

City and Borough of Sitka
 DEPARTMENT OF PUBLIC WORKS
 100 LINCOLN STREET • SITKA, ALASKA 99835
 TEL (907) 747-1804 FAX (907) 747-3158

Location
 McGraw Lease
 Granite Creek Area

DRAWN:	TAD	SCALE:	1" = ~300'
CHECKED:	NA	DATE:	5 April 05
DRAWING NAME:	McGrawLeaseGC		
SHEET NO.	1 / 1		

Tuesday April 5, 2005

MEMORANDUM

HVS

To: Hugh Bevan, Municipal Administrator
Mayor Dapcevich and Members of the Assembly

From: Richard A. Riggs PE, Director of Public Works *RAR*

Cc: Wells Williams, Brian Bergman, Mark Buggins, Cliff Groh

Subject: Granite Creek Lease Lot 2-3
Lease Extension / Overburden Disposal Site

Background:

For years Sitka enjoyed the benefits provided by the Granite Creek Land Clearing Waste Area. The waste area was strategically located in proximity to available rock sources. This disposal site was closed a few years ago.

Since that time, Sea Mountain Golf Course (also located in the vicinity of Granite Creek) has been accepting waste material in conjunction with the development of the golf course. However, it is my understanding that the golf course development is approaching the desired grades and the Sitka Golf Association will soon no longer accept land clearing waste materials.

Sitka is in need of a long term land clearing landfill solution that provides similar benefits as those that have been provided over the last 30+ years.

A land clearing landfill was developed in 2002 on the town side of Granite Creek in conjunction with the Federal Highway's Harbor Mountain Bypass Project. There is limited additional capacity in the active cell and this area is expected to be included in future solid waste operations - specifically wastewater sludge disposal. The footprint could be expanded with additional permitting and construction, but this site would have challenges and only be an interim solution. The engineering department has been working with the Corps. of Engineers to permit this site (currently in public notice phase) in case a more efficient alternative is not developed.

In the opinion of this office, there is a land clearing landfill solution that provides efficiency, does not include substantial development costs on the behalf of the City and Borough, and is a long term alternative - this solution includes extending the lease with McGraw Construction and allowing McGraw Construction to develop a land clearing landfill that is accessible to the public.

It is worth noting that Granite Creek has been the focus of water quality efforts since 2000. The landclearing landfill would be required to meet strict operating standards to ensure the creek is not polluted with leachate, sediment, or turbidity.

Analysis:

McGraw Construction is the lessee for Granite Creek Lease Lot 2-3 (reference attached location map). Mr. Dormand McGraw of McGraw Construction currently operates a rock quarry in this lease area as well as a concrete batch plant. The current lease is attached. The lease expires on November 20, 2006.

The subject quarry is mined out on the northerly limits as it nearly approaches the limits of the lease area. Mr. McGraw has proposed to develop a land clearing landfill that would in essence, replace the void created through years of rock mining.

Mr. McGraw is willing to develop, operate, and manage a land clearing landfill within the northerly portion of lease tract 2-3 with the following amendments to the current lease:

1. The current lease is extended 10 years from the current expiration date. The lease could be extended an additional five years with Assembly approval.
2. The subject waste area will accept overburden, strippings, brush, stumps and other organic debris from private land development work and CBS projects.
3. Rates for waste material disposal will be charged as follows:
 - a. Through December 31, 2007 the base unit rate shall be \$3.00 per cubic yard (this is identical to the current rate charged by SGA).
 - b. This base unit price shall be adjusted annually on January 1st of each year, commencing on January 1, 2008, at a rate of three percent.
 - c. There will be no free dumping.
4. The rate will include a \$0.50 royalty that will be collected by McGraw Construction and reimbursed to the City and Borough on a quarterly basis. This same royalty amount was included in the Granite Creek Waste Area.
5. McGraw Construction will be responsible for all elements associated with operating, managing, and maintaining the waste area including, but not limited to the following:
 - a. Daily oversight of the acceptance and disposal of overburden, strippings, brush and other organic debris.
 - b. Collecting fees for disposal at the site and collecting CBS sales tax on all transactions at the site and remit said tax along with CBS payment.
 - c. Controlling access to the site. Operating hours are from 7:00 AM to 7:00 PM, Monday through Saturday.
 - d. Maintaining access roads within the lease area as well as ponding, and drainage to limit leachates, sediment load and turbidity entering Granite Creek.
 - e. Providing material for berm construction as well as any required cover material.
 - f. Maintaining records of imported material and reimbursing the City and Borough \$0.50 per cubic yard for material imported, regardless of its source. Payment shall be made on a quarterly basis to the City and Borough and copies of all records shall be included with payment.
 - g. Slope failures due to mishandling of materials or improper slope construction shall be repaired by McGraw Construction at no cost to CBS.
 - h. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation.
 - i. Maintain access roads and drainages within the lease area to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting the lease area site. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on inside face of berm, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan.
 - j. Update and submit a SWPPP for all activity in the subject lease area subject to approval by CBS, adhere to the Granite Creek TMDL, maintain water quality compliance, and maintain regulatory compliance.
 - k. Maintain existing streamside vegetated buffers along the North Fork.
6. CBS obtains Conditional Use permit – McGraw Construction complies with any special conditions of said permit.

