

POSSIBLE MOTION

I MOVE TO approve a lease amendment between the City and Borough of Sitka and SECON, Inc. for Granite Creek Industrial Site #7 and authorize the Interim Municipal Administrator to execute the document.

MEMORANDUM

To: Phillip Messina, Interim Municipal Administrator
Mayor Hunter and Members of the Assembly

From: Michael Harmon, P.E., Director of Public Works *SW - Acting*
Dan Tadic, P.E., Municipal Engineer *DT*

cc: Jay Sweeney, Chief Finance & Administrative Officer *J*
Brian Hanson, Municipal Attorney *BH*
Wendy Lawrence, Municipal Assessor

Date: August 16, 2017

Subject: Lease Amendment, Granite Creek Industrial Area – SECON, Inc.

Background:

On April 14, 2015 the Assembly approved the lease of Granite Creek Industrial Site #7 to Aggregate Construction, Inc. (ACI) for paving work in lieu of monthly lease payment. The lease expires on June 25, 2021. The City and Borough of Sitka (CBS) consented to an assignment of the lease for Site #7 to SECON, Inc. (SECON) on June 14, 2016 after SECON purchased ACI. SECON is currently the only paving contractor located in Sitka. This parcel serves as a permanent location for their asphalt plant.

Analysis:

After the lease was assigned to SECON, both parties became aware of boundary issues with the current lease. A portion of the CBS access road to the Pit Run and tree cutting areas encroaches on the SECON lease area. In addition, some of SECON's newly acquired assets encroach onto adjacent CBS property. Accounting for the respective encroachments results in a net increase of 37,897 square feet in lease area. The proposed lease amendment to account for the additional lease area is attached. Public Works believes that receiving a cash payment for the additional lease area is preferable in this instance to the "paving work in lieu of monthly lease payment" model under the original lease.

Fiscal Note:

The additional lease area encompasses 37,897 square feet in the Granite Creek Industrial Area. The City Assessor confirmed the value of a monthly lease for the additional area at \$852.68 or \$10,232.19 annually. No Consumer Price Index adjustment or other rent adjustment is accounted for in the amended lease agreement as the remaining term is less than 5 years.

Recommendation:

Authorize the Municipal Administrator to execute a lease amendment with SECON, Inc. under the terms outlined in this memo and the attached draft lease amendment.

**FIRST AMENDMENT TO LEASE
BETWEEN CITY AND BOROUGH OF SITKA AND SECON, INC.**

THIS FIRST AMENDMENT TO LEASE (this “**First Amendment**”) is dated as of August ___, 2017, by and between THE CITY AND BOROUGH OF SITKA (“**CBS**”) and SECON, INC. (“**Lessee**”).

WITNESSETH, THAT:

WHEREAS, CBS and Larry Shinn d/b/a Aggregate Construction entered into an Agreement for Material Lease and/or Sale of Municipally Owned Property in Exchange for Work, signed May 28, 2015 (the “**Lease**”), for the lease area partially described as “Granite Creek Lease Site #7”; and

WHEREAS, Larry Shinn d/b/a Aggregate Construction assigned the Lease to Lessee by written instrument signed June 6, 2016; and

WHEREAS, CBS consented to the assignment of the Lease to Lessee by written instrument signed June 14, 2016; and

WHEREAS, CBS and Lessee both desire to address lease area boundary issues which were discovered after assignment of the Lease with respect to CBS’s access road encroachment onto the lease area and Lessee’s encroachment onto adjacent CBS property, both as shown on Exhibit A attached and hereby incorporated by reference;

NOW, THEREFORE, in consideration of good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, CBS and Lessee agree as follows:

1. **Incorporation of Preamble and Recitals.** The preamble and recitals to this Amendment are incorporated herein by reference and made a part of this Amendment.

2. **Amendments.**

(a) Section I.A of the Lease, entitled “Lease Area”, is hereby amended by adding the words “minus the reduced area for CBS’s road encroachment plus the additional areas for Lessee’s encroachments, both as depicted on Exhibit A, with the revised lease area encompassing 138,597 square feet” immediately following “100,700 square feet.”

(b) Section I.B of the Lease, entitled “Terms”, is amended by adding the following subsection:

“6. Starting on the day after approval of the First Amendment by the CBS Assembly and on or before the first day of each calendar month thereafter during the term of the Lease, Lessee shall pay to CBS rent for the additional lease area, as shown in Exhibit A, in the amount of Eight Hundred Fifty-Two and 68/100ths Dollars (\$852.68) per calendar month, plus applicable sales tax. All monthly rent shall be paid to CBS at the address stated in the preamble. Rent for any

partial calendar month shall be pro-rated at a daily rate of one thirtieth (1/30) of the monthly rent. Lessee shall pay CBS sales tax as applicable. The failure to make timely payment of any monthly rent payment shall constitute a default of the Lease by Lessee.”

3. **Continued Force and Effect.** CBS and Lessee ratify and confirm the Lease and acknowledge and agree that, as amended by this First Amendment, the Lease is binding and is and remains unchanged and in full force and effect. In the event of a conflict between the terms of the Lease and this First Amendment, the terms of this First Amendment shall control.

4. **Counterparts; Captions Not Binding.** This First Amendment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement. The captions in this First Amendment are inserted for reference only and in no way define, describe or limit the scope or intent of this First Amendment or of any of the provisions hereof.

