


MEMORANDUM

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

Through: Michael Harmon, Director of Public Works 

From: Stephen L. Weatherman P.E., Municipal Engineer 

cc: Jay Sweeney, Interim Finance Director

Date: June 22, 2011

Subject: Material Sale Agreement – Quarry Site 5, Granite Creek Industrial Area

Background:

Southeast Earthmovers has been operating Quarry Site 5 from May 5, 1999 to the present. Southeast Earthmovers is currently up to date on material payments. The quarry is currently being used to provide some of the rock and gravel material required for the Sitka Airport project. Southeast Earthmovers has requested a 5 year lease extension as included in the terms of the original May 5, 1999 agreement. 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 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 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 have a different royalty amount which will be addressed in the specific quarry agreement.
- 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:

Southeast Earthmovers royalty payment rate to CBS remains unchanged at \$1.55 per cubic yard in place for rock material removed. The lease area has approximately 100,000 CY of material remaining.

Recommendation:

Authorize the Administrator to execute a Material Sale Agreement with Southeast Earthmovers from July 13, 2011 to August 1, 2016 with a royalty rate of \$1.55 per cubic yard in place.

US SURVEY 5530

APPROX. LIMITS
OF EXCAVATION

RECONFIGURED
SITE 5
5.88 ACRES

121,578 S.F.
(2.79 ACRES)

BASIS OF BEARINGS

PREVIOUS
BOUNDARY
LINES (TYP.)

RECONFIGURED
SITE 4
9.42 ACRES

LOG DEBRIS
PILE

RELEASED
PORTION OF
SITE 4
2.76 ACRES

SITE 1B

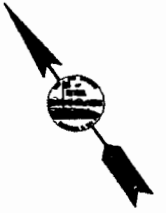
UNUSED PORTION
SITE 1

MON. "F"

SITE 1A

SITE 8

MON. "E"



City and Borough of Sitka

DEPARTMENT OF PUBLIC WORKS

100 LINCOLN STREET • SITKA, ALASKA 99835

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

GRANITE CREEK
RECONFIGURED
LEASE SITES 4 & 5

DRAWN:	PAR	SCALE:	1" = 200'
CHECKED:	HRB	DATE:	12.19.00
DRAWING NAME	4-5 RECON		
SHEET NO.	1 / 1		

An Outline of Phased Reclamation Scheduling for the Granite Creek rock quarry leases, with prescribed performance standards, BMPs and recommended tools for measuring success of reclamation¹

Introduction

Material sources at several gravel leases in the Granite Creek watershed are gradually being depleted. Rock will be depleted at different rates at the three quarry sites. Existing rock quarry volumes at the Tisher lease are estimated to be exhausted first, possibly as soon as 2011 or 2012. The Dormand McGraw rock quarry site will be blasting and expanding its quarry over the next several years. Three new rock quarry sites up the North Fork of Granite Creek have been surveyed and platted in 2009 in preparation for site work and leasing by the CBS to address these future material shortages. Reclamation of inactive lease sites is required under CBS lease stipulation. Planning for a phased reclamation approach and the conditions governing reclamation is the subject of this report.

In June 2005, the CBS contracted out a thorough review and update of the 1982 Granite Creek Operation and Reclamation Plan. Titled *“An Updated Reclamation Plan for Granite Creek Material Lease Sites: A review and summary of current reclamation requirements, with recommended supplemental conditions”*, the report reviewed the BMPs established in the 1982 plan. It proposed new supplemental BMPs, suggested language for adopting a definition of reclamation, and recommended that measures of success be formally adopted by CBS to objectively evaluate progress in reclamation and in determining when it is complete. The report includes both the 1982 and the recommended supplemental reclamation standards and actions. It was also recommended that CBS consider requiring a Letter of Credit (in lieu of a performance bond) from the operator covering reclamation prior to the initiation of reclamation activities, in an amount to be determined by CBS in consultation with the operator.

Many of these recommendations have yet to be adopted by the CBS, including a definition of “reclamation”, measures of success, and end points against which to gauge successful completion of reclamation. Task 9 of the FY10 workplan addresses this issue. The sequential approach outlined for FY10 includes a number of steps. First, complete an inventory of available rock remaining at the quarries and an estimated time frame for exhausting each of the sources. Working with the CBS to adopt a clear definition of reclamation and measures of success would logically follow. Third, consider adopting the recommended supplemental performance standards and BMPs included in Table 2 of the 2005 reclamation report.

Lease operators planning to close (reclaim) material sites would be required to file a Reclamation Plan and updated Stormwater Pollution Prevention Plan (SWPPP) for municipal review and approval before reclamation work proceeds. Working closely with the operators and providing them with required reclamation standards would be essential. A monitoring

¹ Prepared for the City and Borough of Sitka by Redburn Environmental & Regulatory Services using funding provided by the Alaska Department of Environmental Conservation and the Environmental Protection Agency through an ACWA community water quality grant awarded under the Clean Water Act. June 2010.

approach to test the effectiveness of reclamation efforts on water quality is a central BMP in the 2005-recommended standards.

