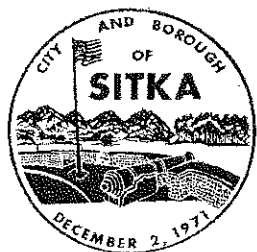


## **POSSIBLE MOTION**

**I MOVE** to terminate the “Agreement For Material Sale From Municipally Owned Property” executed February 2012 with Southeast Earthmovers.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

November 30, 2012

*Sent certified & regular mail & email*

Jon McGraw  
Southeast Earthmovers  
Box 784  
Sitka, AK 99835

Re: City and Borough of Sitka Quarry Site 5

Dear Mr. McGraw

You were sent a previous notice on July 17, 2012 about your failure to pay the minimum monthly payment of \$416.67 for March through June 2012 as required by your present Agreement For Material Sale From Municipally Owned Property ("Current Agreement"), executed in February 2012. You were informed that nonpayment of the royalty and land lease payments means that you are in breach of the Current Agreement, and thus the Current Agreement is subject to termination under Section IX, entitled Termination and Suspension. You were given the required 30 days under the Current Agreement to cure the breach. You failed to do so. In fact, you have failed to make any of the required payments under the Current Agreement since the July notice, for August through November 2012. Therefore, at the next Assembly meeting on December 11, 2012, I am requesting the Assembly terminate the Current Agreement. CBS will also seek other legal remedies for your default, including but not limited to pursuing the monies owned against the bond you posted for the Current Agreement.

You were also informed in the July 17th letter about your delinquent quarry royalty and land lease payments under your prior Agreement Material Sale & Lease Of Material Property, dated April 9, 2001 ("Prior Agreement"). The 1<sup>st</sup> notice was sent on April 24, 2012. The total due the City and Borough of Sitka ("CBS") was \$107,375.21. CBS has confirmed you were paid for this material. See April 24, 2012 letter. In your email of September 4, 2012 and in prior contacts with the Public Works Director, you admit you owe CBS the unpaid royalties/land lease payments, and promised to begin making payment, including \$20,000 by September 25, 2012. No such payment was made on that date, nor have any payments been made towards the \$107,375.21 arrearages. CBS will now begin legal action against you.

This letter proposes a last chance alternative to resolve these matters. Attached is a Promissory Note and Confession of Judgment Without Action ("Confession") for your signature related to your arrearages concerning the Prior Agreement. Additionally,

Providing for today ... preparing for tomorrow

Jon McGraw  
November 30, 2012  
Page 2

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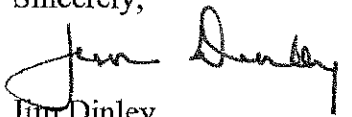
attached is an Amendment No. 1 to your Current Agreement for your signature. Amendment No. 1 requires:

1. Full payment to be made when Amendment No. 1 is signed by you for the monies owed from March through November 2012 under your Current Agreement;
2. Timely payments to be made on your arrearages under the Prior Agreement in accordance with the attached Promissory Note and Confession;
3. Agreement that if you fail to remain current with the payments under your Current Agreement, as well as the arrearages under the Prior Agreement, your Current Agreement may be terminated by CBS. No further cure notice is required before termination of the Current Agreement for failure to timely pay the arrearages under the Prior Agreement, except as provided in the Promissory Note.

The Assembly agenda is prepared next Wednesday at noon. Failure to sign and submit the Promissory Note and Confession regarding your prior Agreement, as well as Amendment No. 1 regarding your Current Agreement, will result in my recommending to the Assembly to terminate your Current Agreement and proceed with legal action against you concerning the arrearages under your Prior Agreement and Current Agreement. If you timely sign and submit all of the documents, I will recommend the Assembly accept Amendment No. 1 to your current Agreement.

If you have any questions, contact me as soon as possible.

Sincerely,

  
Jim Dinley  
Municipal Administrator

Attachments

cc: Theresa Hillhouse, Municipal Attorney  
Michael Harmon, Public Works Director  
Jay Sweeney, Finance Director



# City and Borough of Sitka

## PUBLIC WORKS

100 LINCOLN STREET • SITKA, ALASKA 99835  
PHONE (907) 747-1804 • FAX (907) 747-3158

July 17<sup>th</sup>, 2012

Southeast Earthmovers  
Box 784  
Sitka, AK 99835

Re: City and Borough of Sitka Quarry Site 5

Dear Mr. McGraw

We had previously notified you of required quarry royalty payments on April 24<sup>th</sup>, 2012 (certified mail). The total due the CBS is \$107,375.21. Our discussions with Tim Eddy have indicated he has paid you for this material. In addition to the royalty payment noted above, the minimum monthly payment of 416.67 has not been made for March, April, May and June of 2012. Nonpayment of the royalties owed CBS means that you are in violation of your quarry purchase agreement with the CBS signed and dated by you on February 27<sup>th</sup> 2012.

Pursuant to the agreement, Section IX Termination and Suspension, we are issuing a 30 day notice of termination of the agreement which will be effective August 16<sup>th</sup>, 2012. A default lease agreement may be reinstated if required payments are made within the 30 days. The Bond companies will be notified of default if the required payments are not made within the 30 days. If the bonds must be used to cover the default, any and all additional costs associated with recovering the money owed to CBS will be added to the balance owed. These could include attorney and other legal fees. Also any monies currently owed to Southeast Earthmovers now or in the future by CBS will be used to pay off the royalties owed and other costs incurred to collect.

Sincerely,

Michael Harmon P.E.  
Public Works Director  
City and Borough of Sitka

CC Jim Dinley, Administrator  
Stephen Weatherman, Municipal Engineer  
Jay Sweeney, Finance Director  
Theresa Hillhouse, Municipal Attorney

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mail piece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;"><b>Southeast Earthmovers</b>  <b>Attn: Jon McGraw</b>  <b>PO BOX 784</b>  <b>Sitka, Alaska 99835</b></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p style="text-align: center;">MAR 25 2004</p> <p>3. Service Type:  <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

2. Article Number (Transfer from service tag) **7009 0080 0001 3167 6811**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only - No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fee</b>	

7/17/12

Postmark  
*Michael H*

**Southeast Earthmovers**  
**Attn: Jon McGraw**  
**PO BOX 784**  
**Sitka, Alaska 99835**

Sent To \_\_\_\_\_  
Street, Apt. No., or PO Box No. \_\_\_\_\_  
City, State, ZIP+4 \_\_\_\_\_

7009 0080 0001 3167 6811

--- On Tue, 9/4/12, Jon McGraw <[earthmovers.jon@att.net](mailto:earthmovers.jon@att.net)> wrote:

From: Jon McGraw <[earthmovers.jon@att.net](mailto:earthmovers.jon@att.net)>

Subject: Re Granite Creek ste 5

To: [stephen@city.yahoo.com](mailto:stephen@city.yahoo.com)

Cc: [earthmovers.jon@att.net](mailto:earthmovers.jon@att.net)

Date: Tuesday, September 4, 2012, 1:50 PM

Stephen

Mike said to send this to you about payments for site 5.

Yes I do owe the City an unpaid amount for royalties. I talked to Mike about making payments on this. I will make the first payment of \$20,000.00 by the 25th and work at making monthly payments. You also have money with held for Oja street that I would like to apply to this

As you are aware the do royalties are under the old lease not the new one.

Please let me know as soon as you can if this acceptable.