Impact to the Community:

Sitka is in need of a long term land clearing landfill solution that is cost effective and efficient. The subject area provides that solution.

Additional Land Clearing Landfill Comments:

The Engineering Department is proceeding with the COE public notice associated with the land clearing landfill site located between Harbor Mountain Road and Granite Creek. If the McGraw Construction proposal is approved, the Harbor Mountain site will not be constructed, but staff will continue to renew the permit (3 year cycle) for possible future considerations. Additionally \$150,000 for construction of the Harbor Mountain site can be deleted from the draft FY 06 Solid Waste Fund budget.

Public Works will begin accepting select waste materials (primarily non-organic and unsaturated) at Kimsham Landfill that can be utilized in the final grading plan for the landfill closure. This material will be accepted free of charge.

Recommendation:

Authorize the Administrator to execute a ten-year lease extension with McGraw Construction for Lease Lot 2-3 including the terms outlined above.



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CJB

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

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

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

Dormand McGraw
McGraw Construction
PO Box 185
Sitka, AK 99835

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

SECTION I. DESCRIPTION

A. LEASE AREA:

Granite Creek Lease Lot 2-3 as shown on the attached CBS plat of the Granite Creek Industrial Area Lease Tract 2-3 dated July 3, 2001 2001. Lease area contains 14.5 acres more or less.

B. TERMS

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

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

 \$.50 Per Cubic Yard

Annual royalty fees shall be \$5,000 or the actual number of cubic yards of rock removed from the lease area, whichever is greater.

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

\$100.00 Per Acre Per Month for that acreage under rock pit development and \$100.00 per acre, per month for acreage used for rock processing equipment.

\$325.00 Per Acre Per Month for that acreage for operation of a concrete batch plant.

4. It is not the intent of the Municipality to allow indeterminate holding of lease areas without development. The Lessee shall be required to begin development within six (6) months of execution of this lease and pay a minimum of \$5,000 per year in royalty fees or the actual number of cubic yards of rock removed from the lease area, whichever is greater during the five year term of this lease.

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

SECTION II. PAYMENTS

A. MATERIAL SALE:

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

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

2. The bid royalty amount of \$.50 per yard Royalty Fee shall be paid annually.
3. The lease rent payment may be paid in advance either monthly, yearly or for the full term of the lease.
4. Royalty payments shall be based on records required in Section III, and shall be submitted to the Municipality no later than the thirtieth (30th) working day following the completion of the annual survey.

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

SECTION III. RECORDS

1. By June 30th of each year of this lease, the Lessee shall cause the lease area to be fully cross sectioned, by a registered surveyor, licensed to practice in the State of Alaska. The cross sections shall be certified by said surveyor and submitted to the Municipality. A swell factor of 1.5 shall be used in determining final quantities of material removed from the pit site, less quantities wasted and used for cover material. Royalty adjustments, if required will be based on surveyed quantities.

SECTION IV. OPERATING REQUIREMENTS

1. **Surveying --**

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

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

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

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

2. **Erosion and Pollution Control**

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

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

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

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

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

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

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

3. **Mining Plan**

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

- A. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12"X12" in size with the legend "Warning Steep Embankment" clearly displayed. They will be installed on metal sign posts. Signs shall be painted safety orange in color.
- B. Back walls of rock cuts shall not be constructed steeper than 0.25 feet horizontal to 1.0 feet vertical.
- C. A 10-foot wide horizontal bench shall be constructed for every 30 vertical feet of rock cut. The bench is intended to prevent rock fall from reaching the floor of the quarry.
- D. Upon completion of a rock cut the backwall shall be scaled of all loose rock rubble.
- E. All mining operations shall be conducted in accordance with industry standards. All storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.

