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## MEMORANDUM

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**To:** Jim Dinley, Administrator  
Mayor and Members of the Assembly

**From:** Michael Harmon P.E., Director of Public Works 

**Reviewed:** Jay Sweeney, Finance Director   
Mellissa Cervera, Contract Coordinator

**Date:** December 31, 2012

**Subject:** Southeast Earthmovers Lease Assignment to S&S General Contractors  
Granite Creek Site 5

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### Background:

Southeast Earthmovers Inc. (SEEM) has requested a lease assignment to S&S General Contractors (S&S) due to the fact that they are the primary user of the pit and are better positioned to pay the royalties in a timely manner. SEEM has failed to pay the royalty payments for rock removed from Granite Creek Site 5 under the prior lease agreement and struggle to stay current on their new lease. The nonpayment for the rock removed totaled just over \$107,000 in 2012. In addition to nonpayment of royalties, SEEM has failed to pay the minimum monthly payment required for the currently active lease which totals \$3,750.03 plus interest. In order to come current on this lease and avoid termination, SEEM has paid the back debt on the current lease, and agreed to pay the back debt on the prior lease over a 12-month period via a Promissory Note, Confession of Judgment Without Action ("Confession"), and Lease Amendment #1. If this payment plan and assignment is approved by the Assembly, SEEM will be current on their lease and the lease will be assigned to S&S.

S&S was the primary user of Granite Creek Site 5 in 2011 through 2012, producing rock for the Airport Runway Extension Safety Area Project. Site 5 has remained relatively dormant since the completion of this project. S&S has since secured the contract to provide rock for the Sitka Breakwater Project and would like to utilize Site 5 as the primary source. The lease to SEEM runs through April 1, 2016 with a \$1.55 per cubic yard royalty rate and minimum \$5,000 per year payment.

In addition to the lease assignment, S&S will be subject to the Promissory Note, Confession of Judgment, and Amendment #1. Amendment #1 specifies that the current lease may be terminated immediately if past payments on the prior lease are not timely paid in accordance with the Promissory Note and Confession.

### Analysis:

S&S has a good track record of paying what is owed to CBS and is one of the largest rock suppliers in Southeast Alaska. S&S is an excellent candidate to create high royalty production given they have secured the contract for the breakwater and other projects in Sitka (such as the Centennial Hall Parking Lot Project). By way of transferring the current lease to S&S, we

believe it will benefit the General Fund in terms of securing past royalty debts quicker (versus potential legal action against SEEM).

In addition, CBS is working with S&S to provide a unique opportunity for S&S to offer services to CBS in place of making debt payments. As such, we are currently working on a potential option under the current lease for S&S to remove rock for the Electric Department Diesel Turbine Generation Project against debt owed under the Promissory Note and Confession. Such a trade for services may yield significant cost savings to CBS on this project.

This lease assignment will allow S&S to operate Granite Creek Site 5 until the lease expires in 2016. At this time, the lease provides the opportunity to renew. S&S has expressed interest in potentially operating an overburden site within the Granite Creek Site 5 once the rock is removed. Additional overburden sites are a fundamental need in Sitka and are in line with our continued remediation goals for quarries. Transitioning a quarry to an overburden site not only provides a fundamental service to the community but also creates new land opportunities as demonstrated with the golf course.

**Fiscal Note:**

SEEM has signed a Promissory Note for \$107,375.21, plus interest to address the nonpayment of the rock removal royalties based on the prior lease. In addition, SEEM has paid \$3,918.38 through S&S in back minimum monthly payments under the current lease, and made the first payment for December under the Promissory Note. If the Assembly approves these documents for signature, including the ordinance allowing for lease assignment, SEEM will have paid all owed under the current lease and in compliance with the payment schedule under the Promissory Note and Confession regarding the prior lease. The reassignment of the lease to S&S will carry all financial obligations forward to be assigned to S&S including but not limited to the Promissory Note, Confession of Judgment, and Amendment #1.

The lease includes a minimum monthly royalty rate of \$416.67 (\$5,000 annually). The rock royalty is set at \$1.55 per cubic yard which is the current standard rate in Granite Creek Industrial Park. This royalty rate was researched when the leases in the Granite Creek Industrial Park were renewed in 2012 and will be looked at again when the leases are either extended or advertised for bid. The current Granite Creek Industrial Park royalty rate is close to the average price in Southeast Alaska and is set based on location, services provided, and quality of the rock. We are basically "average" in terms of these royalty factors including rock quality.