Material Source Inventory in the Granite Creek Industrial Area and a Likely Sequential Timeframe for Reclamation

Recognizing that Granite Creek has finite rock material remaining and in an effort to gather information on existing rock volumes remaining at Granite Creek and to evaluate other feasible future material sources in the Sitka area, the City and Borough of Sitka Public Works Department (Harmon, 2009) completed a report in July 2009 called “Considerations for Future Material Sites in Sitka”. It provided a rough inventory of existing material sources in Granite Creek and analyzed options and relative feasibility for future material site locations.

Existing quarry sites at Granite Creek have the potential to be expanded by modifying lease boundaries. McGraw Gravel Sales is estimated to have several years of rock supply remaining. SE Earthmovers, located along the South Fork, can possibly move east up the South Fork for future deposits. The Tisher Construction lease site is constrained by the Harbor Mountain Road above it and the biosolids/overburden disposal site. Discussions with the lessee and CBS suggest no more than two years of rock material remains to be removed. The CBS Pit Run site has material deposits continuously up to the South Fork, with decades of material left at current rates of extraction. An estimated 90,000 cyds/year of rock has been removed from these three sites over the last eight years. Estimates are considered rough due to the current honor system of relying on lessees to weigh and report volumes to the CBS in a timely manner. Variable demand effects the extraction rate.

Existing rock quarry leases have variable expiration dates. The Tisher Construction lease expires on 6/18/2011, with provision for a possible 5-year extension. SE Earthmovers has a 10-year lease through 4/9/2011, with a possible 5-year extension. McGraw Construction’s lease expires on 11/20/2011, with a 5-year extension possible for satisfactory performance.

Potential new material sites were described in the report, with the North Fork of Granite Creek identified as the most feasible site for rock quarry expansion. This area lies northeast of the existing Granite Creek quarry sites. The three-lot North Fork quarry subdivision sites are estimated to provide 1 million cubic yards or a 10-year supply of rock. Environmental challenges in developing this area include several stream crossings, routing and access road construction through muskeg wetlands, and overburden waste disposal. Further study was recommended to detail routes, mitigation measures, and material site boundaries. The CBS completed the platting of the North Fork quarry subdivision in 2009 but have not yet requested bids from contractors for road construction and site preparation.

The report concludes that “the ultimate use opportunities should be part of the planning and leasing process as the city moves forward with future quarry locations”. Defining the intended use of the post-quarry sites – either for industrial, recreational or mixed development - is key to determining appropriate reclamation approaches. Converting pit areas to waste disposal sites precludes use of areas for anything other than storage or other non-structural use. The current Sea Mountain Golf Course was built on the old waste overburden site at Granite Creek and is an example of successfully reclaiming lands for recreational uses.

Conclusions in the report prudent to reclamation planning include the following:

- The required annual surveys to verify rock quantities at each lease are not being completed. Timely completion of surveys would provide an accurate estimate of remaining rock sources.
- Modify existing leases to require documentation of in-place cross section volume calculations.
- The Public Works Department has not established a coherent management structure for overseeing the leases. Lead responsibility for lease management is ill defined.

The Sequential Approach to Reclamation: Assumptions in Preparing for Reclamation

Several assumptions and considerations affect the timing of reclamation at the rock quarry lease sites. Principle are the amounts of remaining rock and the rate of extraction, whether the CBS will be granting 5-year lease extensions or terminating the leases in 2011, whether the CBS agrees to modify the existing lease boundaries to provide more rock material, and the CBS plans and schedule for utilizing the Tisher lease site for a municipal Class III solid waste landfill. Any of these variables could affect reclamation timeline projections. Most of the rock quarry leases expire in 2011 and several operators have expressed the intent of requesting a 5-year extension. From a practical standpoint, reclamation at any site wouldn't proceed as long as a lease is active/current.

The following "best guess" assumptions are based on email communication and discussions with CBS management.

1. Tisher and Jon McGraw leases: the future site of the CBS Class III landfill

The CBS secured a Class III solid waste permit from the Alaska Department of Environmental Conservation in 2005 to convert the current Tisher Construction and SE Earthmovers quarry sites into a solid waste landfill for construction and demolition debris and concrete once viable rock sources were exhausted. The project plan calls for a progressive filling of cells starting at the Tisher lease and gradually moving north to the SE Earthmovers lease as needed over time.

