

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-04

AN ORDINANCE AUTHORIZING A 10-YEAR MATERIAL SALE & LEASE AGREEMENT WITH McGRAW'S CONSTRUCTION REGARDING MUNICIPAL PROPERTY AT QUARRY TRACTS 2 AND 3 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 ("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 circumstances shall not be affected.

3. **PURPOSE.** McGraw's Construction (Lessee) has had an agreement with the City and Borough of Sitka (Lessor) to lease municipal property to operate a quarry as well as a disposal site for overburden waste disposal, including trees, stumps, brush, and other debris at the Granite Creek Industrial area since November, 2001, that included two 5-year extensions options which were executed. The Lessee has continued in "hold-over" while a new agreement has been negotiated.

The attached Agreement For Material Sale & Lease Of Municipal Property ("Agreement") has a term of 10 years, beginning February 15, 2012. As part of the consideration for this 10 year Agreement, the Lessee will allow public access to other CBS future quarry sites through this lease area.

Pursuant to Sitka Home Rule Charter at Art. 3.01 and SGC 18.12.010, Assembly approval by ordinance is required to approve any lease of municipal property, which is included in this agreement. By approving this lease, the Assembly authorizes the Municipal Administrator to execute the Agreement. The Agreement is attached to this Ordinance as Exhibit A.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Municipal Administrator is authorized to execute the attached Agreement For Material Sale & Lease of Municipal Property between City and Borough of Sitka and McGraw's Construction.

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

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46 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
47 Sitka, Alaska this 14th of February, 2012.

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Cheryl Westover, Mayor

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51 **ATTEST:**

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53 Colleen Ingman, MMC

54 Municipal Clerk

MEMORANDUM

To: James Dinley, Administrator
Mayor Westover and Members of the Assembly

From: Michael Harmon, Director of Public Works *MH*
Stephen L. Weatherman P.E., Municipal Engineer *SLW*

Reviewed: Jay Sweeney, Finance Director
Tammy O'Neill, Contract Coordinator *TO*

Date: January 18, 2012

Subject: Agreement Material Sale Agreement and Lease of Municipal Property –
Quarry Site 2 & 3, Granite Creek Industrial Area

Background:

McGraw Construction has been operating Quarry Sites 2 & 3 as a overburden waste disposal site from November 20, 2001 to the present. McGraw Construction is currently up to date on material payments. The quarry is currently being used to provide a land clearing landfill to accept overburden, trees, stumps, brush and other debris from private development and CBS projects. McGraw Construction has requested a 10 year lease extension. The original overburden disposal site lease agreement allowed for a 5 year extension however McGraw Construction will be allowing public access to other CBS future quarry sites through this lease area in return for the longer 10 year lease. This extension is the one extension allowed with the current agreement. The operation of the quarry is in general compliance with the Reclamation Plan and has met the requirements of the Storm Water Pollution Prevention Plan.

The overburden disposal site lease was first developed in 2005 to meet a need for a disposal site for overburden and other construction or land clearing debris. Previously the CBS had operated overburden disposal sites however the sites had filled or were converted to the Sea Mountain Golf Course. The plan that was developed has no CBS costs and generates revenue from the disposal of the material. The disposal site has operated for 5 years and has provided a positive impact to the local economy. All users of the disposal site pay the same rate so it is fair to all.

The lessee of the quarry site McGraw Construction is responsible for the operation and maintenance of the Storm Water Pollution Prevention Plan (SWPPP) mandated for the use of the quarry site. Our testing of water quality of Granite Creek has shown that the quarry operators have been doing a good job in controlling sediment transport through their SWPPP.

The proposed Material Sale Agreement has been developed to address various issues that have come up during the life of the current leases.

- The new agreement specifies more frequent methods of measuring material removed for royalty payments.
- The new agreement requires a performance bond to provide a guarantee for payment.
- The new agreement form will be used in the future for all of the material sales at each quarry currently operating and new quarries being developed for lease.
- Each of the current leases has a different royalty amount which will be adjusted to the \$1.55 rate for all quarries in the Granite Creek Quarries.
- The insurance requirements have increased for the quarries near Harbor Mountain Road due to public liability and been reduced for the quarries not adjacent to the public roadways.

Fiscal Note:

McGraw Construction royalty payment rate to CBS has been increased to \$1.55 per cubic yard in place for rock material removed to be consistent with other Granite Creek quarries. The lease also includes waste material disposal at \$3.30 per cubic yard. The disposal rate may be increased at 3% each year annually on January 1. The royalty to CBS for the disposal is \$0.50 per cubic yard placed in the landfill paid monthly.

Recommendation:

Authorize the Administrator to execute a Agreement Material Sale Agreement and Lease of Municipal Property with McGraw Construction from February 15, 2012 to January 1, 2022 with a royalty rate of \$1.55 per cubic yard in place of material removed from the site and a disposal royally rate of \$0.50 per cubic yard placed.