4. **Reclamation**

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

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

5. **Fire Protection**

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

6. **Access Roads**

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

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

7. **General Conditions**

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

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

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

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

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

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

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

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

The Lessee agrees to submit the Standard Accounting Voucher and payment for rock material removed within ten (10) working days of the expiration date of the lease.

The lease area may be used for the processing and storage of material removed from the lease area and for truck scales, rock crushers, and other such equipment necessary to produce marketable materials products. Other material incidental to the production of mineral products such as fillers, or coagulants needed for the settlement ponds may be stored on the site, as needed. A temporary small one bay gravel equipment maintenance shop may also be allowed specifically for equipment used at the site.

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

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

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

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

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

8. The Lessee shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION V. LIABILITY AND INSURANCE

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

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

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

SECTION VI. IMPROVEMENTS AND OCCUPANCY

1. Any improvements or transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by the Lessee in connection with this lease and within the lease area, shall be in accordance with plans approved by the Municipality. Improvement and facility safety (both design & operation) shall be the responsibility of the Lessee not the Municipality. Lessee agrees to follow all applicable safety codes and regulations.
2. The Lessee shall, within sixty (60) days, after the expiration of termination date of this lease, remove all equipment and other personal property from the lease area, and pay the prescribed lease fees.

SECTION VII. INSPECTION

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

SECTION VIII. TERMINATION AND SUSPENSION

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

SECTION IX. RESERVATIONS

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