Tishers' remaining rock supply will be depleted first and it appears his site would be the first to be vacated and "reclaimed" for future CBS uses. CBS expects to take over the pit when Tisher has it mined out and use it as an extension of the CBS' current landfill work (including landfarming contaminated soil, asbestos landfill, etc.). Phase I of this project began in 2007 with the operation of the inert waste dumpsite located in the far corner of the Tisher pit floor. If CBS decides not to use the area for that purpose, it would be available for a future industrial use.

The timing and extent of reclaiming Tisher's pit (Lease Area 4) depends upon whether the CBS will ever have to use the site for municipal solid waste emergencies. Municipal solid waste is currently barged out of Sitka. Preparing the site for CBS use will not entail significant work by the lease operator. The CBS is currently uncertain whether it will waive the reclaim requirement in his lease or do something else for closure of the site. CBS projects a timetable for beginning

use of the Tisher site for solid waste no sooner than 5 years from now, or 2015, unless Tisher is provided an off-site quarry lease earlier than that, allowing for an earlier start date. .

The adjacent Jon McGraw pit (Lease Area 5) is estimated by CBS (Dan Jones, personal communication) to have 15 years of rock left at the lessee's present production rate, and maybe 5 years time if it went into active production. Neither Tisher's nor Jon McGraw's pits appear to have the flexibility to be both (concurrent) working pits and reclaim sites like Dormand McGraw's because the back wall of their pits is at the property limit and at the edge of Harbor Mountain Road.

2. Dormand McGraw rock quarry site

The McGraw Gravel Sales lease site includes both a rock quarry and organic waste overburden disposal site that began accepting waste in 2005. Disposal has progressively filled – or reclaimed – pit locations that were exhausted of available rock source. Approximately 44,000 cyds of soil, stumps and organic overburden has been disposed at the site since 2005. In the rock quarry portion of the lease, it is estimated that sufficient source exists for several more years, possibly 10 years.

Larry Harmon's assessment for CBS completed in July 2009 suggested Dormand McGraw has "several years of rock supply left". The current quarry still has available rock northwest of his current pit - straight back into the rock face - and the lessee has indicated he would like to have extensions in his lease to expand his lease in that direction. It appears that his current plan is to access the rock at the northeast extreme of his pit from the top of the current overburden placement. He would presumably work the whole back wall at that elevation for a number of years (at current rate, estimated at 10 years) without having to work subgrade to the overburden site top elevation. Whether he, or a future lessee, would then work the subgrade behind the overburden or go further into the mountain at higher elevation remains to be seen.

The Dormand McGraw quarry site (Lease Areas 2 and 3) hasn't published any reclaim timeline. Based on CBS' understanding of the lessee's desires for future expansion of the rock pit to the northwest (further in to the existing face), it is assumed that the reclaim (waste overburden) site could last another 10 years as it progressively fill up from northeast (the current farthest extent away from Granite Creek Road) to southwest (the entrance at Granite Creek Road).

Significant rock supplies exist abutting the current Sea Mountain Golf Course. One potential long term option far in the future (up to 50 years) is to consider taking the remainder of the mountain between the D. McGraw pit and the Sitka Golf Association driving range down to driving range elevation and rebuilding the holes that are now up the mountain as development progresses. This could be done from the backside of Dormand McGraw's pit without subjecting the general public to significant signs of rock quarrying.

3. CBS pit run site

The pit run site still has significant quantities of material available remaining to be mined and will likely be the last area to undergo reclamation. As the owner of the site, the CBS will be

responsible party for preparing the Reclamation Plan and carrying it out. Current timeframe estimates from CBS Public Works managers are that this material could last up to 50 years, with reclamation beginning after that time.

4. CBS biosolids waste disposal site

The CBS currently operates this old waste overburden site as a biosolids and lime disposal site. The site was permitted for use under the 2005 ADEC Class III solid waste permit. The biosolids consist of treated sludge from the municipal wastewater treatment plant. The CBS is comparing the costs of continuing to operate the biosolids site against the option of barging wastes out of Sitka to an approved waste site in the Lower 48.

The CBS Environmental Unit (Mark Buggins, personal communication) estimates that the biosolids disposal site could continue to receive organic wastes for about another ten years, or through 2020. The second and third phases of expansion have yet to be completed. CBS' best estimate regarding closure of this area is that they would fill it at such a grade that it will be "naturalized" to blend into the hillside from the berm at the bottom to the edge of Harbor Mountain Road at the top. A 5:1 grade on the finished site sloping towards the berm, with 3 feet of material covering the site is envisioned (Mike Webb, personal communication). Fill would then be seeded with grass for closure. Reclamation would be the responsibility of the CBS, as landowner and operator on the site. An estimated timeline for the eventual reclamation of the CBS biosolids/overburden site to prepare it for other future uses is no earlier than 2020.

Regardless of the sequence and timing of individual lease site reclamation, a Reclamation Plan must be filed with the CBS prior to work proceeding. What elements those future Plans should address are outlined in the following sections.