**Recommendation:**

Pass the ordinance, accept the Assignment Agreement, and authorize the Administrator to execute the assignment documents associated with Southeast Earthmovers Inc. lease for Granite Creek Site 5 to S&S General Contractors as detail in this agenda item, including the Consent to Assign, Promissory Note and Confession.

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2 **Sponsor: Administrator**  
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5 **CITY AND BOROUGH OF SITKA**

6  
7 **ORDINANCE NO. 2013-03**  
8

9 **AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA CONSENTING**  
10 **TO THE ASSIGNMENT OF AGREEMENT FOR MATERIAL**  
11 **SALE FROM MUNICIPALLY OWNED PROPERTY TO S&S GENERAL**  
12 **CONTRACTORS AND EQUIPMENT RENTALS, INC. FROM**  
13 **SOUTHEAST EARTHMOVERS, INC.**  
14

15 **1. CLASSIFICATION.** This ordinance is not of a permanent nature and is not  
16 intended to become a part of the Sitka General Code (“SGC”).  
17

18 **2. SEVERABILITY.** If any provision of this ordinance or any application to  
19 any person or circumstance is held invalid, the remainder of this ordinance and  
20 application to any person or circumstance shall not be affected.  
21

22 **3. PURPOSE.** The purpose of this ordinance is to consent to the assignment of  
23 the Agreement For Material Sale From Municipally Owned Property (“Current  
24 Agreement”) from Southeast Earthmovers, Inc. (“Lessee”) to S&S General Contractors  
25 and Equipment Rentals, Inc. (“S&S” or “Assignee”). City and Borough of Sitka (“CBS”)  
26 is the Lessor/Owner of municipal property at Site 5 of the Granite Creek Industrial Area.  
27 CBS consents to the assignment of the Current Agreement for the remainder of the term,  
28 which terminates on April 1, 2016.  
29

30 Southeast Earthmovers, Inc. has had an agreement since April 2001 (“Prior  
31 Agreement”) with CBS to lease municipal property to operate a quarry at Site 5 of the  
32 Granite Creek Industrial area. On February 14, 2012, the Assembly approved the Current  
33 Agreement, ending on April 1, 2016.  
34

35 Southeast Earthmovers, Inc. had not paid all monies owed under the Prior  
36 Agreement and the Current Agreement. It has signed a Promissory Note and Confession  
37 Of Judgment Without Action (“Confession”) regarding the Prior Agreement arrearages.  
38 It also has provided payment through S&S for past payments owed on its Current  
39 Agreement.  
40

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

44 the Current Agreement, and to explore expanding the rock extraction in the quarry as  
45 well as insuring past due arrearages and future payments are paid in full. Increased rock  
46 extraction is also expected, which will result in greater royalty revenue to CBS.

47  
48 Assignment is authorized at Section IV.M of the Current Agreement. In  
49 accordance with this section, the proposed Assignment Agreement is attached. The  
50 Assignment Agreement has not been executed, pending the Assembly's Consent. The  
51 Lessee and Assignee warrant that the final version of the proposed Assignment  
52 Agreement. However, nothing in this Consent To Assignment Of Agreement For  
53 Material Sale From Municipally Owned Property ("Consent") shall be construed to  
54 obligate S&S to consummate the assignment. It is understood and acknowledged that the  
55 execution and delivery of this Consent is in anticipation of the consummation of the  
56 assignment, which has not yet been effected.

57  
58 **4. ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly  
59 of the City and Borough of Sitka, that:

- 60
- 61 A. The assignment of the Agreement For Material Sale From Municipally  
62 Owned Property ("Current Agreement") regarding Site 5 of the Granite  
63 Creek Industrial Area from Southeast Earthmovers, Inc. to S&S, is  
64 authorized in accordance with the Agreement at Section IV.M., upon S&S  
65 fulfilling the contingent requirements, as stated in the attached Consent;
  - 66
  - 67 B. The contingent requirements that must be performed by Lessee shall  
68 include S&S signing the attached Promissory Note and Confession, among  
69 other requirements set out in the Consent;
  - 70
  - 71 C. Assignee S&S shall be bound by the same terms and conditions of the  
72 Current Agreement including any amendments (e.g., Amendment No. 1),  
73 upon Lessee Southeast Earthmovers, Inc. and S&S executing the  
74 Assignment Agreement to the Consent; and
  - 75
  - 76 D. The Municipal Administrator is authorized to execute the attached Consent  
77 upon S&S complying with the contingent requirements, as stated in the  
78 Consent.
- 79  
80  
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82           **5.     EFFECTIVE DATE.** This ordinance shall become effective on the day  
83 after the date of its passage.