Thanks Jon [earthmovers.jon@att.net](mailto:earthmovers.jon@att.net)



# City and Borough of Sitka

## PUBLIC WORKS

100 LINCOLN STREET • SITKA, ALASKA 99835

PHONE (907) 747-1804 • FAX (907) 747-3158

4/24/12

Southeast Earthmovers  
Box 784  
Sitka, AK 99835

Re: City and Borough of Sitka Quarry Site 5

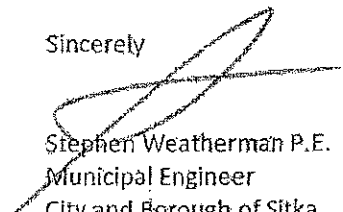
Dear Jon

We have reviewed the as-build plans you have submitted for the end of 2011 quarry quantities for your lease of City and Borough of Sitka Quarry Site 5. Based on the survey 200086 cubic yards of rock has been quarried. Our records indicate that you have made the following payments.

Jon McGraw's Quarry payments					
Work Month	Payment Month		Cumulative Total	Quantity CY	Cumulative Total
March	April	\$ 56,761.42	\$ 56,761.42	36,620.27	36,620.27
April	May	\$ 47,974.98	\$ 104,736.40	30,951.60	67,571.87
May	June	\$ 38,811.69	\$ 143,548.09	25,039.80	92,611.67
June	July	\$ 35,681.00	\$ 155,210.29	23,020.00	115,631.67
July	August	\$ 11,662.20	\$ 167,077.09	7,524.00	123,155.67
August	September	\$ 11,866.80	\$ 167,077.09	7,656.00	130,811.67
Cross section totals CY					200,086.00
Cross section CY amount not paid for					69,274.33
Total Due to City					\$107,375.21

Our discussions with Tim Eddy have indicated he has paid you for this material. We expect to receive payment for these royalties (\$107,375.21) no later than 5/15/2012 per the lease.

Sincerely

  
Stephen Weatherman P.E.  
Municipal Engineer  
City and Borough of Sitka

## PROMISSORY NOTE

\$107,375.21, Plus Interest

November 30, 2012  
Sitka, Alaska

FOR CONSIDERATION RECEIVED, Southeast Earthmovers, Inc., P.O. Box 784, Sitka, Alaska 99835 (referred to as "Debtor"), signs this Promissory Note ("Note") relating to past due quarried rock royalty payments and land lease payments due to the City and Borough of Sitka ("CBS") related to Agreement Material And Lease Of Municipal Property ("Prior Agreement"), dated April 9, 2001, amounting to One Hundred Seven Thousand Three Hundred Seventy Five and 21/100 Dollars (\$107,375.21), plus interest at 12%/annum. Payments are to be timely made in accordance with the attached Payment Schedule ("Schedule") and in accordance with this Note.

During the period of this Note, Debtor shall remain current with any payments owed the CBS, including but not limited to payments for loans, land leases, sales taxes, property taxes, utility payments, and any other CBS accounts, including its payment under its current Agreement For Material Sale From Municipally Owned Property, dated February 2012 ("Current Agreement"). Additionally during this same period, Debtor shall comply with all CBS laws, including any building code, building permits, zoning code provisions, etc.

CBS may cause additional parties to be added or release any party, either with or without notice to the undersigned, either as co-maker, endorsers, or guarantors, or may extend the time for making any payment, or may accept an installment or full payment in advance, without affecting the liability of the Debtor.

The Debtor may prepay without penalty.

Failure to make any required payment(s) or meet the following conditions shall constitute a default under this Note:

1. Failure to pay under this Note in accordance with the Schedule;
2. Failure to remit any other payments for loans, land leases, sales taxes, property taxes, utility payments, and any other CBS accounts within seven (7) calendar days of the due date;
3. Failure to comply with CBS laws, including any building code, building permits, or zoning code provision; and
4. Breach of any other conditions in this Note

Upon a default under this Note, CBS may, at its sole discretion, concurrently undertake one or more of the following remedies:

1. Declare the entire amount unpaid balance of this Note, including all interest, due and payable;
2. Terminate any of the Debtor's leases with CBS, including the current Agreement and the Debtor's lease of the Sawmill Cove Industrial Park Administration Building space;



and

3. Apply any payments currently due to Debtor by CBS or through any of the CBS's contractor, including any subcontractor agreement associated with the Blue Lake Hydroelectric project, towards the unpaid balance of this Note.

Before undertaking any of the above available remedies in the case of a default under this Note, CBS shall provide Debtor written notice of the default and right to cure, sent by United States certified mail. Debtor shall be afforded a right to cure any default within a thirty (30) day period from the date of the written notice of default and right to cure. If any default is not cured by Debtor within the thirty (30) day period, CBS shall have the right to enforce any remedy, in full or in part, without further written notice to debtor, this right being expressly waived by Debtor.

Should CBS take any action regarding default or to collect regarding this Note, Debtor agrees to pay all reasonable attorney fees, court costs (including fees and court costs in any appeal or bankruptcy proceeding and including on any matter this is specific to a bankruptcy proceeding), plus any actual expenditures incurred to secure the payment of or to collect on this Note.

Debtor waives demand, protest and notice of demand, protest and nonpayment, and expressly agrees that this Note or any provision of this Note may be extended from time to time, and consents to the acceptance of further security, including other types of security, all without in any way affecting the liability of such parties.

If any part of this Promissory Note is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

This Note is also signed simultaneous with the attached Confession of Judgment Without Action ("Confession") against Debtor regarding this Note. CBS will file the Confession to obtain satisfaction for any amount owed under this Note in accordance with the provisions set out in the Confession and/or Note upon default by Debtor after cure period has expired.

\_\_\_\_\_  
Jon W. McGraw, President  
Southeast Earthmovers, Inc.

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, Jon W. McGraw, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Confession of Judgment on behalf of Southeast Earthmovers, Inc., and affirms by signing this document to be authorized to sign on behalf of Southeast Earthmovers, Inc., and does so freely and voluntarily.

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

**Payment Schedule  
For Promissory Note  
in the Amount of \$107,375.21**

**Between  
Southeast Earthmovers, Inc. and the City and Borough of Sitka  
November 30, 2012**

**Terms:**

**Number of Payments:** 12  
**Annual Interest Rate:** 12.00%  
**Daily Interest Rate:** 0.03288% (365/366 Day Basis)  
**Periodic Payment:** \$ 9,539.51

<u>Payment Number</u>	<u>Payment Date</u>	<u>Beginning Principal Balance</u>	<u>Payment</u>	<u>Interest Portion</u>	<u>Principal Portion</u>	<u>Beginning Principal Balance</u>
1	12/31/2012	\$ 107,375.21	\$ 9,539.51	\$ 1,094.34	\$ 8,445.16	\$ 98,930.05
2	1/31/2013	\$ 98,930.05	\$ 9,539.51	\$ 1,008.27	\$ 8,531.23	\$ 90,398.81
3	2/28/2013	\$ 90,398.81	\$ 9,539.51	\$ 832.16	\$ 8,707.34	\$ 81,691.47
4	3/31/2013	\$ 81,691.47	\$ 9,539.51	\$ 832.58	\$ 8,706.92	\$ 72,984.55
5	4/30/2013	\$ 72,984.55	\$ 9,539.51	\$ 719.85	\$ 8,819.66	\$ 64,164.89
6	5/31/2013	\$ 64,164.89	\$ 9,539.51	\$ 653.95	\$ 8,885.55	\$ 55,279.34
7	6/30/2013	\$ 55,279.34	\$ 9,539.51	\$ 545.22	\$ 8,994.29	\$ 46,285.05
8	7/31/2013	\$ 46,285.05	\$ 9,539.51	\$ 471.73	\$ 9,067.78	\$ 37,217.27
9	8/31/2013	\$ 37,217.27	\$ 9,539.51	\$ 379.31	\$ 9,160.20	\$ 28,057.08
10	9/30/2013	\$ 28,057.08	\$ 9,539.51	\$ 276.73	\$ 9,262.78	\$ 18,794.30
11	10/31/2013	\$ 18,794.30	\$ 9,539.51	\$ 191.55	\$ 9,347.96	\$ 9,446.34
12	11/30/2013	\$ 9,446.34	\$ 9,539.51	\$ 93.17	\$ 9,446.34	\$ 0.00