**AGREEMENT
FOR MATERIAL SALE &
LEASE OF MUNICIPAL PROPERTY**

City and Borough of Sitka ("CBS") agrees to sell certain materials and lease municipal property to McGraw's Construction, P.O. Box 185, Sitka, AK 99835 ("Lessee") in this Agreement For Material Sale & Lease of Municipal Property ("Agreement"), subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. MATERIAL/LEASE SITE ("Site"):

The Site as shown on the attached July 3, 2001 CBS plat of the Granite Creek Industrial Area consists of Tracts 2 and 3.

The Site contains 14.5 acres more or less.

B. TERMS:

1. The term of this Agreement begins on February 15, 2012, and ends on February 15, 2022. This Agreement replaces the original agreement regarding the same property, dated November 20, 2001, and which was extended on July 21, 2005.
2. In return for the 10 year term of this Agreement, Lessee agrees to allow controlled access across the lease area to other CBS property for material extraction by other commercial private or public operations.
3. Lessee agrees to pay the following royalty fees for the material removed from the Site:

 \$1.55 per cubic yard, in place.
4. The Lessee agrees to pay the following rent for the lease of 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.

 \$325.00 per acre, per month for that acreage used for operations of a concrete batch plant.
5. Lessee is willing to develop, operate and manage a land clearing landfill within the northern portion of leased Tracts 2 and 3. The subject waste area will accept overburden, stripping, brush, stumps and other debris from private development work and CBS Projects.

- a. Rates for waste material disposal will be charged as follows:
 - i. Through December 31, 2012, the base unit rate shall be \$3.30 per cubic yard;
 - ii. This base unit price shall be adjusted annually on January 1 of each year, commencing on January 1 2013, at a rate of three (3%) percent; and
 - iii. There will be no free dumping
- b. The rate will include \$0.50 royalty that will be collected by the Lessee and reimbursed to the CBS on a monthly basis.
- c. Lessee shall be reasonable for all elements associated with operating, managing and maintaining the waste area including but not limited to the following:
 - i. Daily oversight of the acceptance and disposal of overburden, stripping, brush and other organic materials;
 - ii. Collecting fees for disposal at the Site and collection of CBS sales tax on all transactions at the Site and remit the tax along with CBS payment;
 - iii. Controlling access to the Site, with operating hours from 7:00 AM to 7:00 PM, Monday through Saturday;
 - iv. Maintaining access road within the lease area as well as ponding and drainage to limit leachates, sediment load and turbidity entering Granite Creek;
 - v. Providing material for berm construction as well as any required cover material;
 - vi. Maintain records of imported material and reimbursing CBS \$0.50 per cubic yard for material imported, regardless of its source. Payment shall be made on a quarterly basis to CBS and copies of all records shall be included with payment;
 - vii. Slope failures due to mishandling of materials or improper slope construction shall be repaired by the Lessee at no cost to CBS;
 - viii. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation;

- ix. Maintain access roads and drainage within the Site to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting in the Site. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on the inside face of berms, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan (SWPPP);
 - x. Update and submit a SWPPP for all activities on the Site subject to approval by the CBS Municipal Engineer, adhere to the Granite Creek TMDL, maintain water quality compliance and maintain regulatory compliance; and
 - xi. Maintain existing stream side vegetated buffers along the North Fork.
6. It is not the intent of CBS to allow indeterminate holding of the Site without development. Lessee shall be required to continue existing development prior to February 15, 2012 and pay minimum royalty payments for material removed or disposal 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.
7. At a future date within the 10 year term of this Agreement, Lessee may request an additional 6 acres of CBS property to extend the lease area. The area requested shall be a mutually agreed area between the CBS and the Lessee. If the area has not been subdivided, zoned and permitted by CBS, Lessee shall have the area subdivided, zoned and permitted. The operations of the lease area will be reevaluated at that time to determine if the royalty fee for material removal should be changed based on fair market value of the material at that time.

SECTION II. PAYMENTS

- A. Lessee shall be required to submit a bond upon executing this Agreement in the amount of \$100,000.00, issued by a Surety properly licensed to do business in Alaska. On the yearly anniversary date of this Agreement, and after the pit cross sections are accomplished and Lessee is inspected for adherence to a continuation plan, CBS shall release in writing the prior year's bond, 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 Lessee. 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 for material removed from the Site 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 month's work. Failure to submit the payment by the 15th 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; or

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 15th 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 shall 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, Lessee 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 Lessee is consistently under-reporting the material removed by more than 15% and or falsifying the records to under-report the material removal, Lessee 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 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 end of the term of this Agreement, Lessee shall have the quarry fully cross sectioned by a registered engineer/surveyor, properly 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, Lessee 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; or
 - 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, Lessee 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, Lessee shall have the Site surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the 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 Lessee to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

Lessee shall also have the Site as it exists when this Agreement is executed, cross sectioned within thirty (30) days of the beginning date of this Agreement and prior to the removal of any material. The purpose of this initial cross section is to establish the beginning configuration of the 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 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 Lessee's operation shall be treated with such measures to prevent erosion and shall be reclaimed in accordance with the required reclamation plan. Lessee 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 Lessee and approved by CBS and the Alaska State Department of Environmental Conservation(DEC) before work begins in the Site. The SWPPP may require the installation and maintenance of siltation control structures at Lessee's expense.