SECTION X. PERMITS

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

SECTION XI. PASSAGE OF TITLE

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

SECTION XII. EXPIRATION AND EXTENSION

1. This lease shall expire NOVEMBER 20, 2006

SECTION XIII. WARRANTIES

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

SECTION XIV. WAIVER

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

IN WITNESS WHEREOF, on this 20th day of November, 20 01

CITY AND BOROUGH OF SITKA

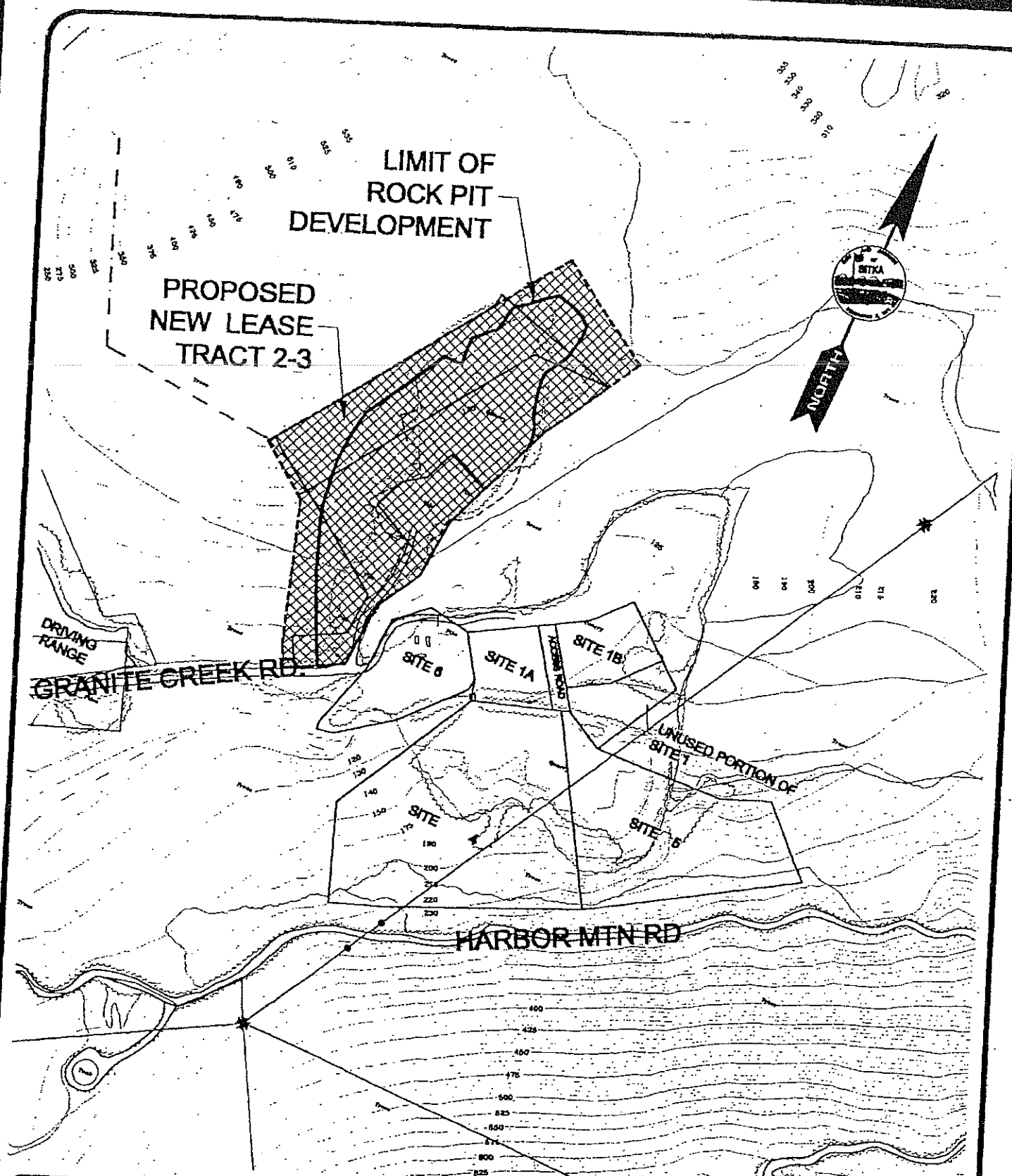
By [Signature]
Lessee

By [Signature]
Administrator

(SEAL)

ATTEST:

By [Signature]
Municipal Clerk



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
 INDUSTRIAL AREA
 LEASE TRACT 2-3**

DRAWN:	PAR	SCALE:	1"=400'
CHECKED:	HRB	DATE:	7.3.01
DRAWING NAME Area June 2001 sml			
SHEET NO.		1 / 1	

FIRST AMENDMENT TO AGREEMENT BETWEEN
MCGRAW CONSTRUCTION AND
THE CITY AND BOROUGH OF SITKA, ALASKA

REGARDING GRANITE CREEK LEASE AND MATERIAL SALES
GRANITE CREEK LEASE LOT 2-3

THIS AMENDMENT is entered into as of the 21 day of July, 2005, by and between the City and Borough of Sitka, (hereinafter called the "Municipality") and McGraw Construction (hereinafter called the "Lessee").

WHEREAS, the Municipality and the Contractor are parties to an Agreement Regarding Granite Creek Lease and Material Sales, Granite Creek Lease Lot 2-3, November 20, 2001 (the "Agreement"); and

WHEREAS, the parties wish to amend certain provisions of the Agreement for their mutual benefit and advantage;

NOW, therefore, the parties agree as follows:

SECTION I. DESCRIPTION (B) TERMS (1) is amended to read as follows:

- 1. The current lease is extended 5 years from the current expiration date. Two additional five year lease terms may be granted with Assembly approval.

SECTION I. DESCRIPTION (B) TERMS, add the following:

- 5. Lessee is willing to develop operate, and manage a land clearing landfill within the northerly portion of lease tract 2-3. The subject waste area will accept overburden, strippings, brush, stumps and other organic debris from private land development work and CBS projects.
 - a. Rates for waste material disposal will be charged as follows:
 - i. Through December 31, 2007 the base unit rate shall be \$3.00 per cubic yard (this is identical to the current rate charged by SGA).
 - ii. This base unit price shall be adjusted annually on January 1st of each year, commencing on January 1, 2008, at a rate of three percent.
 - iii. There will be no free dumping.
 - b. The rate will include a \$0.50 royalty that will be collected by the Contractor and reimbursed to the Municipality on a quarterly basis.
 - c. Lessee will be responsible for all elements associated with operating, managing, and maintaining the waste area including, but not limited to the following:
 - d. Daily oversight of the acceptance and disposal of overburden, strippings, brush and other organic debris.