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT SITKA

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CITY AND BOROUGH OF SITKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTHEAST EARTHMOVERS, INC., )  
 )  
 Defendant. )  
 ) Case No. 1SI-12-\_\_\_\_\_ CI

CONFESSION OF JUDGMENT WITHOUT ACTION

1. Pursuant to Alaska R. Civ. P. 57(c), Southeast Earthmovers, Inc. ("Defendant"), confesses judgment in favor of the City and Borough of Sitka ("Plaintiff" or "Sitka") for a total amount of arrearages of One Hundred Seven Thousand Three Hundred Seventy-five Dollars and 21/100 (\$107,375.21) in royalties and land lease payments owed to Plaintiff for Granite Creek Industrial Area Site 5 based on the Agreement Material Sale And Lease Of Municipal Property ("Prior Agreement") effective April 1, 2001, plus interest calculated at 12%/annum.

2. The amount of payment and procedures to follow are set out in the attached Promissory Note ("Note") with a payment schedule ("Schedule"), signed by the Defendant on the same date at this Confession Of Judgment Without Action ("Confession"), and made part of this document as Exhibit A. Each payment shall be timely delivered to Plaintiff at 100 Lincoln Street in Sitka, Alaska. Payments shall be made until all arrears have been paid in full, including interest.

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3. Plaintiff agrees not to file this Confession with the Court and request entry of final judgment or to execute upon this Confession unless and until Defendant fails to comply with conditions set forth in this Confession and/or Note, which includes failing to make timely payments according to the Note with its Schedule regarding royalties and land payments owed to Plaintiff in accordance with the Prior Agreement. Default under the Note which entitles the Plaintiff to file this Confession with the Court also includes, but is not limited to, the Defendant not making timely payments under its Agreement For Material Sale From Municipally Owned Property, dated February 2012 ("Current Agreement"). Defendant agrees that if Defendant fails to comply with the conditions in this Confession and/or Note, acceleration of the amount owed under the attached Note with its Schedule shall be permitted at the election of Plaintiff, based on the default provisions of the Note. Plaintiff shall be entitled, by affidavit of default and without notice to Defendant, to have a writ of execution issued against all of Defendant's property, both real and personal, as well as proceed with all other remedies allowed by law.

4. If it becomes necessary to take legal action to enforce this Confession, Defendant agrees that Plaintiff will be considered the prevailing party and shall be entitled to recover its court costs, full reasonable attorney's fees, and any collection costs incurred to obtain all amounts due to Plaintiff.

DATED AT Sitka, Alaska, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
Theresa Hillhouse, Municipal Attorney  
Alaska Bar No. 8011086

CITY-BOROUGH  
ATTORNEY  
CITY AND BOROUGH  
OF SITKA  
100 LINCOLN ST.  
SITKA, ALASKA 99835  
TELEPHONE 747-1821

VERIFICATION OF CONFESSION OF JUDGMENT

STATE OF ALASKA )  
 )ss.  
FIRST JUDICIAL DISTRICT )

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I, Jon W. McGraw, President for Southeast Earthmovers, Inc., under oath, affirm that I am authorized to make this verification, know the contents of the Confession Of Judgment Without Action, and believe the same to be true and just. I authorize freely and voluntarily judgment to be given against Southeast Earthmovers, based on this Confession Of Judgment Without Action.

DATED at Sitka, Alaska, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Jon W. McGraw, President  
Southeast Earthmovers, Inc.

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, Jon W. McGraw, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Confession Of Judgment Without Action on behalf of Southeast Earthmovers, Inc., and affirms by signing this document to be authorized to sign on behalf of Southeast Earthmovers, Inc., and does so freely and voluntarily.

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

CITY-BOROUGH  
ATTORNEY  
ITY AND BOROUGH  
OF SITKA  
100 LINCOLN ST.  
SITKA, ALASKA 99835  
TELEPHONE 747-1821

**AMENDMENT NO. 1 TO  
AGREEMENT FOR MATERIAL SALE FROM  
MUNICIPALLY OWNED PROPERTY**

WHEREAS, on April 9, 2001, City and Borough of Sitka ("Sitka") and Southeast Earthmovers, Inc. ("Purchaser") entered into a ten year "Agreement Material Sale And Lease Of Municipal Property" ("Prior Agreement") for payment of royalty fees and land lease for material removed from Granite Creek Gravel Pit Site 5;

WHEREAS, the Sitka and Purchaser entered into a subsequent "Agreement For Material Sale From Municipally Owned Property" in February 2012 ("Current Agreement") for payment of royalty fees and land lease for material removed from Granite Creek Gravel Pit Site 5;

WHEREAS, Purchaser owes Sitka \$107,375.21 in royalties/land lease payments from the Prior Agreement, plus interest at 12%/annum;

WHEREAS, Purchaser owes Sitka \$3,750.03 in royalties/land lease payments from the Current Agreement, plus interest at 12%/annum;

WHEREAS, Purchaser has agreed to execute the attached Promissory Note ("Note") with attached Payment Schedule ("Schedule"), as well as a Confession Of Judgment Without Action ("Confession") to pay Sitka all arrearages on the Prior Agreement;

WHEREAS, Purchaser pays all arrearages owed to Sitka from March through November 2012 on the Current Agreement upon execution of this Amendment No. 1 To Agreement For Material Sale From Municipally Owned Property ("Amendment No. 1");

WHEREAS, Sitka and Purchaser agree to amend the Current Agreement as set out in this Amendment No. 1 to reflect the agreed to conditions set out in the Note and Confession, as well as to address payments due under Current Agreement (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 and Confession Of Judgment Without Action, dated \_\_\_\_\_, made as an attachment to this Agreement.

**SOUTHEAST EARTHMOVERS, INC.**

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
Jon McGraw, President

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

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, Jon McGraw, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Amendment No. 1 To Agreement For Material Sale From Municipally Owned Property on behalf of Southeast Earthmovers, Inc., and affirms by signing this document to be authorized to sign on behalf of the Southeast Earthmovers, Inc., and does so freely and voluntarily.

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

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, JAMES DINLEY, Municipal Administrator of City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Amendment No. 1 To Agreement For Material Sale From Municipally Owned Property on behalf of Southeast Earthmovers, Inc.,

on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

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

# AGREEMENT

## FOR MATERIAL SALE

### FROM

## MUNICIPALLY OWNED PROPERTY

City and Borough of Sitka ("CBS") agrees to sell to Jon McGraw, Southeast Earthmovers, PO Box 784, Sitka, Alaska 99835 ("Purchaser"), the materials designated in this Agreement For Material Sale From Municipally Owned Property ("Agreement"), subject to the following terms and conditions:

### SECTION I. DESCRIPTION

#### A. MATERIAL SITE:

Site 5 as shown on plat of the Granite Creek Gravel Pit lease areas, dated March 22, 1985, and as modified by CBS Assembly on December 12, 2000. The Material Site contains 5.88 acres more or less.