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86           **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and  
87 Borough of Sitka, Alaska this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

92  
93 **ATTEST:**

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95  
96  
97

\_\_\_\_\_  
Sara Peterson, Deputy Municipal Clerk

After Recording Return To:  
Municipal Clerk  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, AK. 99835

**CONSENT TO ASSIGNMENT OF AGREEMENT  
FOR MATERIAL SALE FROM  
MUNICIPALLY OWNED PROPERTY**

City and Borough of Sitka (“CBS” or “Owner”), 100 Lincoln Street, Sitka, Alaska 99835, entered into an Agreement For Material Sale From Municipally Owned Property (“Agreement”) with Southeast Earthmovers, Inc. (“Lessee”), P.O. Box 784, Sitka, Alaska 99835, for lease of municipal property and extraction and sale of materials located on that property described as Site 5 of Granite Creek Industrial Area, executed in February 2012. The Agreement terminates on April 1, 2016 .

Lessee has requested assignment of the Agreement to S&S General Contractors & Equipment Rentals Inc. (“S&S” or “Assignee”), PO Box 1440, Sitka, Alaska 99835.

CBS consents to the assignment of the Agreement to S&S in accordance with Section IV.M of the Agreement, with all rights, title, interest, obligations, and liabilities. S&S shall be subject to all terms and conditions of the Agreement, including any amendments (e.g., Amendment No. 1). This Consent To Assignment Of Agreement For Material Sale From Municipally Owned Property (“Consent”) shall not release S&S or

Southeast Earthmovers, Inc. from any obligations and liabilities as Assignee or Lessee under the Agreement, as further specified in the Assignment Agreement.

In accordance with Section IV.M of the Agreement regarding assignment, the Lessee and Assignee have submitted the terms of the proposed assignment or production agreement in the attached Assignment Agreement. Section IV.M also requires the time of assignment and potential volumes of production prior to approval of such an assignment. As far as the volumes of production, Assignee has been the primary user of Granite Creek Site 5 in 2011 and 2012. Assignee has a contract for more rock for the Sitka Breakwater project, and intends to use rock from the quarry. Regarding the time of the assignment, the proposed Assignment has not been executed, pending the Owner's Consent. The Lessee and Assignee warrant that the final version of the Assignment shall be substantially similar to Attachment Assignment Agreement. However, nothing in this 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, but is expected to soon occur.

This Consent is contingent upon the following requirements being met before any execution of this document:

1. S&S signs the Promissory Note and Confession Of Judgment Without Action ("Confession"), assuming arrearages owed to CBS by Southeast Earthmovers, Inc. based on the Prior Agreement regarding Granite Creek Site 5, in the amount of \$107,375.21 plus interest at 12%/annum;

2. S&S is to provide the following documented proof as outlined in the Agreement:
  - a. Payment bond required by the Agreement at Section II; and
  - b. All insurances required by the Agreement at Section VI, to remain in effect and provide all required coverage without any gaps, including any warranties of services and material and against any claims as specified in the Agreement;
3. S&S shall provide copies of any required licenses, permits, plans and certificates in order to perform under the Agreement; and
4. S&S shall provide the name and address of the official contact of S&S, who shall receive all future notices required by the Agreement.

This Consent is also based on the Assignee and Lessee providing the following assurances by signing this Consent:

1. S&S and Southeast Earthmovers, Inc. will be liable under the Agreement in accordance with Assignment Agreement;
2. S&S affirms that they are legally bound by the Agreement and that it will comply with all the terms and conditions, royalty fees and prices, contained in the Agreement;
3. S&S and Southeast Earthmovers, Inc. agree that they are liable to defend all, indemnify and hold harmless CBS pursuant to indemnity obligations set forth in the Liability and Indemnification at Section V of the Agreement, as further described in the Assignment Agreement; and
4. S&S and Southeast Earthmovers, Inc. agree that they are liable to defend all, indemnify and hold harmless CBS pursuant to any claims, actions, or damages arising from this Consent.

Assignee shall also record and pay for the recording of this Consent.



This Consent is subject to approval by the City and Borough of Sitka Assembly before it becomes effective.

CITY AND BOROUGH OF SITKA

\_\_\_\_\_  
Jim Dinley, Municipal Administrator

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: \_\_\_\_\_

SOUTHEST EARTHMOVERS, INC.