The Original and Updated Reclamation Plan for Granite Creek

In June 2005, the CBS contracted the completion of the report "Updated Reclamation Plan for Granite Creek Material Lease Sites". It updated the 1982 Reclamation Plan included as a standard lease requirement for rock quarries to provide additional standards and BMPs (see Table 1) to supplement those standards in the 1982 Plan (Table 2). In addition to new standards and BMPs to help guide reclamation, the report also proposed that 1) the CBS formally adopt a clear definition of "reclamation"; and 2) include measures of success to provide an objective benchmark for determining the acceptable end points of reclamation.

The 2005 report lists existing reclamation plan requirements governing current leases, proposed supplemental standards in addition to the 1982 requirements for consideration by the Director of Public Works, and provided these standards in a tabular format that can be directly inserted as an attachment to CBS lease agreements. An analysis justifying the supplemental standards was also provided. Simply referencing the 1982 requirements in the operator lease agreements has proven ineffective, as most operators either do not have the 1982 Reclamation Plan or have not thoroughly reviewed it.

Objectives of the report were to clarify reclamation standards/requirements, remove ambiguity in interpreting standards, and to provide the CBS and the operators with a responsible reclamation

plan blueprint that will lead to successful reclamation. This will result in the municipality not inheriting a potential liability after site closure is completed. Clear end points on what constitutes successful reclamation are necessary. Failure to establish these criteria “up front” often leads to disagreement on acceptable reclamation and, in a worst case, litigation.

Key recommendations taken from the 2005 report were:

“It is recommended that the CBS adopt one definition of reclamation and include that definition in the Supplemental Reclamation Requirements for Material Lease Sites (Table 2) to be appended to lease agreements. Measures of success in reclamation should also be included with that definition to provide an objective determination of an end-point in the reclamation process.

“It is recommended that the City and Borough of Sitka require a lease operator to file a Reclamation Plan and updated SWPPP, complete with diagrams/profiles, timetable, methods and materials, measures of success, end points and projected finished condition, for municipal review and approval before reclamation work proceeds.

“It is recommended that the City and Borough of Sitka consider requiring a Letter of Credit from the operator covering reclamation prior to the initiation of reclamation activities, in an amount to be determined by CBS in consultation with the operator”.

Many of these recommendations have yet to be adopted by the CBS.

The following section addresses each of these recommendations in turn.

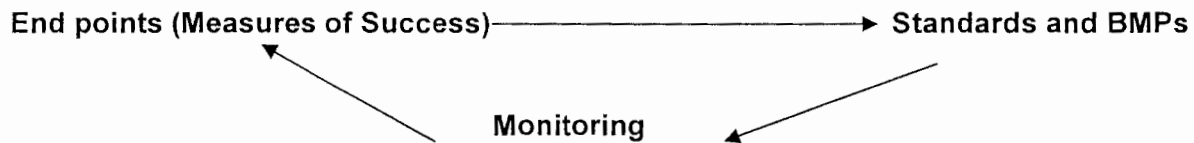
Monitoring Reclamation Success Over Time: Adopting a Clear Definition of Reclamation, Measures of Success and Agreed-Upon End Points for Reclaimed Lease Sites

This section addresses the questions: What constitutes acceptable reclamation? What are the agreed-upon end points for reclaimed lease sites?

Quantifiable measures of success are essential to evaluating reclamation activities and should be included “hand in hand” with BMPs and performance standards. Such measures serve as “objectives” (what end result we seek) and are met through a variety of “means” such as standards and best management practices

Monitoring is an essential tool to evaluate the effectiveness of the BMPs in meeting the acceptable endpoint or objective. Similar to effectiveness monitoring in forest practices, BMPs can be adjusted in the field as necessary to meet the end point, whether compliance with the TMDL and water quality standards or a prescribed percent grass coverage of a revegetated area. Monitoring allows for judging incremental progress towards reclamation and provides the basis for making any needed adjustments

The diagram below highlights the iterative relationship between standards, monitoring and measures of success.



1. Adopt a definition of “reclamation”

Given the consistent use of the term “reclamation” in CBS municipal lease agreements, this term is adopted, rather than “restoration”, as the process which defines the standards to be undertaken at material lease sites.

It is recommended that the CBS adopt one definition of reclamation and include that definition in the Supplemental Reclamation Requirements for Material Lease Sites (Table 2) to be appended to lease agreements. Measures of success in reclamation should also be included with that definition to provide an objective determination of an end-point in the reclamation process.

The 1982 Reclamation Plan used the terms “restoration” and “reclamation” interchangeably, and does not include a definition of either term. An agreed-upon definition of reclamation is important, as this guides the required standards and environmental “end points” for successful reclamation.