- e. Collecting fees for disposal at the site and collecting CBS sales tax on all transactions at the site and remit said tax along with CBS payment.
- f. Controlling access to the site. Operating hours are from 7:00 AM to 7:00 PM, Monday through Saturday.
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- i. Maintaining records of imported material and reimbursing the City and Borough \$0.50 per cubic yard for material imported, regardless of its source. Payment shall be made on a quarterly basis to the City and Borough and copies of all records shall be included with payment.
- j. Slope failures due to mishandling of materials or improper slope construction shall be repaired by the Lessee at no cost to Municipality.
- k. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation.
- l. Maintain access roads and drainages within the lease area to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting the lease area site. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on inside face of berm, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan (SWPPP).
- m. Update and submit a SWPPP for all activity in the subject lease area subject to approval by the Municipality, adhere to the Granite Creek TMDL, maintain water quality compliance, and maintain regulatory compliance.
- n. Maintain existing streamside vegetated buffers along the North Fork.

SECTION XII. EXPIRATION AND EXTENSION (1) is amended to read as follows:

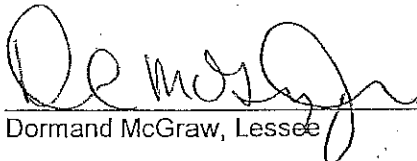
1. The lease shall expire November 20, 2011.

NO OTHER CHANGES. Except as expressly provided for by this First Amendment, the terms and conditions of the Agreement remain unchanged.


EFFECTIVE DATE. This First Amendment is effective as of the 21 day of July, 2005.

WHEREFORE, the parties have executed this First Amendment as of the date first written above.

MCGRAW CONSTRUCTION:


Dormand McGraw, Lessee

CITY AND BOROUGH OF SITKA:


Scott Brylinsky, Acting Administrator
John Stein,

ATTEST:

(Seal)


Municipal Clerk

LEGAL REVIEW:


Cliff Groh, Municipal Attorney

230:67 NEW
CJB

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

AGREEMENT
MATERIAL SALE and LEASE
OF
MUNICIPAL PROPERTY

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Dormand McGraw
McGraw Construction
PO Box 185
Sitka, AK 99835

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

SECTION I. DESCRIPTION

A. LEASE AREA:

Granite Creek Lease Lot 2-3 as shown on the attached CBS plat of the Granite Creek Industrial Area Lease Tract 2-3 dated July 3, 2001 2001. Lease area contains 14.5 acres more or less.

B. TERMS

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

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

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4. It is not the intent of the Municipality to allow indeterminate holding of lease areas without development. The Lessee shall be required to begin development within six (6) months of execution of this lease and pay a minimum of \$5,000 per year in royalty fees or the actual number of cubic yards of rock removed from the lease area, whichever is greater during the five year term of this lease.

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

SECTION II. PAYMENTS

A. MATERIAL SALE:

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

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

2. The bid royalty amount of \$.50 per yard Royalty Fee shall be paid annually.
3. The lease rent payment may be paid in advance either monthly, yearly or for the full term of the lease.
4. Royalty payments shall be based on records required in Section III, and shall be submitted to the Municipality no later than the thirtieth (30th) working day following the completion of the annual survey.

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

SECTION III. RECORDS

1. By June 30th of each year of this lease, the Lessee shall cause the lease area to be fully cross sectioned, by a registered surveyor, licensed to practice in the State of Alaska. The cross sections shall be certified by said surveyor and submitted to the Municipality. A swell factor of 1.5 shall be used in determining final quantities of material removed from the pit site, less quantities wasted and used for cover material. Royalty adjustments, if required will be based on surveyed quantities.

SECTION IV. OPERATING REQUIREMENTS

1. **Surveying --**

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

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

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

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

2. **Erosion and Pollution Control**

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

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

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

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

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

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

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

3. **Mining Plan**

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

- A. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12"X12" in size with the legend "Warning Steep Embankment" clearly displayed. They will be installed on metal sign posts. Signs shall be painted safety orange in color.
- B. Back walls of rock cuts shall not be constructed steeper than 0.25 feet horizontal to 1.0 feet vertical.
- C. A 10-foot wide horizontal bench shall be constructed for every 30 vertical feet of rock cut. The bench is intended to prevent rock fall from reaching the floor of the quarry.
- D. Upon completion of a rock cut the backwall shall be scaled of all loose rock rubble.
- E. All mining operations shall be conducted in accordance with industry standards. All storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.