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

STATE OF ALASKA                    )  
  ) ss:  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, 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 by signing this agreement, swear or affirm that he is the President of Southeast Earthmovers, Inc. and is authorized to sign this document, and does so freely and voluntarily.

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

S&S GENERAL CONTRACTORS &  
EQUIPMENT RENTALS, INC.

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

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: \_\_\_\_\_

## ASSIGNMENT AGREEMENT

### Parties

This Assignment Agreement ("Agreement") is by and between Southeast Earthmovers Inc. (referred to herein as "Assignor"), an Alaskan Corporation, and S&S General Contractors and Equipment (referred to herein as "Assignee"), an Alaskan Corporation.

### Recitals

A. Assignor leases from the City and Borough of Sitka ("CBS"), 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, containing 5.88 acres, more or less ("Material Site"), pursuant to the terms and conditions set forth in that certain Agreement for Material Sale & Lease of Municipal Property dated February 23, 2012, between CBS and Assignor in the form attached hereto as Exhibit A ("Prime Lease").

B. Assignor wishes to assign all of its rights and interest under the Prime Lease to Assignee, and Assignee wishes to assume Assignor's obligations under the Prime Lease, pursuant to the terms and conditions contained in this Agreement and at all time subordinate and subject to the terms and conditions imposed by the Prime Lease.

### Consideration

For good, valuable and sufficient consideration received and to be received, the parties have agreed and hereby agree as follows:

### Terms and Conditions

1. Assignment of Rights and Assumption of Obligations. Assignor hereby assigns, transfers, and conveys to Assignee, and Assignee hereby assumes all of Assignor's rights, duties and obligations under the Prime Lease,
2. Condition of Material Site. Assignor makes no warranties, express or implied, concerning the condition of the Material Site. Assignee accepts the Material Site in its present condition.
3. Payments under Prime Lease and Promissory Note. In consideration for the assignment herein, Assignee shall assume the responsibility from Assignor of paying the past due quarried rock royalty payments due to 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. Assignee shall also sign and comply with the attached Promissory Note and Confession Of Judgment Without Action related to that past due quarried rock royalty payments.

Assignee shall also assume the responsibility from Assignor of paying the past due quarried rock royalty payments due to the CBS related to the Prime Lease plus 12%/annum, to be completely paid directly to the CBS upon execution of this Agreement.

Additionally, Assignee shall pay all future rent and royalty fees as required by the Prime Lease directly to CBS in accordance with the Prime Lease, or be subject to default as provided under the Prime Lease, as well as interest at 12%/annum and other legal remedies as provided by the Prime Lease and Alaska law.

4. Taxes. Assignee shall timely satisfy all applicable sales taxes and leasehold property taxes associated with the Material Site for the period after the effective date of this Agreement and for any business operations conducted therein by Assignee.

5. Indemnification. Assignee will indemnify Assignor and hold it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to the Material Site to the same extent that Assignor is required to indemnify CBS under the Prime Lease; provided that Assignee will have no obligation to indemnify Assignor or hold it harmless from any claims, actions, damages, liability or expenses in connection with loss of life, personal injury and/or damage to the Material Site to the extent such claims, actions, damages, liability or expenses arise from or relate to any act or failure to act by any person prior to the commencement of the Term. Assignor will indemnify, defend and hold Assignee harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to the Material Site to the same extent that Assignor is required to indemnify CBS under the Prime Lease for any act or failure to act by any person prior to the commencement of the Term.

6. Conflict. In the event any provision of this Agreement should conflict with the Prime Lease, the Prime Lease shall control.

7. Assignment of Subletting. Assignee shall have the right and the power to voluntarily assign, transfer, encumber, sell, convey or sublease any of its right, title or interest in or to this Agreement or the Material Site in accordance with the terms of the Prime Lease.

8. Governmental Regulations. Assignee shall, at Assignee's sole cost and expense, comply with all the requirements of all municipal, borough, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the Batch Plant Premises and Assignee's operations thereon.

9. General Provisions.

9.1 Successors. All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties.

9.2 Waiver. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition

for any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver be in writing.

9.3 Entire Agreement. This Agreement and all exhibits hereto sets forth all covenants, promises, agreements, conditions and understanding between Assignor and Assignee concerning the Material Site and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Assignor or Assignee unless reduced to writing and signed by them.

