stored in suitable magazines provided and maintained by Contractor. The magazine shall be appropriate for the types and quantities of explosives to be used. The magazine shall be constructed, fitted out, grounded, and made secure in compliance with all federal and state regulations.
2. Keep fully detailed records giving the types and quantities of explosives delivered, on hand, and used, including Supplier's batch numbers. Similar records of detonators by types and delays shall also be maintained. These records shall be available for inspection and shall be maintained at Contractor's site office.
3. Transport of explosives and detonators shall be in vehicles suitably grounded and protected from lightning strikes and electrical storm phenomena, all in accordance with applicable regulations.
4. No explosives shall be handled, transported, or in any way made use of during any period of electrical storm, lightning, or other electrical phenomena.
5. A blaster designated by Contractor and experienced in controlled blasting techniques shall be present during, and in direct control of, all explosives handling, loading, and blasting operations.
6. Take every precaution to prevent premature explosions and misfires. Under no circumstances are lighting or power cables to be used for fitting.
7. An adequate warning system shall be provided to ensure that all persons are at a safe distance before a blast is detonated. Blasting signal signs shall conform to 29 CFR 1926.909 (OSHA) and shall be posted at each access to the work site.
8. Should a misfire occur, Contractor shall warn all persons affected and no persons other than the designated blaster and supervisor shall enter the area until the charge has exploded or been made safe. Only when Contractor's designated blaster and his supervisor are satisfied that danger no longer exists will the workers be allowed back into the area.

C. Blast Monitoring:

1. Monitor each blast by means of three-component particle velocity measuring equipment to determine particle velocities generated by the blast.
2. The blast monitoring equipment shall be capable of measuring and recording the displacement, velocity, and frequency in three vertically perpendicular directions: vertical, radial, and perpendicular to the vibration source. The blast monitoring equipment shall have variable trigger level settings, digital peak velocity memory, and shall be capable of performing Fourier transforms on the data.
3. Blast monitoring equipment shall be of a type that provides a readout that can be fully evaluated on site. Recording on magnetic tape that requires special equipment for interpretation is unacceptable.
4. Blast monitoring instruments shall have been calibrated within the previous six months to an acceptable standard.
5. The blast monitoring equipment shall have a flat velocity frequency response with a minimum broad band channel of 6 Hz to 150 Hz with a tolerance equation better than +10 percent.
6. Install and operate blast monitoring equipment in accordance with the Field Practice Guidelines for Blasting Seismographs as set forth by the International Society of Explosives Engineers and in accordance with this specification. The more stringent shall apply.
7. Maintain an adequate supply of printing paper for data output.
8. Provide monitoring equipment to monitor vibration velocities at a minimum of three locations as determined by Owner. Contractor shall supply all recording equipment sensors, cables, accessories, printing data reduction equipment, and skilled operators.
9. The locations for blast monitoring velocity measurements will be selected by the Contractor and Owner after the pre-blast survey. The locations will be based on distance from the blast, the condition of the structure, and the importance and risk associated with the structure. Locations may be changed during construction. Monitoring locations include, but are not limited to; Jarvis D4 building and radiator, fuel tank(s), Jarvis Street Substation, and existing structures.
10. Provide power supply for monitoring equipment. If the equipment is battery powered, maintain at least one spare fully charged battery for each monitoring unit.

11. Provide protection for blast monitoring equipment left unattended against damage, unauthorized movement of the sensors, theft and vandalism.
12. Prepare Blasting Record for each blast. The record shall include date, time, location, and elevation of the blast; the depth, spacing, burden, number, and diameter of holes; delay pattern; powder factor and maximum quantity of explosive per delay; distance to nearest structure; and seismograph locations and copies of seismograph reading records.
13. Continuously monitor for stray electrical currents utilizing device(s) designed for detecting both stray ground electrical potential and currents and atmospheric electric potential over ground. Monitoring devices shall be OSHA or MSHA approved, and shall be specifically designed for the specified monitoring use.
14. Adequately identify in writing to Owner all potential EMF and RF hazards to his operation, and eliminate or guard against such hazards in accordance with OSHA Standards and IME "Safety Guide for the Protection of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps".

D. Limiting Particle Velocities:

1. Blasting shall be done in a manner such that adjacent existing structures, associated foundations and project concrete structures are not damaged. Contractor remains responsible for damage to existing structures. Do not exceed the following particle velocities.

Location or Structure	Maximum Particle Size Velocity (in/sec)
Jarvis Street Substation	1.0
Powerhouse	1.0
Fuel Tank(s)	1.0
Intake and Gate Structures	2.0
Diesel Engine Enclosures & Radiator	2.0

3.05 DISPOSAL

- A. Contractor shall be responsible of the coordination of excavation, stockpiling, reuse of the material in the Work, and disposal of surplus materials.

- B. Unless otherwise directed by Owner, all excavated rock materials shall be disposed of by Contractor, and in accordance with local, state and federal law.
- C. Excavated materials shall be removed and disposed of as the Work progresses. Debris shall not be allowed to accumulate in the Work area. Contractor may use excavated rock for his needs. The rock used for any temporary work shall be removed upon completion.



## **Appendix B : Compensation**

Compensation for the Contractor's Work under this Contract shall not exceed \$107,375.21, which is the same amount as owed by the Contractor as set out in the Promissory Note ("Note") and Confession Of Judgment Without Action ("Confession") signed by the Contractor in compliance with Amendment No. 1 to the Agreement For Material Sale From Municipally Owned Property regarding Site 5 at the Granite Creek Industrial Area. Payments shall be submitted monthly for Work completed, paid by the Electric Department to the City and Borough of Sitka, until all payments have been made as required by the Note and Confession. Once the Note and Confession have been satisfied, the Electric Department shall pay monthly directly to the Contractor for any additional Work completed, but with all payments made indirectly to the City and Borough of Sitka and to the Contractor not to exceed the total amount of this Contract, \$107,375.21.

## **Appendix C: Communications**

### **Communication Organization**

Contact persons for the Contractor and CBS shall be CBS's Utility Director, Christopher Brewton for CBS, and Timothy Eddy (President) for the Contractor.

All communications regarding scope, schedule or budget shall be directed to CBS's Utility Director. All communications requesting agreement or confirmation of technical decisions or conclusions shall be directed to the Utility Director.

Communications directly between Contractor, CBS staff or the CBS's individual consultants may take place, provided that all such communications are appropriately copied to CBS's Utility Director. For the purpose of this project, Contractor shall act as the Owner's representative and single point-of-contact to manage all aspects of the project.

### **Direction of Work**

Contractor's work shall be directed and requested by CBS's Utility Director. Requests and direction will be submitted to the Contractor in writing usually by e-mail. Contractor shall acknowledge each request and provide a short proposal to perform the work and timetable to complete it.

## **Appendix D: Work Products**

### Work Products / Deliverables

Work performed under this contract need not be stamped by a professional engineer.

All deliverables must be submitted in the electronic format that it was generated (i.e. WORD, Excel, ACAD), so that it may be modified, a pdf format for publication, and paper copies when and as requested by the CBS.

### Use of Deliverables

CBS retains the right to use all work products paid for by CBS to continue the development and construction of the Jarvis Street Diesel Capacity Addition Project. The work products may be released to third parties to continue the work if necessary.

**Appendix E: Schedule**

The Scope of Work will be performed and completed no later than December 31, 2013.