#### B. TERMS:

1. The term of this Agreement begins on February 23, 2012, and ends on April 1, 2016.
2. Purchaser agrees to pay the following royalty fees for the material removed from the Material Site:  
\$1.55 per cubic yard, in place
3. It is not the intent of CBS to allow indeterminate holding of Material Site without development. Purchaser shall be required to begin development prior to March 1, 2012 and pay minimum royalty fees of \$5,000.00 per year during the term of this Agreement. The minimum royalty payment shall be made on a monthly basis. The Lessee shall make a minimum monthly payment of \$416.67.

### SECTION II. PAYMENTS

- A. Purchaser shall be required to submit a bond upon executing this Agreement in the amount of \$100,000.00, issued by a Surety licensed to do business in Alaska. On the yearly anniversary date of this Agreement, and after the pit cross sections are accomplished and Purchaser is inspected for adherence to a continuation plan, CBS shall release the prior year's bond, in writing, and accept a new bond for the next year of operation, as set out in Section III.A.



The purpose of the bond shall be to correct non-conforming conditions created by Purchaser. An example might be to do necessary continuation work left undone or otherwise correct site problems such as drainage control. The bond may also be used to pay for unpaid royalties or other costs owed to CBS, such as anniversary surveys.

B. The \$1.55 per cubic yard Royalty Fee shall be paid using one of the following methods;

1. Prior to each shot based on in place calculated blast yield quantities. These quantities shall be verified for each 100,000 yards removed from the quarry by field survey cross sections certified by a registered engineer/surveyor.
2. Monthly based on submitted shot records and verified by field cross sections certified by a registered engineer/surveyor for each 100,000 yards of material removed. This method of payment will be guaranteed by a payment bond. The shot records are due with the royalty payment check on the first day of the month for the previous months work. Failure to submit the payment by the 15<sup>th</sup> of the month shall result in a penalty of double the royalties due for the month.

This method is verified by field survey cross sections for each 100,000 yards certified by a registered engineer/surveyor, unless the quarry has produced no rock for the preceding quarter. However, the initial quarry cross section, yearly anniversary quarry cross section, and the final quarry cross sections are also required.

3. Monthly based on quantities measured by a certified scale. The scale tickets will be used to determine the weight of material removed from the quarry. If certified scale method of measurement is used, quarterly quantity based cross section of the quarry is not required. However, the initial quarry cross section, yearly anniversary quarry cross sections, and the final quarry cross sections are required.

This method of payments will be guaranteed by a payment bond. The certified scale records are due with the royalty payment check on the first of the month for the previous months work. Failure to submit the payment by the 15<sup>th</sup> of the month shall result in a penalty of double the royalties due for the month.

C. The amount of the payment bond required for payment methods B.2 and B.3 above will be based on one of two methods. The first method that may be used is based on the surface area of the quarry that has not been quarried. For each full acre and or fraction of an acre that has not been quarried, a \$25,000 payment bond is required up to a maximum of \$100,000. The area quarried does not include the area with only overburden removed.

The second method is based on the average amount of material that has been removed per month in the preceding year. A \$25,000 payment bond, up to a maximum of \$100,000, shall be required for each \$25,000 or portion of this amount paid monthly in royalties.

During the first year of this Agreement, and until the quarry begins producing material, Purchaser shall use the first method of calculating the payment bond.

- D. Whatever method is used to determine payment and verification, if it becomes apparent that the Purchaser is consistently under-reporting the material removed by more than 15% and or falsifying the records to under-report the material removal, Purchaser shall be fined. A fine of double royalty payments of the under-reported amount will be assessed and the Agreement may be terminated.
- E. Final royalty payments shall be based on records required in Section III, and shall be submitted to CBS no later than the fifteen (15) days following the month in which operations on the material site are completed.

Payment shall be accomplished by an accounting voucher provided by CBS for all payments.

### SECTION III. RECORDS

- A. Annually on the Agreement anniversary date, at the beginning and at the end of the term of this Agreement, Purchaser shall have the quarry fully cross sectioned by a registered engineer/surveyor, licensed to practice in the State of Alaska. The cross sections shall be certified by this engineer/surveyor and submitted to CBS. Surveyed volume will be compared to royalty yardage paid as a method of accounting control.
- B. Alternately, Purchaser may have the material taken from the quarry measured by either of the following methods:
1. Certified scale. The scale tickets will be used to determine the weight of material removed from the quarry and must be submitted to CBS. If certified scale method of measurement is used, quantity cross sections of the quarry are not required. However, the initial quarry cross sections, yearly anniversary quarry cross sections, and the final quarry cross sections are required.
  2. Shot records. The shot records will be used to determine the volume of material removed from the quarry and must be submitted to CBS. If shot records are used, quantity cross sections are required every 100,000 CY. In addition to the intermediate cross sections, initial quarry cross sections, yearly anniversary quarry cross sections, and the final cross sections are required.
- C. All final royalty payments will be adjusted based on survey cross section quantities.
- D. The overburden removed and disposed is incidental to the quantities measured. However, Purchaser may at its discretion provide additional cross sections with the overburden removed prior to blasting to be used as a base of the quantities measured.

SECTION IV. OPERATING REQUIREMENTS

- A. **Boundary Lines and Survey Monuments** – Upon execution of this Agreement, Purchaser shall have the Material Site surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the Material Site or any survey lines or witness tree to any survey corner or monument, shall be severed or removed, nor shall any survey corner or monument be damaged or destroyed. Any violation of this subsection will require Purchaser to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

Purchaser shall also have the Material Site as it exists when this Agreement is executed, cross sectioned within thirty (30) days of the Agreement execution date and prior to the removal of any material. The purpose of this initial cross section is to establish the beginning configuration of the Material Site and base line to be used for any quarterly cross section.

- B. **Erosion Control and Protection of Waters** – Road construction or operations in connection with this Agreement shall be conducted so as to avoid damage to streams, lakes or other water areas and lands adjacent to the Material Site. Vegetation and materials shall NOT be deposited into any stream or other waste area. Locations and/or improvements such as road crossings over streams shall be approved, in advance, by CBS.

All roads or other areas to be abandoned or an area to cease being an active portion of Purchaser's operation shall be treated with such measures to prevent erosion and shall be reclaimed in accordance with the required reclamation plan. Purchaser shall repair any damages resulting from any failure to perform to these requirements to the satisfaction of CBS. This includes, but is not limited to, waters defined in Alaska Administrative Code at Title 5 – Fish and Game.

All operations shall be performed in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP). This plan shall be prepared by Purchaser and approved by CBS and the Alaska State Department of Environmental Conservation before work begins in the Material Site. The SWPPP may require the installation and maintenance of siltation control structures at Purchaser's expense.

Should CBS determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to the Department of Environmental Conservation and/or the U.S. Fish and Wildlife Service after all reasonable attempts have been made to have Purchaser correct the problems, this Agreement shall be void upon notification to Purchaser by CBS. Purchaser shall hold CBS harmless from any litigation whatsoever which may result from this action.

Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and Purchaser will, at its own expense, provide all proper drainage and routine settlement ponds for permanent uses.

Construction equipment, aggregate stockpiles, etc shall not be stored within 25 feet of Granite Creek. Purchaser will make every effort to preserve the 25- foot stream buffer.