4. **Reclamation**

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

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

5. **Fire Protection**

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

6. **Access Roads**

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

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

7. **General Conditions**

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

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

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

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

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

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

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

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

The Lessee agrees to submit the Standard Accounting Voucher and payment for rock material removed within ten (10) working days of the expiration date of the lease.

The lease area may be used for the processing and storage of material removed from the lease area and for truck scales, rock crushers, and other such equipment necessary to produce marketable materials products. Other material incidental to the production of mineral products such as fillers, or coagulants needed for the settlement ponds may be stored on the site, as needed. A temporary small one bay gravel equipment maintenance shop may also be allowed specifically for equipment used at the site.

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

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

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

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

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

8. The Lessee shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION V. LIABILITY AND INSURANCE

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

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

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

SECTION VI. IMPROVEMENTS AND OCCUPANCY

1. Any improvements or transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by the Lessee in connection with this lease and within the lease area, shall be in accordance with plans approved by the Municipality. Improvement and facility safety (both design & operation) shall be the responsibility of the Lessee not the Municipality. Lessee agrees to follow all applicable safety codes and regulations.
2. The Lessee shall, within sixty (60) days, after the expiration of termination date of this lease, remove all equipment and other personal property from the lease area, and pay the prescribed lease fees.

SECTION VII. INSPECTION

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

SECTION VIII. TERMINATION AND SUSPENSION

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

SECTION IX. RESERVATIONS

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

SECTION X. PERMITS

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

SECTION XI. PASSAGE OF TITLE

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

SECTION XII. EXPIRATION AND EXTENSION

1. This lease shall expire NOVEMBER 20, 2006

SECTION XIII. WARRANTIES

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

SECTION XIV. WAIVER

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

IN WITNESS WHEREOF, on this 20th day of November, 20 01