The 2005 Updated Reclamation Plan examined several definitions of reclamation for application to Granite Creek. Several pertinent definitions for gravel mining are provided below. CBS should select one or provide an alternative definition.

- “The process by which lands disturbed as a result of mining activity are reclaimed back to a beneficial use. Reclamation activity includes the removal of buildings, equipment, machinery and other physical remnants of mining, closure of tailings impoundments, leach pads and other mine features, and contouring, covering and revegetation of waste rock piles and other disturbed areas.”
 - “The reconstruction of the landscape in which a mine operated in order to make it possible for the landscape to be once again safely used for other purposes.”
 - “Returning disturbed land to a stable, biologically productive state”.
2. Identify measures of success and end points for completed reclamation. What objectives are the performance standards supposed to achieve?

Quantifiable measures of success are essential to evaluating reclamation activities and should be included “hand in hand” with BMPs and standards. Such measures serve as objectives (what end

result we seek) and are met through a variety of “means” such as standards and best management practices. They are necessary to evaluate progress in reclamation and in determining when it is satisfactorily completed.

Fundamental questions are:

What use or mix of uses does CBS wish to attain at the Granite Creek Industrial Site after reclamation? Light industrial? Recreational?

Is the site stable and safe to occupy for future planned uses?

Is pollution runoff potential reduced and minimized so that CBS will not be inheriting a future liability?

Measures of success are an essential component of a Reclamation Plan and should be included along with BMPs and standards.

Defining “end points” – criteria for determining when reclamation is complete – is equally important. These generally relate to the definition of reclamation, and involve a determination of whether the newly planned use can occur on the site, pollution potential is minimal and the site is stable and safe to occupy.

The 1982 Reclamation Plan focuses on reclamation BMPs /standards, but does not address specific measures of success or “end points”, leaving that to the CBS. The issue is sufficiently important that it needs to be addressed here.

Working closely with lease operators to define appropriate measures of success and ‘end points’ of reclamation is essential to effective reclamation. Reclamation is an iterative process.

A number of standards in the *Existing Requirements (Table 2)* include subjective terminology. These include: “desired condition for the planned use, “suitable grades”, “high quality overburden material”, “the ultimate use”, “revegetation should be encouraged in areas subject to erosion”. All these terms would benefit from a clear, objective description. For example, prescribing a percent (%) slope grade for contoured areas is measurable and enforceable. Defining the stability of a site based on runoff conditions that do not result in water quality violations is measurable. Defining revegetation success in terms of % coverage of a given area with grasses, or an allowable extent of sediment runoff, is measurable. Setting measurable water quality benchmarks is also recommended.

Important categories that most reclamation plans typically address include a mix of reestablishing vegetation, monitoring, drainage and erosion control, site inspection and reporting, and reclaiming land to support the use for which it is intended, whether industrial, light commercial or recreational. Minimal measures for mining site reclamation typically include the following core elements:

- Minimal requirements (monitor reveg success, soil stability and water quality runoff)
- Establishing reclamation targets or goals (% vegetative cover, WQ levels in creek, soil loss)

- Monitoring revegetation success (percent cover, species composition)
 - Monitoring soil stability and stormwater runoff (sediment runoff volume and levels)
 - Establishing reference plots in the watershed against which to compare site reclamation
 - Use adaptive management, recognizing the things change and the iterative process that occurs during reclamation
3. Adopt a new requirement that operators file a Reclamation Plan and an updated SWPPP to CBS for approval before reclamation work proceeds.

The CBS is responsible for providing the lease operators the required reclamation standards and BMPs and the end points/measures of success. Lessees are then required to prepare a Reclamation Plan addressing those elements and receive CBS approval before reclamation work begins. Also included in the Plan should be a timetable and a clear statement of the finished condition for CBS approval before reclamation work begins.

4. Establish the terms of Letters of Credit in lieu of performance bonding

It is recommended that the City and Borough of Sitka consider requiring a Letter of Credit from the operator covering reclamation prior to the initiation of reclamation activities, in an amount to be determined by CBS in consultation with the operator.

Minimizing a public entity's future liability for reclaimed sites is a common objective. One tool to address this issue is a performance bond or Letter of Credit. A performance bond to cover reclamation is a common requirement for mining projects in Alaska. The bond is placed in an escrow account and held until the landowner (in this case the City and Borough of Sitka) determines that reclamation is successfully completed and the site can be safely utilized for another planned use. Many public entities are going away from performance bonds in lieu of using a Letter of Credit. CBS Public Works has stated that it favors this approach. Close collaboration between CBS and lease operators is recommended in arriving at specific terms in Letters of Credit.