5. **Interpretation.** Capitalized terms not defined herein shall have the meanings ascribed to them in the Lease. This First Amendment: (a) constitutes the entire agreement between the parties with respect to the amendments set forth herein and supersedes all prior understandings, agreements whether written or oral between the parties relating thereto; (b) may not be amended or modified except by a written agreement duly executed on behalf of the parties; (c) shall in all respects (including non-contractual disputes or claims arising out of or in connection with this First Amendment) be subject to and construed in accordance with the law governing the Lease; and (d) is legally binding upon and inures to the benefit of the parties and their permitted successors and assigns, and no third party is intended to benefit from, nor may any third party seek to enforce, any of the terms of this First Amendment. As amended hereby, the Lease shall be and remain in full force and effect.

[SIGNATURES AND ACKNOWLEDGEMENTS ON NEXT PAGE]

IN WITNESS WHEREOF, CBS and Lessee have caused this First Amendment to be duly executed as of the day and year first above written.

CBS:

CITY AND BOROUGH OF SITKA

By: _____
Name: _____
Title: _____

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2017, before me, a Notary Public in and for the State of Alaska, personally appeared _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign the First Amendment and does so freely and voluntarily.

Notary Public in and for State of Alaska
My commission expires: _____

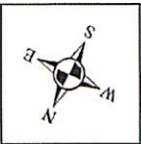
LESEE:
SECON INC.

By: _____
Name: _____
Title: _____

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2017, before me, a Notary Public in and for the State of Alaska, personally appeared _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign the First Amendment and does so freely and voluntarily.




Notary Public in and for State of Alaska
My commission expires: _____


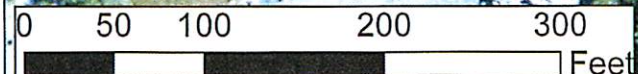
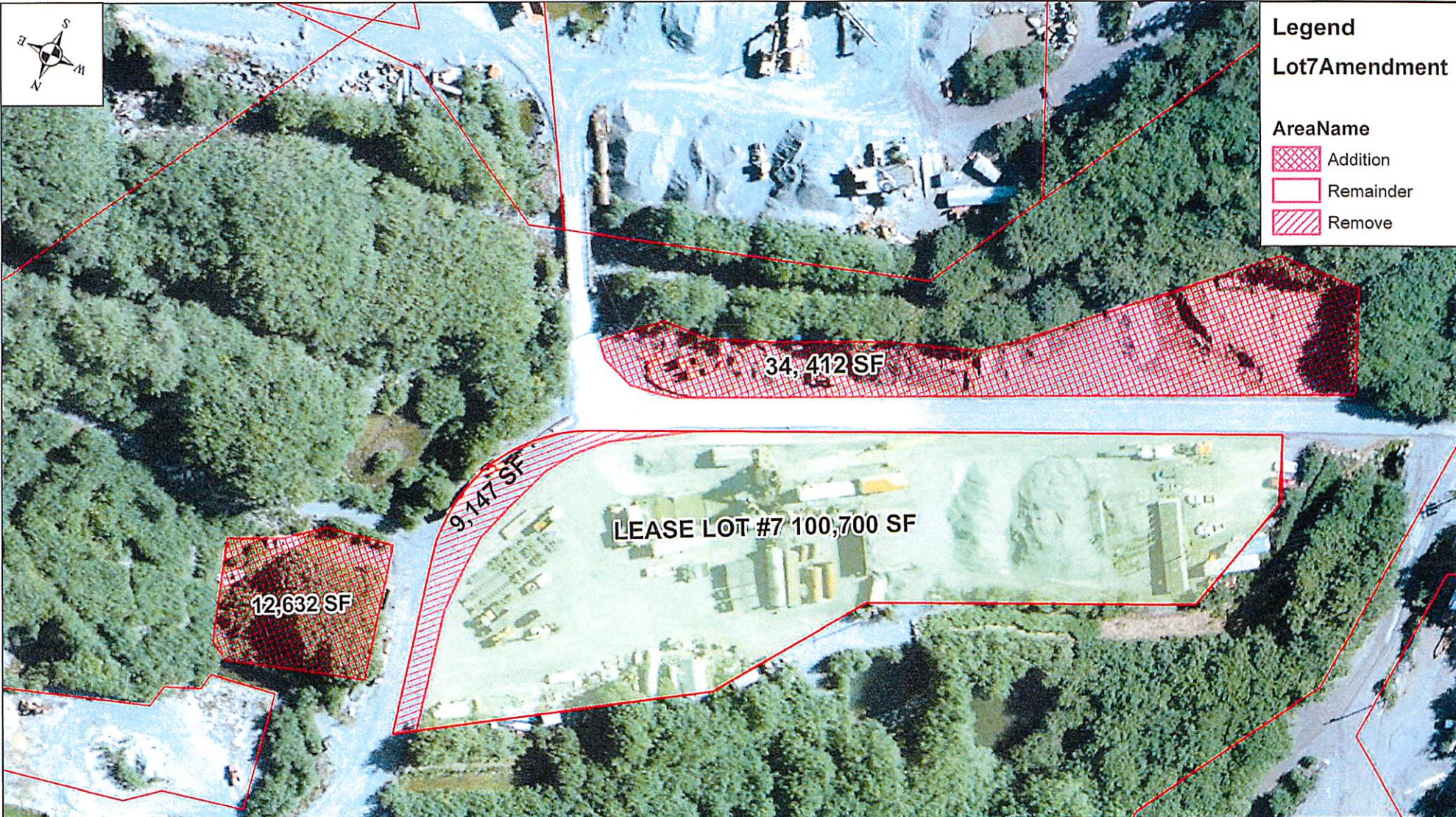


Legend

Lot7Amendment

AreaName

-  Addition
-  Remainder
-  Remove



City and Borough of Sitka

PUBLIC WORKS
100 LINCOLN STREET • SITKA, ALASKA 99835
PHONE (907) 747-1804 • FAX (907) 747-3158

EXHIBIT A
AMENDED SITE #7 LEASE AREA