- C. **Reclamation Plan** – Attached and appended to this Agreement is Appendix A – Reclamation Plan – Granite Creek Material Site. Purchaser shall be responsible for the adherence to this plan. Purchaser shall demonstrate compliance to the reclamation plan on a yearly basis. ~~Substantial non-compliance shall be grounds for termination or cancellation of the Agreement.~~
- D. **Mining Plan**- Purchaser shall conduct all operations in accordance with industry standards, and an approved MSHA mining plan. This plan shall be prepared by Purchaser and approved by CBS and MSHA before work begins in the Material Site. Operations shall also be in accordance with the following:
1. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12" x 12" in size with the legend "Warning, Steep Embankment" clearly displayed. They will be installed on metal sign posts. Signs shall be painted safety orange in color.
  2. Slopes of back walls of rock cuts and benching shall be as determined by MSHA requirements.
  3. Upon completion of a rock cut the back wall shall be scaled back of all loose rock rubble.
  4. Storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.
- E. **Continuation Plan**- In addition to the mining plan, operations shall be performed in a manner designed to leave the Material Site in a condition conducive to additional mining after termination of this Agreement. A continuation plan shall be prepared by Purchaser and approved by CBS before work begins in the Material Site.
- F. **Fire Protection** – Purchaser shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Material Site, resulting from any and all operations involved under the provisions of this Agreement. Purchaser shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.
- G. **Roads** – Before constructing any haul road, secondary or spur roads across CBS property, Purchaser shall obtain written approval of the location and construction standards of such roads from CBS.
- H. Access over any route not under CBS control is the sole responsibility of Purchaser. Purchaser agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.

I. Purchaser shall maintain adequate supervision at all times when operations are in progress to insure that the terms and conditions of this Agreement and all applicable Federal, State and local laws, rules and regulations governing such operations are enforced. At all times, when operations are in progress, Purchaser or a person authorized by Purchaser to assume the responsibilities imposed by this Agreement, shall be present on the Material Site.

J. The terms and conditions of this Agreement shall apply with equal force upon any agent, employee or contractor designated by Purchaser to perform any or all of the operations of severance, extraction or removal of the materials sold under this Agreement, and Purchaser shall be liable for non-compliance caused by any such agent, employee or contractor.

K. Purchaser shall be responsible for the accurate location of operations under this Agreement, including any survey that may be necessary for such location unless otherwise specified in this Agreement.

L. **Special Provisions** – It is mutually agreed that:

1. Sound engineering practices and procedures shall be adhered to at all times during removal operations. Engineering plans for roads, drainage and other components of the project shall be submitted for review. The plans shall be sealed and signed by a registered engineer, licensed to practice in the State of Alaska.
2. Stumps and any other debris shall be disposed of by burning (subject to ADEC approval) or burying at the Granit Creek Overburden Site and in a manner considered suitable by CBS representatives.
3. In working the land to effect the removal of the Agreement entitlement, Purchaser agrees to so manage that upon completion of the removal, a reasonable degree of level land is maintained, per the continuation plan, from which material has been taken, and no holes-of-water are formed.
4. At the expiration of this Agreement, Purchaser shall notify the Director of Public Works so an inspection of the Material Site can be scheduled. This inspection shall include general clean-up, compliance with the reclamation plan, removal of all Purchaser's equipment and any other item felt a responsible element of any final inspection.
5. All responsibilities and liabilities of Purchaser shall remain in effect until this Agreement terminates, and all of its conditions are met, including cleanup of site and.
6. Purchaser agrees to submit the Standard Accounting Voucher and payment for material removed within fifteen (15) working days of the expiration date or completion, whichever occurs earlier.

7. If Purchaser is forced to end, restrict or curtail its operations due to State or Federal law or regulations or for any other cause over which CBS has no control, CBS shall have no liability, whatsoever.
8. Purchaser shall coordinate its activities insofar as possible with the other purchasers who now or in the future may hold material sale agreements. ~~Before removing material under any roadway or otherwise interrupting access~~ to any other operations, Purchaser shall make arrangements satisfactory to the affected parties for coordinating operations. The affected parties cannot unreasonably withhold such approval if proper alternate arrangements have been made. In the case where the affected parties cannot reach agreement, CBS shall be the sole arbitrator to reach a satisfactory result.
9. The Material Site may be used for the processing and storage of material to be removed from the Material Site, and for the temporary location and operation of an asphalt batching plant, scales, crushers and other such equipment necessary to produce marketable materials products. Other material incidental to the production of asphalt or mineral products such as asphalt, fillers, or coagulants needed for the settlement ponds may be stored on the Material Site, as needed. A temporary small one bay gravel equipment maintenance shop may also be allowed specifically for equipment used at the site.

Granite Creek is, in fact, a long term source of gravel and other mineral products. As such, it is not a purchaser's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed.

10. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, Purchasers operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M. daily. CBS reserves the right to restrict operations on weekends and holidays, with liability to Purchaser for violating this restriction.
- M. Purchaser may not assign its rights under this Agreement or allow other parties to produce rock, gravel or finished material on the site without prior written approval of CBS.
- Prior to the approval of any such assignment, CBS shall be provided with all the terms of the proposed assignment or production agreement. This shall include time of assignment and potential volumes of production. If such terms are deemed inflationary or of such a type to be considered an abandonment of further interest in the Material Site by the original party, the assignment may be denied.
- N. Maintenance of the main road, culverts and other such improvements shall be maintained by Purchasers at no expense to CBS.
- O. Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and Purchaser, at its own expense, shall

provide all proper drainage and routine settlement ponds for permanent uses. This is covered in the Reclamation Plan, as attached.

- P. Purchaser shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION V. LIABILITY AND INDEMNIFICATION

Purchaser shall defend, hold harmless, and indemnify CBS from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the exercise of the Purchaser's privileges granted by this Agreement, or arising out of any incident whatsoever which may occur on the Material Site or commonly used facility. This includes but not limited to damage to power lines, poles and facilities, telephone lines and poles, survey monuments, roads, bridges and culverts, pollution and/or damage to water systems, or personal injury.

SECTION VI. INSURANCE

- A. Purchaser shall carry Workers' Compensation insurance, in accordance with the rules and regulations of the State of Alaska. This policy shall also include Employers' Liability limits of no less than \$500,000. If applicable, the policy shall also cover USL&H and Maritime employees that may be employed by purchaser, as it relates to the activities of this Agreement.
- B. Purchaser shall carry Commercial General Liability insurance with occurrence limits of \$1,000,000 and aggregate limits of \$2,000,000. This policy shall in no way limit or exclude blasting operations and any other significant exclusions of coverage shall be shown on the certificate of insurance. This policy shall name the City & Borough of Sitka as an additional insured.
- C. Purchaser shall carry Business Automobile insurance with limits of \$1,000,000. This shall cover all owned, non-owned and hired automobiles that are used in the operations related to this Agreement. The policy shall name CBS as an additional insured.
- D. Purchaser shall carry Excess or Umbrella Liability insurance with limits of no less than \$5,000,000. This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability.

Purchaser shall provide a Certificate of Insurance that evidences the above. This Certificate shall also allow for a 30 day notice of cancellation or material change of coverage.

SECTION VII. IMPROVEMENTS AND OCCUPANCY

- A. Any improvements to transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by Purchasers in connection with this Agreement and within the Material Site area shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the

responsibility of Purchaser, and not the responsibility of CBS. Purchaser agrees to follow all applicable safety and building codes, regulations, and permits.

- B. The Purchaser shall, within sixty (60) days after the expiration of termination date of this Agreement, remove all equipment and other personal property from the Material Site, and comply with Subsection IV.L.4.

SECTION VIII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the Material Site.
- B. At all times when operations are in progress, Purchaser shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of Purchaser, any notices and instructions given by authorized CBS personnel in regard to the performance under this Agreement, and to take such action as is required by the terms of this Agreement.