Performance Standards and BMPs for Conducting Reclamation Efforts

Considerable effort has gone into developing reclamation standards and BMPs for Granite Creek, initially in 1982 and again in 2005. The following 2005 *Supplemental Reclamation Requirements for Material Lease Sites in Granite Creek (Table 1)* are recommended for direct inclusion - as a formal attachment or addendum - into municipal lease agreements along with the original 1982 requirements shown in Table 2. Identical formats are used in Table 1 and Table 2, with each Reclamation Element followed by the Required Action or BMP to facilitate their use.

Formally adopt the supplemental performance standards and BMPs included in Table 1 (below) from the 2005 Updated Reclamation Plan to augment those included in the original 1982 Reclamation Plan (Table 2).

The supplemental standards are consolidated from the following documents: *Environmental Assessment of Granite Creek (2000)*; *Granite Creek TMDL and Recovery Strategy (2002)*; *Environmental audit checklist for material lease sites (2005)*; *Granite Creek Watershed Development Review Guidelines and Pollution Control Recommendations (June 2005)*.

Authority for Requiring Supplemental Reclamation Terms

The authority for requiring these supplemental terms is found in the existing lease terms, specifically, “The City reserves the right to implement additional environmental protection plans from time to time and “The CBS also retains broad authority to amend lease terms for cause.”

TABLE 1. SUPPLEMENTAL RECLAMATION REQUIREMENTS FOR MATERIAL LEASE SITES IN GRANITE CREEK²

RECLAMATION ELEMENT	REQUIRED STANDARDS OR ACTIONS
<i>Reclamation Plan and associated SWPPP</i>	1. The lease operator is required to file a Reclamation Plan and updated SWPPP, complete with diagrams/profiles, timetable, methods and materials, measures of success, annual milestones and projected finished condition, for municipal review and approval before reclamation work proceeds. Additional conditions may be imposed by the CBS.
<i>Vegetated stream buffers and setbacks</i>	1. Established vegetated stream buffers and setbacks shall be protected and not be encroached upon during reclamation. 2. Vegetation and materials are not to be deposited into the stream or its tributaries. 3. No fuel, oil or hazardous waste storage shall occur within 50 feet of Granite Creek or its tributaries during reclamation
<i>Fill suitability for reclamation</i>	1. Only fill materials free of contamination and approved by the CBS may be used for reclamation work.
<i>Revegetation</i>	1. Grass seed used in revegetation must meet the CBS specifications for seed mix. 2. A revegetation measure of success must be agreed to between CBS and the operator.
<i>Fisheries enhancement</i>	1. Operators and CBS shall look for opportunities to enhance fisheries habitat during reclamation.
<i>Settling pond maintenance windows</i>	1. Settling pond cleanouts during reclamation are restricted to the period June 1 – July 15 to protect fish.
<i>Monitoring</i>	1. Operators shall “self monitor” the effects of their reclamation operations on water quality and report any problems to CBS Public Works. 2. Turbidity and TSS levels will be routinely monitored by CBS staff to ensure compliance with water quality standards.
<i>Solid Wastes</i>	1. All solid wastes shall be removed from the lease site and disposed of at an CBS-approved site.
<i>Operator training in reclamation</i>	1. Operators must attend reclamation training

² These standards are inserted into lease agreements in addition to those in Table 2.

	<p>sessions sponsored by the CBS prior to beginning reclamation work. This is a requirement before CBS will approve a Reclamation Plan.</p>
<i>Drainage and erosion control</i>	<ol style="list-style-type: none"> 1. No blasting or earthmoving shall occur during heavy rains. 2. Use of bioswales is encouraged to treat surface runoff before entering the stream in locations where settling ponds are not practicable.
<i>Site inspection and municipal signoff</i>	<ol style="list-style-type: none"> 1. CBS staff will periodically audit operator compliance with standards in <i>Table 1</i> and <i>Table 2</i>. 2. A finished reclamation site must be certified as "pollution-free" by a certified engineer or technical consultant with expertise in this field. The CBS may hire a specialist to complete this test, at the expense of the operator.
<i>Operator oversight and management of reclamation</i>	<ol style="list-style-type: none"> 1. The operator is responsible for daily oversight of reclamation and controlling access to the site. 2. The operator is responsible for purchasing all materials needed for reclamation. 3. The operator shall maintain records of materials used and actions taken in reclamation and provide a copy to CBS on request. 4. The operator shall control run-on water and surface ponding to minimize infiltration into the overburden fill site and minimize leachate generation. 5. New or expanded ponding or other treatments may be required by the CBS to address leachates, sediment, or petroleum contamination. Fabric liners, ponds, and aeration may be required where extensive overburden with a high organic content is used for fill in reclamation.
<i>Letter of Credit</i>	<ol style="list-style-type: none"> 1. The CBS will require the filing of a Letter of Credit prior to beginning reclamation activities. The amount will be determined by the CBS in consultation with the operator.