CITY AND BOROUGH OF SITKA

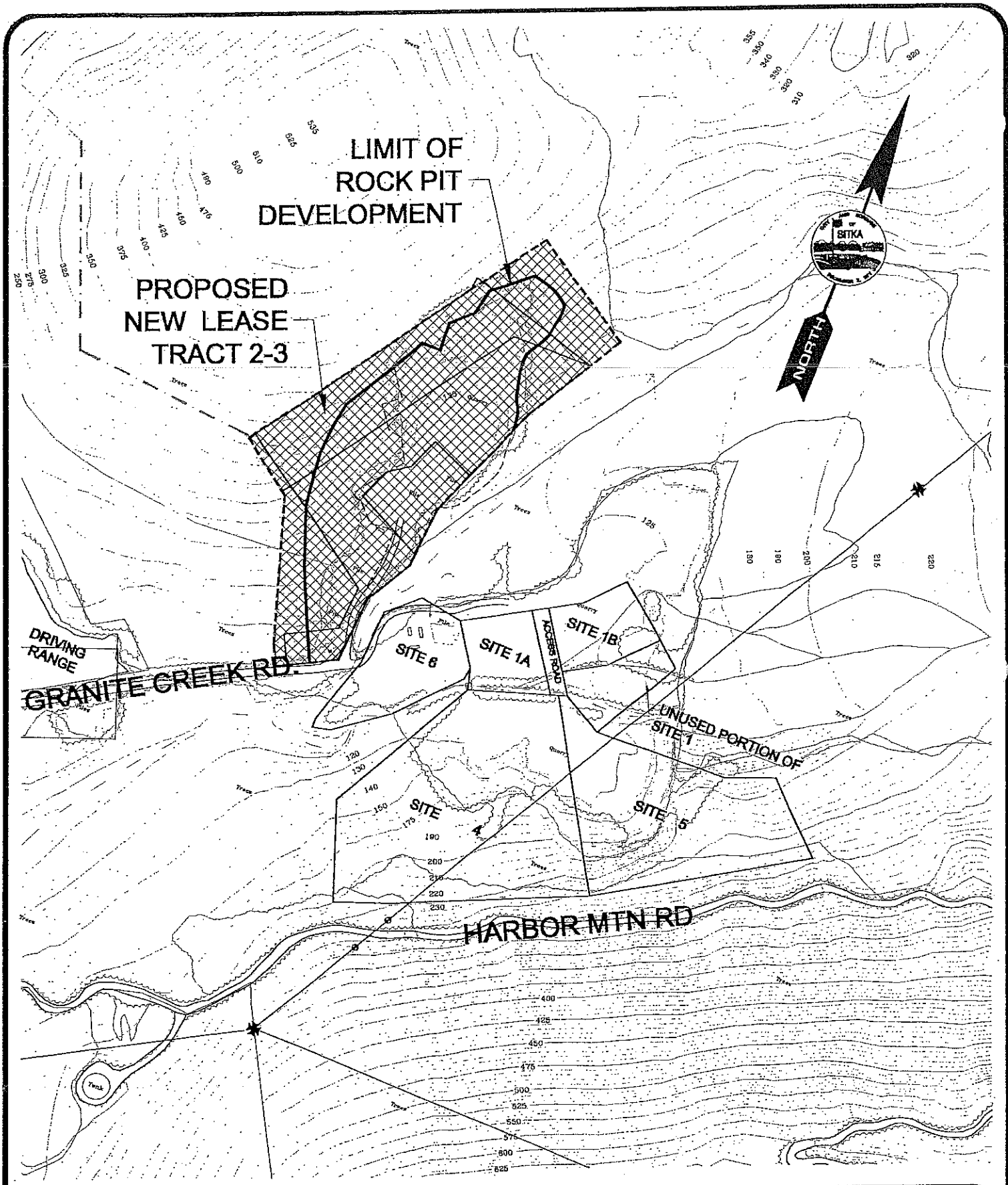
By [Signature]
Lessee

By [Signature]
Administrator

(SEAL)

ATTEST:

By [Signature]
Municipal Clerk



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
 INDUSTRIAL AREA
 LEASE TRACT 2-3**

DRAWN:	PAR	SCALE:	1" = 400'
CHECKED:	HRB	DATE:	7.3.01
DRAWING NAME Area June 2001 sml			
SHEET NO.		1 / 1	



City and Borough of Sitka

PUBLIC WORKS

100 LINCOLN STREET • SITKA, ALASKA 99835

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

MEMORANDUM

To: John Stein, Administrator
Mayor and Members of the Assembly

From: Richard A. Riggs PE, Director of Public Works *RAAR*

Date: July 14, 2005

Subject: Land Clearing Landfill

The lease amendment to McGraw Construction's Granite Creek lease, which includes a land clearing landfill, has been executed. This amendment was considered by the Assembly this last spring. The associated conditional use was approved at the second meeting in June.

Consistent with the lease terms, McGraw Construction will have a disposal site for overburden, green waste, etc. available from 7AM to 7PM, Monday through Saturday. The facility will be available for overburden by mid-August and is available immediately for green waste.

This office receives calls from citizens at a frequency of 2-3 calls per week regarding green waste disposal, so even at the residential level this will be an improvement to the existing alternatives.

With the execution of this amendment, the lease was extended 5 years from the previous expiration date with two additional five year extensions contingent upon Assembly approval.

Tuesday April 5, 2005

MEMORANDUM

To: Hugh Bevan, Municipal Administrator
Mayor Dapcevich and Members of the Assembly

From: Richard A. Riggs PE, Director of Public Works *HR*

Cc: Wells Williams, Brian Bergman, Mark Buggins, Cliff Groh

Subject: Granite Creek Lease Lot 2-3
Lease Extension / Overburden Disposal Site

Background:

For years Sitka enjoyed the benefits provided by the Granite Creek Land Clearing Waste Area. The waste area was strategically located in proximity to available rock sources. This disposal site was closed a few years ago.

Since that time, Sea Mountain Golf Course (also located in the vicinity of Granite Creek) has been accepting waste material in conjunction with the development of the golf course. However, it is my understanding that the golf course development is approaching the desired grades and the Sitka Golf Association will soon no longer accept land clearing waste materials.

Sitka is in need of a long term land clearing landfill solution that provides similar benefits as those that have been provided over the last 30+ years.

A land clearing landfill was developed in 2002 on the town side of Granite Creek in conjunction with the Federal Highway's Harbor Mountain Bypass Project. There is limited additional capacity in the active cell and this area is expected to be included in future solid waste operations – specifically wastewater sludge disposal. The footprint could be expanded with additional permitting and construction, but this site would have challenges and only be an interim solution. The engineering department has been working with the Corps. of Engineers to permit this site (currently in public notice phase) in case a more efficient alternative is not developed.

