

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2013-03

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA CONSENTING
TO THE ASSIGNMENT OF AGREEMENT FOR MATERIAL
SALE FROM MUNICIPALLY OWNED PROPERTY TO S&S GENERAL
CONTRACTORS AND EQUIPMENT RENTALS, INC. FROM
SOUTHEAST EARTHMOVERS, INC.**

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code ("SGC").
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 circumstance shall not be affected.
3. **PURPOSE.** The purpose of this ordinance is to consent to the assignment of the Agreement For Material Sale From Municipally Owned Property ("Current Agreement") from Southeast Earthmovers, Inc. ("Lessee") to S&S General Contractors and Equipment Rentals, Inc. ("S&S" or "Assignee"). City and Borough of Sitka ("CBS") is the Lessor/Owner of municipal property at Site 5 of the Granite Creek Industrial Area. CBS consents to the assignment of the Current Agreement for the remainder of the term, which terminates on April 1, 2016.

Southeast Earthmovers, Inc. has had an agreement since April 2001 ("Prior Agreement") with CBS to lease municipal property to operate a quarry at Site 5 of the Granite Creek Industrial area. On February 14, 2012, the Assembly approved the Current Agreement, ending on April 1, 2016.

Southeast Earthmovers, Inc. had not paid all monies owed under the Prior Agreement and the Current Agreement. It has signed a Promissory Note and Confession Of Judgment Without Action ("Confession") regarding the Prior Agreement arrearages. It also has provided payment through S&S for past payments owed on its Current Agreement.

Southeast Earthmovers, Inc. has requested assigning to S&S its Current Agreement, including any amendments (e.g. Amendment No. 1), Promissory Note and Confession. S&S intends to continue to use the municipal property in accordance with the Current Agreement, and to explore expanding the rock extraction in the quarry as

well as insuring past due arrearages and future payments are paid in full. Increased rock extraction is also expected, which will result in greater royalty revenue to CBS.

Assignment is authorized at Section IV.M of the Current Agreement. In accordance with this section, the proposed Assignment Agreement is attached. The Assignment Agreement has not been executed, pending the Assembly's Consent. The Lessee and Assignee warrant that the final version of the proposed Assignment Agreement. However, nothing in this Consent To Assignment Of Agreement For Material Sale From Municipally Owned Property ("Consent") shall be construed to obligate S&S to consummate the assignment. It is understood and acknowledged that the execution and delivery of this Consent is in anticipation of the consummation of the assignment, which has not yet been effected.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, that:

- A. The assignment of the Agreement For Material Sale From Municipally Owned Property ("Current Agreement") regarding Site 5 of the Granite Creek Industrial Area from Southeast Earthmovers, Inc. to S&S, is authorized in accordance with the Agreement at Section IV.M., upon S&S fulfilling the contingent requirements, as stated in the attached Consent;
- B. The contingent requirements that must be performed by Lessee shall include S&S signing the attached Promissory Note and Confession, among other requirements set out in the Consent;
- C. Assignee S&S shall be bound by the same terms and conditions of the Current Agreement including any amendments (e.g., Amendment No. 1), upon Lessee Southeast Earthmovers, Inc. and S&S executing the Assignment Agreement to the Consent; and
- D. The Municipal Administrator is authorized to execute the attached Consent upon S&S complying with the contingent requirements, as stated in the Consent.

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

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 22nd day of January, 2013.


Mim McConnell, Mayor

ATTEST:


Sara Peterson, Acting Municipal Clerk