9.4 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.5 Independent Counsel. Each party to this Agreement acknowledges that it has enjoyed the advice and representation of competent independent legal, business, tax and financial counsel (or opportunity to seek same) in negotiating, entering into and executing this Agreement. The fact that this Agreement may have been drafted in whole or in part by one such party's counsel shall not cause any party of this Agreement to be construed against such party.

9.6 Warranties of Authority. Each party and natural person who executes this Agreement on behalf of such party acknowledges, warrants and represents for the benefit of the other party to this Agreement that such person is duly authorized and empowered to execute this Agreement on behalf of such party and that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable and binding against such party in accordance with its terms and conditions.

9.7 Attorney's Fees and Legal Costs. All of the attorney's fees and legal costs incurred by the respective parties in negotiating and forming this Agreement shall be borne by the respective parties. All reasonable attorney's fees and legal costs actually incurred by any party to this Agreement to enforce any obligations or any other party under this Agreement or any instruments executed in connection herewith shall be paid to the prevailing party by the other party.

9.8 Recording. Assignee shall not record this Agreement without the written consent of Assignor. Upon request of Assignee, Assignor shall execute and deliver to Assignee a Memorandum of Assignment in recordable form satisfactory to Assignee confirming Assignee's rights under the Prime Lease. Assignee shall pay costs of preparation and recording of any Memorandum of Assignment.

9.9 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Alaska. Venue shall be vested in the Superior Court at Sitka, Alaska.

**Formation**

Assignor and Assignee have executed, delivered and formed this Agreement, effective the \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date").

Assignor:

Southeast Earthmovers Inc  
An Alaskan Corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Assignee:

S&S General Contractors and Equipment Rentals, Inc  
An Alaskan Corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

FOR CONSIDERATION RECEIVED relating to the assignment of the Agreement For Material Sale From Municipally Owned Property, dated February 2012 ("Current Agreement"), from Southeast Earthmovers, Inc. by City and Borough of Sitka ("CBS") to S&S General Contractors and Equipment Rentals, Inc., P.O. Box 1440, Sitka, Alaska 99835 (referred to as "Debtor"), Debtor signs this Promissory Note ("Note") relating to past due quarried rock royalty payments due to the CBS related to Agreement Material And Lease Of Municipal Property ("Prior Agreement") between Southeast Earthmovers, Inc. (Prior Debtor) and CBS, 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 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 assignment of the 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 codes, permits, plans, or zoning code provisions; 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
3. Apply any payments currently due to Debtor by CBS.

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 that 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.

\_\_\_\_\_  
Timothy Eddy, President  
S&S General Contractors and Equipment  
Rentals, Inc.

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, Timothy Eddy, 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 S&S General Contractors and Equipment Rentals, Inc., and affirms by signing this document to be authorized to sign on behalf of S&S General Contractors and Equipment Rentals, 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**

<b>CITY AND BOROUGH OF SITKA,</b>	)	
	)	
	)	<b>Plaintiff,</b>
	)	
<b>vs.</b>	)	
	)	
<b>S&amp;S GENERAL CONTRACTORS AND</b>	)	
<b>EQUIPMENT RENTALS, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	<b>Case No. 1SI-___ - ____ CI</b>

---

**CONFESSION OF JUDGMENT WITHOUT ACTION**

1. Pursuant to Alaska R. Civ. P. 57(c), S&S General Contractors and Equipment Rentals, 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.

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

**VERIFICATION OF CONFESSION OF JUDGMENT**

I, Timothy Eddy, President for S&S General Contractors and Equipment Rentals, 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 S&S General Contractors and Equipment Rentals, Inc., based on this Confession Of Judgment Without Action.

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

\_\_\_\_\_  
Timothy Eddy, President  
S&S General Contractors and Equipment  
Rentals, Inc.

**STATE OF ALASKA** )  
 ) ss.  
**FIRST JUDICIAL DISTRICT** )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, Timothy Eddy, 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 S&S General Contractors and Equipment Rentals, Inc., and affirms by signing this document to be authorized to sign on behalf of S&S General Contractors and Equipment Rentals, Inc., 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:

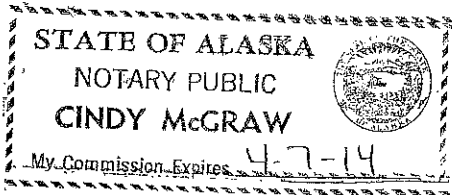
FIRST JUDICIAL DISTRICT )

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 Miller*

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.

