

**CITY AND BOROUGH OF SITKA**

**ORDINANCE NO. 2012-35**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA CONSENTING  
TO THE ASSIGNMENT OF THE AGREEMENT FOR MATERIAL SALE &  
LEASE OF MUNICIPAL PROPERTY TO ASRC CONSTRUCTION HOLDING  
COMPANY, LLC**

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 circumstance shall not be affected.
3. **PURPOSE.** The purpose of this ordinance is to consent to the assignment of the Agreement For Material Sale & Lease Of Municipal Property (“Agreement”) from McGraw’s Construction (“Lessee”), to ASRC Construction Holding Company, LLC (“ASRC CHC” or “Assignee”). City and Borough of Sitka (“CBS”) is the Lessor/Owner regarding municipal property at Quarry Tracts 2 and 3 of the Granite Creek Industrial Area. CBS consents to the assignment of the Agreement for the remainder of the 10-year term, which terminates on February 15, 2022.

McGraw’s Construction has had an agreement since November 2001 with CBS, that had been extended, 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 Quarry Tracts 2 and 3 of the Granite Creek Industrial area.

On February 14, 2012, the Assembly passed Ordinance 2012-04, replacing the prior agreement with the current 10-year Agreement, beginning on February 15, 2012 and ending on February 15, 2022,

Dormand C. McGraw, Jr., Owner of McGraw’s Construction, has requested assigning this Agreement to ASRC CHC. ASRC CHC intends to continue to use the municipal property in accordance with the current Agreement, and to explore expanding the rock extraction in the quarry. The quarry has seen no rock extraction in the past five years, resulting in no royalties to CBS for rock sales from this quarry. Increased rock extraction will result in greater royalty revenue to CBS.

Assignment of the Agreement is authorized at Section IV.M of the Agreement. In accordance with this section, the proposed assignment or production agreement is submitted at Attachment B, entitled "Assignment And Sublease Agreement." This proposed agreement has not been executed, pending the Owner's Consent, and based on on-going negotiations between the Lessee and Assignee. The Lessee and Assignee warrant that the final version of the proposed agreement shall be substantially similar to Attachment B. However, nothing in this Consent shall be construed to obligate ASRC CHC to consummate the assignment. It is understood and acknowledged that the execution and delivery of this Consent is in anticipation of the consummation of the assignment, which has not yet been effected.

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

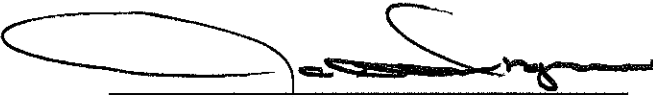
- A. The assignment of the Agreement For Material Sale & Lease Of Municipal Property ("Agreement"), regarding Tracts 2 and 3 of the Granite Creek Industrial Area, is authorized in accordance with the Agreement at Section IV.M., upon ASRC CHC fulfilling the contingent provisions, as stated in the attached Consent.
- B. Assignee ASRC CHC shall be bound by the same terms and conditions of the Agreement, upon Lessee McGraw's Construction and ASRC CHC executing the Assignment and Sublease Agreement, in substantially the same form as Attachment B to the Consent;
- C. Lessee McGraw's Construction shall also be bound by the same terms and conditions of the Agreement, even upon execution of the attached Consent; and
- D. The Municipal Administrator is authorized to execute the attached Consent upon ASRC CHC complying with the contingent provisions, as stated in the Consent.

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

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 23rd day of October, 2012.

  
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Mim McConnell, Mayor

**ATTEST:**

  
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Colleen Ingman, MMC  
Municipal Clerk