Should CBS determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to DEC and/or the U.S. Fish and Wildlife Service after all reasonable attempts have been made to have Lessee correct the problems, this Agreement shall be void upon notification to Lessee by CBS. Lessee 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 Lessee 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. Lessee 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. Lessee shall be responsible for the adherence to this plan. Lessee 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**- Lessee shall conduct all operations in accordance with industry standards, and an approved MSHA mining plan. This plan shall be prepared by Lessee and approved by CBS and MSHA before work begins on the 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; and
 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 Site in a condition conducive to additional mining after termination of this Agreement. A continuation plan shall be prepared by Lessee and approved by CBS before work begins on the Site.
- F. **Fire Protection** – 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 Site, resulting from any and all operations involved under the provisions of this Agreement. Lessee 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, Lessee 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 Lessee. Lessee agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.
- I. Lessee 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, Lessee or a person authorized by Lessee to assume the responsibilities imposed by this Agreement, shall be present on the Site.

- J. The terms and conditions of this Agreement shall apply with equal force upon any agent, employee or contractor designated by Lessee to perform any or all of the operations of severance, extraction or removal of the materials sold under this Agreement, and Lessee shall be liable for non-compliance caused by any such agent, employee or contractor.
- K. Lessee 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, properly 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 Lessee's entitlement under this Agreement, Lessee 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, Lessee shall notify the Director of Public Works so an inspection of the Site 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;
 - 5. All responsibilities and liabilities of Lessee shall remain in effect until this Agreement terminates, and all of its conditions are met, including cleanup of the Site;
 - 6. Lessee 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 Lessee 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. Lessee shall coordinate its activities insofar as possible with the other Lessees 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, Lessee 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 Site may be used for the processing and storage of material to be removed from the 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 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 Lessee's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed; and

10. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, Lessees operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M., Monday through Saturday. CBS reserves the right to restrict operations on weekends and holidays, with liability to Lessee for violating this restriction.
- M. Lessee 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 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 Lessees 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 Lessee, 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. Lessee shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION V. LIABILITY AND INDEMNIFICATION

Lessee 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 Lessee's privileges granted by this Agreement, or arising out of any incident whatsoever which may occur on the 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.

SECTION VI. INSURANCE

- A. Lessee shall carry Workers' Compensation insurance, in accordance with the rules and regulations of the State of Alaska. This policy shall also include coverage of Employers' Liability limits of no less than \$500,000, or the minimum required by State law, whichever is greater. If applicable, the policy shall also cover USL&H and Maritime employees that may be employed by Lessee, as it relates to the activities of this Agreement. A sole proprietor without employees is not required to carry this insurance; however they must provide documentation supporting the exception.
- B. Lessee 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. Lessee 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. Lessee shall carry Excess or Umbrella Liability insurance with limits of no less than \$2,000,000. This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability. This insurance requirement is based on current activity. If the activity changes to include blasting, work adjacent to a public Right of Way or other higher risk activities the insurance limits may be adjusted upward by CBS to address the higher risk activity.

Lessee 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 Lessees in connection with this Agreement and within the Site area shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the responsibility of Lessee; and not the responsibility of CBS. Lessee agrees to follow all applicable safety and building codes, regulations, and permits.
- B. The Lessee shall, within sixty (60) days after the expiration of termination date of this Agreement, remove all equipment and other personal property from the Site, and comply with Subsection IV.L.4.

SECTION VIII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the Site.
- B. At all times when operations are in progress, Lessee shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of Lessee, 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 Lessee breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon Lessee.
- B. Failure of Lessee 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 Lessee.
- 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. Lessee 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 Site provided CBS determines that such uses will not unduly impair Lessee's operations under this Agreement.

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

SECTION XI. PERMITS

- A. Lessee must prepare and submit a Storm Water Pollution Prevention Plan (SWPPP). The plan shall be approved by CBS and the DEC before work begins on the Site. For lease extensions the current SWPPP will be reviewed to determine if modifications are required.
- 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. Lessee shall obtain and pay for any other permits required as needed to construct and operate at the 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 Site, provided however, that the right, title and interest in or to any material which has been paid for, but not removed from the Site by Lessee within the period of the Agreement or any extension, shall vest in CBS.

SECTION XIII. EXPIRATION AND EXTENSION

This Agreement shall expire on February 15, 2022.

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.

McGRAW'S CONSTRUCTION
Lessee

Dorman McGraw, Jr.

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, personally appeared before me Dorman McGraw, Jr., sole proprietor of McGraw's Construcion, 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 this Agreement and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

CITY AND BOROUGH OF SITKA
Lessor

James Dinley
Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the ____ day of _____, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared James 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.

Notary Public for Alaska
My Commission expires: _____