Existing Reclamation Plan requirements adopted in 1982 and included by reference into all rock quarry lease stipulations are shown below.

TABLE 2. EXISTING RECLAMATION PLAN REQUIREMENTS (FROM 1982 REPORT REFERENCED AND APPENDED TO CURRENT MUNICIPAL MATERIAL SITE LEASE AGREEMENTS³)

RECLAMATION ELEMENT	REQUIRED ACTION OR STANDARD
GENERAL RECOMMENDATIONS	
<i>Cost</i>	<ol style="list-style-type: none"> 1. Contractors should conduct reclamation work described in the general recommendations for sites they have worked at their own expense. 2. Cost for restoration on sites worked prior to implementation of this reclamation plan should not be the responsibility of the contractor except when the contractor previously agreed to do the work at their expense.
<i>Buffers</i>	<ol style="list-style-type: none"> 1. When the site is being terminated and restored to prepare it for its ultimate use, buffers should still be observed adjacent to all streams and drainage ditch channels and public roads. Ultimate use of the site should be designed around these buffers. 2. Drainage ditch channels should be relocated only if necessary to meet the needs of the ultimate uses of the site. Once channels have been located, a buffer should be established along the channel. Buffers provide protection of the adjacent structures from flooding as well as protecting the stream channel.
<i>Settling ponds for washing</i>	<ol style="list-style-type: none"> 1. Settling ponds should be cleaned out at the end of restoration work and left in place to continue to clarify waters passing through the ponds as the site is being used for other purposes. Settling ponds provide diversity to the habitat in the restored site. 2. Settling ponds that are incompatible with the planned use of the site can be filled in and drainage to the pond should be routed to another location.
<i>Settling ponds for runoff</i>	<ol style="list-style-type: none"> 1. Settling ponds that have been used for runoff only should be left to fill in naturally over time. Those containing large quantities of fine materials should be cleaned out.
<i>Overburden removal</i>	<ol style="list-style-type: none"> 1. The edge of the area of overburden removal should be sloped to a very mild grade and stabilized with vegetation or other effective and aesthetic means.
<i>Overburden disposal</i>	<ol style="list-style-type: none"> 1. Overburden in the disposal area should be used for the restoration of the site. 2. Once the site has been restored to the desired condition compatible with the planned use, the disposal area should be sloped and contoured to grades suitable for the ultimate use of the site. Gentle grades sloped to drain toward Halibut Point Road are likely to be suitable.

³ This table is intended for direct inclusion into each municipal material site lease agreement.

<i>Slope and Contour</i>	<ol style="list-style-type: none"> 1. Work areas should be shaped and contoured to minimize ponding and to blend with surrounding features and topography. 2. Access roads and culverts should be removed and the areas restored except where the existing roads are compatible with the planned use of the site. 3. Work areas should be sloped and contoured immediately after the area is abandoned. When working sequential aliquots, old areas should be restored immediately. 4. Sloping towards drainage ditches, established during the operation of the site, is suitable restoration.
<i>Erosion Control</i>	<ol style="list-style-type: none"> 1. Erosion control measures established during the operation of the site should be checked for effectiveness; those that are not operating properly should be improved. 2. Revegetation should be encouraged in all areas subject to erosion. 3. Flood control dikes should be checked for evidence of erosion; eroded areas should be restored and protected with appropriate sized riprap.
<i>Drainage</i>	<ol style="list-style-type: none"> 1. Drainage ditches should be relocated only if necessary to meet the needs to the planned use of the site. New ditches should be sized suitably for the amount of flow expected. 2. Ditches should be checked for evidence of insufficient channel size or erodable bed or bank materials. Problem areas should be corrected.
<i>Sequential Work Areas</i>	<ol style="list-style-type: none"> 1. Annual plans for sequential work areas should identify areas that will be restored during that year of operation. Restoration plans should be included in the annual submittal. 2. Overburden removed from a new work area may be used for the restoration of the old work area if it is of suitable quality.
<i>Work Areas</i>	<ol style="list-style-type: none"> 1. All equipment should be removed from areas that are being restored.
<i>Stockpile Areas</i>	<ol style="list-style-type: none"> 1. Stockpiles that are not depleted at the time of restoration should either be used in improving the quality of permanent roads in the site or mixed into the overburden that is broadcast over the site for revegetation.
<i>Safety</i>	<ol style="list-style-type: none"> 1. Fences and gates that were installed for safety during the operation of the site should be removed unless otherwise directed by the City and Borough of Sitka.
<i>Fuel, Oil and Other Toxic Materials</i>	<ol style="list-style-type: none"> 1. All fuel, oil, and other toxic materials should be removed from the site and disposed of in areas approved by the State of Alaska, Department of Environmental Conservation. 2. Lined storage areas should be removed from the area; contaminated materials should be disposed of in approved areas.
<i>Revegetation</i>	<ol style="list-style-type: none"> 1. Areas to be revegetated should be covered with approximately 8-12 inches of high quality overburden material. The material should be placed after sloping and contouring is complete and should be compacted slightly to