SECTION IX. TERMINATION AND SUSPENSION

- A. This Agreement may be terminated by CBS if Purchaser breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon Purchaser.
- B. Failure of Purchaser to take immediate action to correct unwarranted damage to natural resources may be corrected by CBS to prevent additional damage. Any cost incurred by CBS shall be paid by Purchaser.
- C. This Agreement may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.

SECTION X. RESERVATIONS

- A. CBS makes no representations as to the suitability of the property as a material source for any particular use. Purchaser shall determine the suitability of the material for any application.
- B. CBS reserves the right to enter into other agreements regarding other material sites in the Granite Creek Quarry area to other parties during the term of this Agreement.
- C. CBS reserves the right to permit other compatible users, including the sale of materials, on the lands near the Material Site provided CBS determines that such uses will not unduly impair Purchaser's operations under this Agreement.

Should the Municipality enter into any other agreements regarding other material sites within the Granite Creek area, the other purchaser shall pay lease fee and royalties not less than amounts as set forth in Section II of this Agreement.



SECTION XI. PERMITS

- A. Purchaser must prepare and submit a Storm Water Pollution Prevention Plan (SWPPP). The plan shall be approved by CBS and the Alaska State Department of Environmental Conservation before work begins in the Material site.
- B. All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit, as it now exists or as modified in the future.
- C. Purchaser shall obtain any other permits required as needed to construct and operate at the Material Site.

SECTION XII. PASSAGE OF TITLE

All rights, title and interest in or to any material included in this Agreement shall remain with CBS until it has been paid for, or removed from the Material Site, provided however, that the right, title and interest in or to any material which has been paid for, but not removed from the Material Site by Purchaser within the period of the Agreement or any extension there shall vest in CBS.

SECTION XIII. EXPIRATION AND EXTENSION

This Agreement shall expire on April 1, 2016.

SECTION XIV. WARRANTIES

**THIS AGREEMENT IS MADE WITHOUT ANY WARRANTIES BY CBS, EXPRESS OR IMPLIED, AS TO THE QUANTITY, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, CONCERNING THE MATERIAL TO BE EXTRACTED UNDER AGREEMENT.**

SECTION XV. WAIVER

No agent, representative or employee of CBS has authority to waive any provision of this Agreement unless expressly authorized to do so, in writing, by the Municipal Administrator.

Southeast Earthmovers  
PURCHASER

*Jon McGraw*

Jon McGraw

STATE OF ALASKA )

) ss:

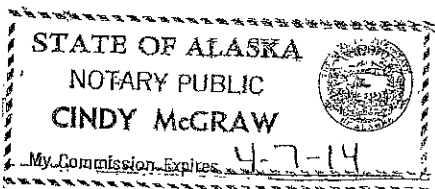
FIRST JUDICIAL DISTRICT )

On this 27<sup>th</sup> day of February, 2012, personally appeared before me Jon McGraw, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign the Purchase Agreement and does so freely and voluntarily.

*Cindy Miles*

Notary Public for Alaska

My Commission Expires: April 7, 2014



CITY AND BOROUGH OF SITKA

*Jim Dinley*

Jim Dinley

Municipal Administrator

STATE OF ALASKA )

) ss.

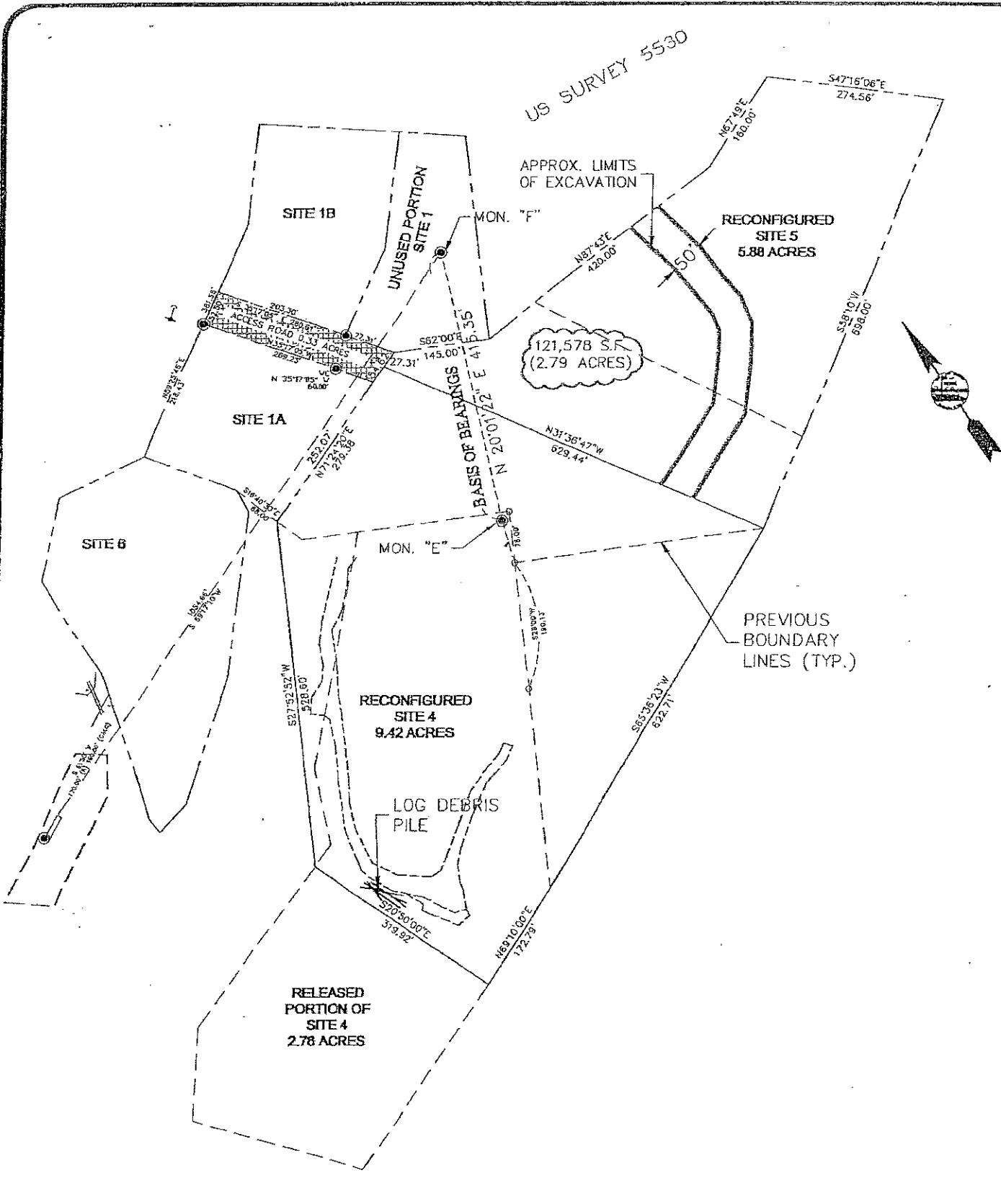
FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on the 28 day of February, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared Jim Dinley, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, and by signing this document verifies that he has been authorized to execute this document on its behalf, and he signs freely and voluntarily.