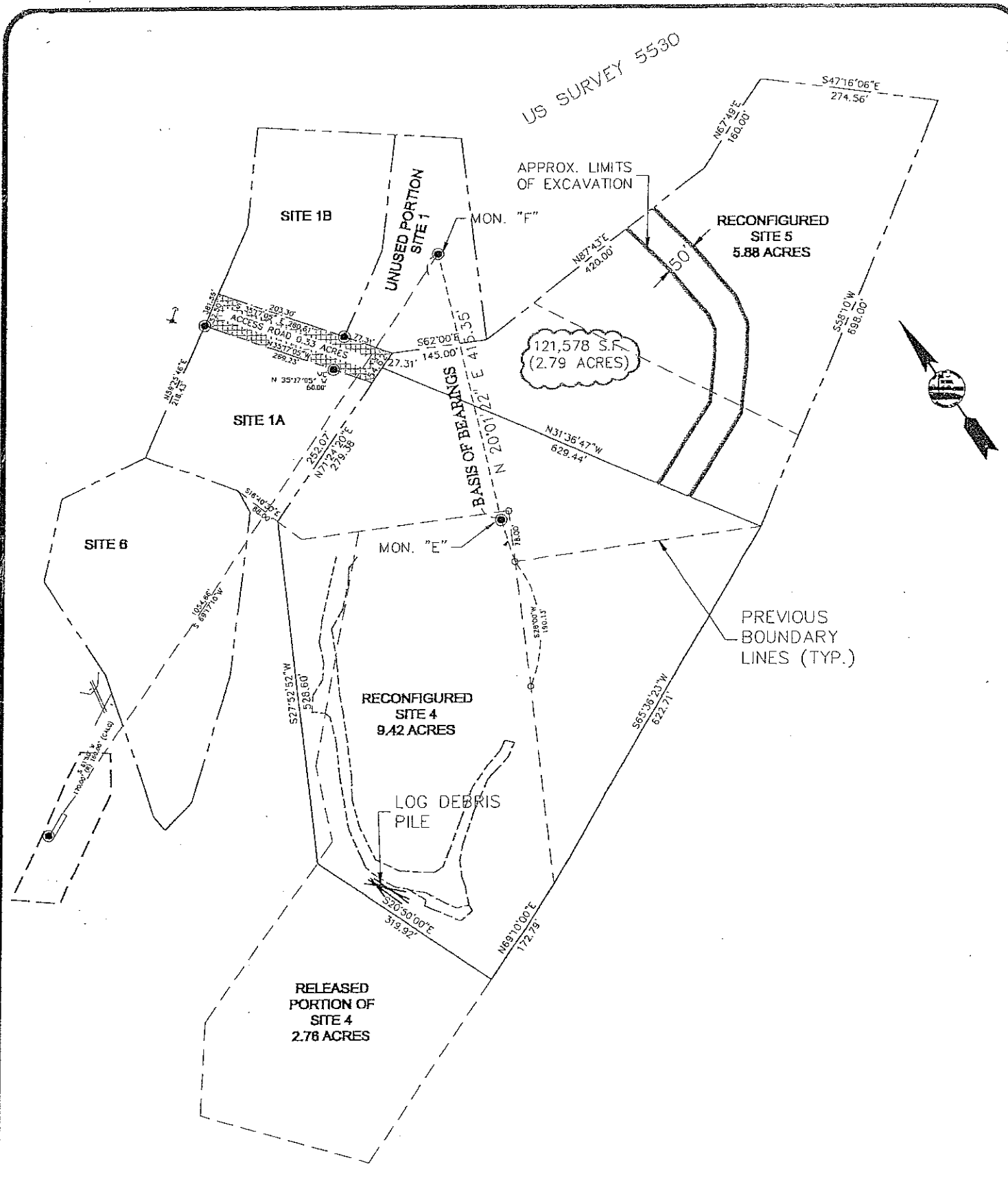
FIRST JUDICIAL DISTRICT )

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



US SURVEY 5530

APPROX. LIMITS OF EXCAVATION

RECONFIGURED SITE 5  
5.88 ACRES

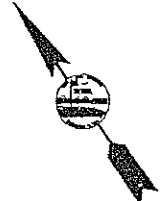
121,578 S.F.  
(2.79 ACRES)

RECONFIGURED SITE 4  
9.42 ACRES

LOG DEBRIS PILE

RELEASED PORTION OF SITE 4  
2.78 ACRES

PREVIOUS BOUNDARY LINES (TYP.)



**City and Borough of Sitka**  
DEPARTMENT OF PUBLIC WORKS  
100 LINCOLN STREET • SITKA, ALASKA 99835  
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		