

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2013-04

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING AMENDMENT NO. 1 TO THE AGREEMENT FOR MATERIAL SALE FROM MUNICIPALLY OWNED PROPERTY WITH SOUTHEAST EARTHMOVERS, INC. AT SITE 5 OF THE GRANITE CREEK INDUSTRIAL AREA

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 April 9, 2001, Southeast Earthmovers, Inc. entered into an Agreement Material Sale and Lease Of Municipal Property ("Prior Agreement") with the City and Borough of Sitka ("CBS") for material removed from Granite Creek Gravel Pit Site 5. The term of the lease was for 10 years with an additional 5 years upon Assembly approval.

On June 28, 2011, the Assembly approved Agreement For Material Sale And Lease Of Municipally Owned Property ("Current Agreement"), which extends the lease of the Granite Creed Gravel Pit Site 5 until April 1, 2016.

On July 17, 2012, Southeast Earthmovers, Inc. was sent a letter by CBS concerning arrearages of \$107,375.21 in royalties and land lease payments from the Prior Agreement. The letter also discussed arrearages of royalty and land lease payments for the months under the Current Agreement.

On November 30, 2012, Southeast Earthmovers, Inc. was sent another letter by CBS about its failure to pay arrearages owed to CBS. In that letter, CBS proposed as an alternative to terminating the Current Agreement that Southeast Earthmovers, Inc. sign a Promissory Note, Confession of Judgment Without Action ("Confession"), and an Amendment No. 1 to the Current Lease which requires Southeast Earthmovers, Inc. to remain current on the payments outlined in the Promissory Note and Confession, as well as make full payment on the Current Agreement arrearages.

On December 11, 2012, Southeast Earthmovers, Inc. signed Amendment No. 1, the Promissory Note and Confession. Payment was made on behalf of Southeast Earthmovers, Inc. by S&S General Contractors & Equipment Rentals, Inc. for the Current


Agreement arrearages.

Assembly approval is required to authorize the Municipal Administrator to sign Amendment No. 1 to Current Agreement, and for the Municipal Attorney to sign the Confession, in lieu of terminating the Current Agreement.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Amendment No. 1 is approved, and the Municipal Administrator is authorized to sign Amendment No. 1, and the Municipal Attorney is authorized to sign the Confession.

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