In the opinion of this office, there is a land clearing landfill solution that provides efficiency, does not include substantial development costs on the behalf of the City and Borough, and is a long term alternative – this solution includes extending the lease with McGraw Construction and allowing McGraw Construction to develop a land clearing landfill that is accessible to the public.

It is worth noting that Granite Creek has been the focus of water quality efforts since 2000. The landclearing landfill would be required to meet strict operating standards to ensure the creek is not polluted with leachate, sediment, or turbidity.

Analysis:

McGraw Construction is the lessee for Granite Creek Lease Lot 2-3 (reference attached location map). Mr. Dormand McGraw of McGraw Construction currently operates a rock quarry in this lease area as well as a concrete batch plant. The current lease is attached. The lease expires on November 20, 2006.

The subject quarry is mined out on the northerly limits as it nearly approaches the limits of the lease area. Mr. McGraw has proposed to develop a land clearing landfill that would in essence, replace the void created through years of rock mining.

Mr. McGraw is willing to develop, operate, and manage a land clearing landfill within the northerly portion of lease tract 2-3 with the following amendments to the current lease:

1. The current lease is extended 10 years from the current expiration date. The lease could be extended an additional five years with Assembly approval.
2. The subject waste area will accept overburden, strippings, brush, stumps and other organic debris from private land development work and CBS projects.
3. Rates for waste material disposal will be charged as follows:
 - a. Through December 31, 2007 the base unit rate shall be \$3.00 per cubic yard (this is identical to the current rate charged by SGA).
 - b. This base unit price shall be adjusted annually on January 1st of each year, commencing on January 1, 2008, at a rate of three percent.
 - c. There will be no free dumping.
4. The rate will include a \$0.50 royalty that will be collected by McGraw Construction and reimbursed to the City and Borough on a quarterly basis. This same royalty amount was included in the Granite Creek Waste Area.
5. McGraw Construction will be responsible for all elements associated with operating, managing, and maintaining the waste area including, but not limited to the following:
 - a. Daily oversight of the acceptance and disposal of overburden, strippings, brush and other organic debris.
 - b. Collecting fees for disposal at the site and collecting CBS sales tax on all transactions at the site and remit said tax along with CBS payment.
 - c. Controlling access to the site. Operating hours are from 7:00 AM to 7:00 PM, Monday through Saturday.
 - d. Maintaining access roads within the lease area as well as ponding, and drainage to limit leachates, sediment load and turbidity entering Granite Creek.
 - e. Providing material for berm construction as well as any required cover material.
 - f. Maintaining records of imported material and reimbursing the City and Borough \$0.50 per cubic yard for material imported, regardless of its source. Payment shall be made on a quarterly basis to the City and Borough and copies of all records shall be included with payment.
 - g. Slope failures due to mishandling of materials or improper slope construction shall be repaired by McGraw Construction at no cost to CBS.
 - h. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation.
 - i. Maintain access roads and drainages within the lease area to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting the lease area site. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on inside face of berm, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan.
 - j. Update and submit a SWPPP for all activity in the subject lease area subject to approval by CBS, adhere to the Granite Creek TMDL, maintain water quality compliance, and maintain regulatory compliance.
 - k. Maintain existing streamside vegetated buffers along the North Fork.
6. CBS obtains Conditional Use permit – McGraw Construction complies with any special conditions of said permit.

Impact to the Community:

Sitka is in need of a long term land clearing landfill solution that is cost effective and efficient. The subject area provides that solution.

Additional Land Clearing Landfill Comments:

The Engineering Department is proceeding with the COE public notice associated with the land clearing landfill site located between Harbor Mountain Road and Granite Creek. If the McGraw Construction proposal is approved, the Harbor Mountain site will not be constructed, but staff will continue to renew the permit (3 year cycle) for possible future considerations. Additionally \$150,000 for construction of the Harbor Mountain site can be deleted from the draft FY 06 Solid Waste Fund budget.

Public Works will begin accepting select waste materials (primarily non-organic and unsaturated) at Kimsham Landfill that can be utilized in the final grading plan for the landfill closure. This material will be accepted free of charge.

Recommendation:

Authorize the Administrator to execute a ten-year lease extension with McGraw Construction for Lease Lot 2-3 including the terms outlined above.