*Sara Peterson*

Notary Public for Alaska

My Commission expires: 4-15-2015



**City and Borough of Sitka**  
 DEPARTMENT OF PUBLIC WORKS  
 100 LINCOLN STREET • SITKA, ALASKA 99635  
 TEL (907) 747-1804 FAX (907) 747-3158

**GRANITE CREEK  
 RECONFIGURED  
 LEASE SITES 4 & 5**

DRAWN: PAR	SCALE: 1" = 200'
CHECKED: HRB	DATE: 12.19.00
DRAWING NAME: 4-5 RECON	
SHEET NO. 1 / 1	

CITY AND BOROUGH OF SITKA  
100 LINCOLN STREET  
SITKA, ALASKA 99835

**A G R E E M E N T**  
**MATERIAL SALE and LEASE**  
**OF**  
**MUNICIPAL PROPERTY**

The City and Borough of Sitka, represented by the Administrator or his authorized representative, hereinafter referred to as the Municipality, does hereby sell and/or lease; and

Jon McGraw  
Southeast Earthmovers  
PO Box 784  
Sitka, AK 99835

hereinafter called the Lessee, does hereby agree to lease the property designated herein, subject to the following terms and conditions:

**SECTION I. DESCRIPTION**

**A. LEASE AREA:**

Site 5 as shown on the plat of the Granite Creek Gravel Pit Lease areas dated March 22, 1985 and modified by the CBS Assembly on December 12, 2000. Lease area contains 5.88 acres more or less.

**B. TERMS**

1. The term of this lease is ten (10) years. An additional five (5) years may be granted if it is determined, after inspection by municipal staff, that there has been adherence to the approved reclamation plan and that it is in the best interests of the Municipality. Any extension must be approved by the Assembly.

2. The Lessee agrees to pay the following royalty fees for the material removed from the material site:

\$ 1.55 Per Cubic Yard

3. The Lessee agrees to pay the following rent for the lease of the property, as follows:

\$100.00 Per Acre Per Month for that acreage under rock pit development and \$100.00 per acre, per month for acreage used for rock processing equipment. The beginning, working area of the lease is 2.79 acres. Therefore, the beginning,

monthly lease payment is \$279.00 per month.

4. It is not the intent of the Municipality to allow indeterminate holding of lease areas without development. The Lessee shall be required to begin development within six (6) months of execution of this lease and pay a minimum of \$5,000 per year in royalty fees during the ten year term of this lease.

If active mining ceases for more than six months, this lease reverts to the City.

## SECTION II. PAYMENTS

### A. MATERIAL SALE:

1. Lessee shall be required to submit a yearly performance bond in the amount of \$25,000 issued by a Surety licensed to do business in Alaska. At the time each year that the pit cross sections are accomplished and Lessee is inspected for adherence to a reclamation plan, the Municipality shall release the prior year's bond, in writing and accept a new bond for the next year of operation. (See Section III, 1)

The purpose of said bond shall be to correct non-conforming conditions created by the Lessee. An example might be to do necessary reclamation work left undone or otherwise correct site problems such as drainage control. Said bond may also be used to pay for unpaid royalties or other costs fairly owed to the Municipality.

2. The bid royalty amount of \$1.55 per yard Royalty Fee shall be paid annually.
3. The lease rent payment may be paid in advance either monthly, yearly or for the full term of the lease.
4. Royalty payments shall be based on records required in Section III, and shall be submitted to the Municipality no later than the thirtieth (30th) working day following the completion of the annual survey.

Lessee shall pay royalties based upon surveyed cross sections of the active mining area.

## SECTION III. RECORDS

1. By June 30<sup>th</sup> of each year of this lease, the Lessee shall cause the lease area to be fully cross sectioned, by a registered surveyor, licensed to practice in the State of Alaska. The cross sections shall be certified by said surveyor and submitted to the Municipality. Royalty adjustments, if required will be based on surveyed quantities.

## SECTION IV. OPERATING REQUIREMENTS

### 1. Surveying --

Upon execution of this lease, the Lessee shall bear the responsibility to have the lease area surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the lease area or any survey lines nor witness tree to any survey corner or monument, shall be severed or removed, nor shall any survey corner or monument be damaged or destroyed. Any violation of this clause will require the Lessee to bear the expense of re-establishing the lines, corners, or monuments by a registered land surveyor.

establishing the lines, corners, or monuments by a registered land surveyor.

The Lessee shall also bear the responsibility of having the lease area, as it exists when the lease is signed, cross sectioned within thirty (30) days of lease execution and prior to the removal of any material. The purpose shall be to establish the beginning configuration of the lease area and base line to be used when the next annual cross section is accomplished.

The area applicable to the lease fee shall be determined as follows:

The initial and yearly survey of the pit shall locate the most advanced limit of clearing and stripping. At this point a line at right angle to the centerline of the pit shall be established between the sidelines of the lease area. The area between the clearing limit lease boundary and the line thus established shall determine the lease fee for the next year.

## 2. Erosion and Pollution Control

Road construction or operations in connection with this contract shall be conducted so as to avoid damage to streams, lakes or other water areas and lands adjacent thereto. Vegetation and materials shall NOT be deposited into any stream or other water area. Locations and/or improvements such as road crossings over streams shall be approved, in advance, by the Municipality and appropriate state and federal agencies.

All roads or other areas to be abandoned or an area ceases to be an active portion of the Lessee's operation shall be treated with such measures to prevent erosion and shall be reclaimed per the required reclamation plan. Any damages resulting from any failure to perform to these requirements shall be repaired by the Lessee to the satisfaction of the Municipality. This includes, but is not limited to waters defined in Title 5 - Fish and Game and Title 6 - Protection to Anadromous Fish; State of Alaska.

All pit mining and rock processing operations shall be performed in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP). This plan shall be prepared by the Lessee and approved by the City before any work begins in the lease area (including mobilization).

The SWPPP shall be prepared to EPA standards. The SWPPP may require the installation and maintenance of siltation control structures at the Lessee's expense

Should the Municipality determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to the Department of Environmental Conservation, the U.S. Fish and Wildlife Service, after all reasonable attempts have been made to have the Lessee correct the problems, this lease shall be void upon notification to the Lessee by the Municipality. The lease shall hold harmless the Municipality from any litigation whatsoever which may result from this action.

Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and the Lessee will, at their own expense, provide all proper drainage and routine settlement ponds for permanent uses. This is covered in the Reclamation Plan, as attached.

Construction equipment, aggregate stockpiles, etc shall not be stored within 25 feet of Granite Creek. The Lessee will make every effort to preserve the 25-foot stream buffer.

3. **Mining Plan**

Lessee shall perform mining operations in accordance with industry standards and in accordance with the following :

A. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12"x12" in size with the legend "Warning Steep Embankment" clearly displayed. They will be installed on metal sign posts. Signs shall be painted safety orange in color.

B. Back walls of rock cuts shall not be constructed steeper than 0.25 feet horizontal to 1.0 feet vertical.

C. A 10-foot wide horizontal bench shall be constructed for every 30 vertical feet of rock cut. The bench is intended to prevent rock fall from reaching the floor of the quarry.

D. Upon completion of a rock cut the backwall shall be scaled of all loose rock rubble.

E. All mining operations shall be conducted in accordance with industry standards. All storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.

4. **Reclamation**

Attached and appended to this agreement is Appendix A - Reclamation Plan - Granite Creek Material Site. All lessees shall be responsible for the adherence to said plan. The leaseholder shall demonstrate compliance to said reclamation plan on a yearly basis and substantial non-compliance shall be grounds for termination or cancellation of the affected lease.

The City reserves the right to implement additional environmental protection plans from time to time.

5. **Fire Protection**

The Lessee shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the lease area resulting from any and all operations involved under the provisions of this lease. The Lessee shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.

6. **Access Roads**

Before constructing any haul road, secondary or spur roads across Municipal lands, the Lessee shall obtain written approval of the location and construction standards of such roads from the Municipality.

Lessee shall access Lease Lot 5 via the public access easement. Lessee shall cooperate with the holder of Lease Lot 4 and the City to construct a stream crossing of Granite Creek at the public access easement. The stream crossing shall be designed to accommodate a 25-year storm event. Maintenance of the stream crossing shall be the joint responsibility of the holders of Lease Lots 4 and 5.

Upon completion of the term of this lease the stream crossing shall become the property of the City.

Maintenance of the main road, culverts and other such improvements providing access or available for common use by all Lessees shall be maintained by the Lessees at no expense to the Municipality

6. **General Conditions**

The Lessee shall maintain adequate supervision at all times when operations are in progress to insure that the terms and conditions of this contract and all applicable Federal, State and local laws, rules and regulations governing such operations are enforced. At all times, when operations are in progress, the Lessee or a person authorized by him to assume the responsibilities imposed by this contract, shall be present on the lease area.

The terms and conditions of this contract shall apply with equal force upon any agent, employee or contractor designated by the Lessee to perform any or all of the operations of severance, extraction or removal of the materials sold under this contract, and the Lessee shall be liable for non-compliance caused by any such agent, employee or contractor.

Sound engineering practices and procedures shall be adhered to at all times during rock removal operations;

Trees, stumps, overburden and any other debris shall be disposed of by burning (subject to ADEC approval) or burying in an authorized location and in a manner considered suitable by the Municipality representatives.

In working the land to effect the removal of the rock resource, the Lessee agrees to so manage that upon completion of the removal, a reasonable degree of level land is maintained, per the reclamation plan, from which material has been taken and no water impoundments are formed.

The Lessee shall coordinate his activities insofar as possible with the other Lessees who now or in the future may hold other, adjacent material sale agreements. Before removing material under any roadway or otherwise interrupting access to any other operation, the Lessee shall make arrangements satisfactory to the affected parties for coordinating operations. In the case where the affected parties cannot reach agreement, the Municipality shall be the sole arbitrator to reach a satisfactory result.

At the expiration of this contract, the Lessee shall notify the Director of Public Works, so that an inspection for release can be scheduled. This inspection shall include general clean up, compliance with the reclamation plan, removal of all Lessee's equipment and any other item felt a responsible element of any final inspection.

All responsibilities and liabilities of the Lessee shall remain in effect until this lease contract term has expired. This includes cleanup of site and compliance with all contract items.

7. The lease area may be used for the processing and storage of material removed from the lease area and for truck scales, rock crushers, and other such equipment necessary to produce marketable materials products. Other material incidental to the production of mineral products such as fillers, or coagulants needed for the



settlement ponds may be stored on the site, as needed. A temporary small one bay gravel equipment maintenance shop may also be allowed specifically for equipment used at the site.

Granite Creek is, in fact, a long term source of gravel and other mineral products. As such, it is not a contractor's storage yard area. Permanent or long term improvements such as garages and shops or other similar buildings and uses shall NOT be allowed. Further, storage of materials not associated with operation/maintenance of the lease area shall NOT be allowed.

Storage of construction debris, broken asphalt or any other solid waste is not permitted.

Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, the Purchasers operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M. daily. The Municipality reserves the right to restrict operations on weekends and holidays without liability to Lessee or its customers.

If the Lessee is forced to end, restrict or curtail his operations due to State or Federal law or regulations or for any other cause over which the Municipality has no control, the Municipality shall have no liability, whatsoever.

Lessee may not assign its rights under this lease or allow other parties to produce gravel material on the site without prior written approval of the Municipality.

#### **SECTION V. LIABILITY AND INSURANCE**

1. The Lessee shall indemnify the Municipality and hold it harmless from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the exercise of the privileges granted the Lessee by this contract, or arising out of any incident whatsoever which may occur on the lease site or commonly used facility. This includes but is not limited to damage to power lines, poles and facilities, telephone lines and poles, survey monuments, roads, bridges and culverts, pollution and/or damage to water systems, or personal injury.

In addition, Sitka shall be named as an additional insured on Lessee's Comprehensive Liability Insurance Policy.

2. The Lessee shall carry Workers' Compensation Insurance covering all employees and shall also carry \$1,000,000 general liability insurance, naming the Municipality as an additional insured, and take such measures as are reasonable to protect the general public from injury on the site.

#### **SECTION VI. IMPROVEMENTS AND OCCUPANCY**

1. Any improvements or transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by the Lessee in connection with this lease and within the lease area, shall be in accordance with plans approved by the Municipality. Improvement and facility safety (both design & operation) shall be

the responsibility of the Lessee not the Municipality. Lessee agrees to follow all applicable safety codes and regulations.

2. The Lessee shall; within sixty (60) days, after the expiration of termination date of this lease, remove all equipment and other personal property from the lease area, and pay the prescribed lease fees.

#### SECTION VII. INSPECTION

1. Authorized agents of the Municipality shall have access at all times to the lease area.
2. At all times, when construction or operations are in progress, the Lessee shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of the Lessee, any notices and instructions given by authorized Municipality personnel in regard to the performance under this contract, and to take such action thereon as is required by the terms of this contract.

#### SECTION VIII. TERMINATION AND SUSPENSION

1. This lease may be terminated by the Municipality if the Lessee breaches the contract and fails to correct this breach within thirty (30) days after written notice is served upon the Lessee.
2. Failure of the Lessee to take immediate action to correct unwarranted damage to natural resources may be corrected by the Municipality to prevent additional damage. Any cost incurred by the Municipality shall be paid by the Lessee.
3. This lease may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.

#### SECTION IX. RESERVATIONS

1. The Municipality reserves the right to lease additional sites in the Granite Creek Quarry area to other parties during the term of this lease.
2. The Municipality reserves the right to permit other compatible uses, including the sale of materials, on the lands near the lease area provided the Municipality determines that such uses will not unduly impair the Lessee's operations under this contract.
3. The Municipality reserves the right to implement additional management plans for the Granite Creek Lease area from time to time.

#### SECTION X. PERMITS

1. Any permits necessary for operations under this contract shall be obtained by the Lessee prior to commencing such operations.
2. All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit, as it now exists or as modified in the future.

**SECTION XI. PASSAGE OF TITLE**

1. All rights, title and interest in or to any material included in this lease shall remain with the Municipality until it has been paid for, or removed from the site, provided however, that the right, title and interest in or to any material which has been paid for, but not removed from the safe area by the Lessee within the period of the lease or any extension there of shall vest in the Municipality upon completion of the lease term.

**SECTION XII. EXPIRATION AND EXTENSION**

1. This lease shall expire April 1, 2011

**SECTION XIII. WARRANTIES**

1. THIS LEASE IS MADE WITHOUT ANY WARRANTIES BY THE MUNICIPALITY, EXPRESS OR IMPLIED, AS TO THE QUANTITY, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, CONCERNING THE MATERIAL TO BE EXTRACTED UNDER CONTRACT.

**SECTION XIV. WAIVER**

1. No agent, representative or employee of the Municipality has authority to waive any provision of this agreement unless expressly authorized to do so, in writing, by the Administrator.

IN WITNESS WHEREOF, on this 9<sup>th</sup> day of April, 2001

*Southeast Earthmovers Inc.*  
By *[Signature]*  
Lessee

CITY AND BOROUGH OF SITKA

By *[Signature]*  
Administrator

(SEAL)

ATTEST:

By *[Signature]*  
Municipal Clerk