AGREEMENT
FOR MATERIAL SALE
FROM
MUNICIPALLY OWNED PROPERTY

City and Borough of Sitka ("CBS") agrees to sell to Jon McGraw, Southeast Earthmovers, PO Box 784, Sitka, Alaska 99835 ("Purchaser"), the materials designated in this Agreement For Material Sale From Municipally Owned Property ("Agreement"), subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. MATERIAL SITE:

Site 5 as shown on plat of the Granite Creek Gravel Pit lease areas, dated March 22, 1985, and as modified by CBS Assembly on December 12, 2000. The Material Site contains 5.88 acres more or less.

B. TERMS:

1. The term of this Agreement begins on July 13, 2011, and ends on April 1, 2016.
2. Purchaser agrees to pay the following royalty fees for the material removed from the Material Site:
 \$1.55 per cubic yard, in place
3. It is not the intent of CBS to allow indeterminate holding of Material Site without development. Purchaser shall be required to begin development prior to August 1, 2011 and pay minimum royalty fees of \$5,000.00 per year during the term of this Agreement.

SECTION II. PAYMENTS

- A.** Purchaser shall be required to submit a bond upon executing this Agreement in the amount of \$100,000.00, issued by a Surety licensed to do business in Alaska. On the yearly anniversary date of this Agreement, and after the pit cross sections are accomplished and Purchaser is inspected for adherence to a continuation plan, CBS shall release the prior year's bond, in writing, and accept a new bond for the next year of operation, as set out in Section III.A.

The purpose of the bond shall be to correct non-conforming conditions created by Purchaser. An example might be to do necessary continuation work left undone or otherwise correct site problems such as drainage control. The bond may also be used to pay for unpaid royalties or other costs owed to CBS, such as anniversary surveys.

B. The \$1.55 per cubic yard Royalty Fee shall be paid using one of the following methods;

1. Prior to each shot based on in place calculated blast yield quantities. These quantities shall be verified for each 100,000 yards removed from the quarry by field survey cross sections certified by a registered engineer/surveyor.
2. Monthly based on submitted shot records and verified by field cross sections certified by a registered engineer/surveyor for each 100,000 yards of material removed. This method of payment will be guaranteed by a payment bond. The shot records are due with the royalty payment check on the first day of the month for the previous months work. Failure to submit the payment by the 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.

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 will be based on one of two methods. The first method that may be used is based on the surface area of the quarry that has not been quarried. For each full acre and or fraction of an acre that has not been quarried, a \$25,000 payment bond is required up to a maximum of \$100,000. The area quarried does not include the area with only overburden removed.

The second method is based on the average amount of material that has been removed per month in the preceding year. A \$25,000 payment bond, up to a maximum of \$100,000, shall be required for each \$25,000 or portion of this amount paid monthly in royalties.

During the first year of this Agreement, and until the quarry begins producing material, Purchaser shall use the first method of calculating the performance bond.

- D. Whatever method is used to determine payment and verification, if it becomes apparent that the Purchaser is consistently under-reporting the material removed by more than 15% and or falsifying the records to under-report the material removal, Purchaser shall be fined. A fine of double royalty payments of the under-reported amount will be assessed and the Agreement may be terminated.
- E. Final royalty payments shall be based on records required in Section III, and shall be submitted to CBS no later than the fifteen (15) days following the month in which operations on the material site are completed.

Payment shall be accomplished by an accounting voucher provided by CBS for all payments.

SECTION III. RECORDS

- A. Annually on the Agreement anniversary date, at the beginning and at the end of the term of this Agreement, Purchaser shall have the quarry fully cross sectioned by a registered engineer/surveyor, licensed to practice in the State of Alaska. The cross sections shall be certified by this engineer/surveyor and submitted to CBS. Surveyed volume will be compared to royalty yardage paid as a method of accounting control.
- B. Alternately, Purchaser may have the material taken from the quarry measured by either of the following methods:
 - 1. Certified scale. The scale tickets will be used to determine the weight of material removed from the quarry and must be submitted to CBS. If certified scale method of measurement is used, quantity cross sections of the quarry are not required. However, the initial quarry cross sections, yearly anniversary quarry cross sections, and the final quarry cross sections are required.
 - 2. Shot records. The shot records will be used to determine the volume of material removed from the quarry and must be submitted to CBS. If shot records are used to used, quantity cross sections are required every 100,000 CY. In addition to the intermediate cross sections, initial quarry cross sections, yearly anniversary quarry cross sections, and the final cross sections are required.
- C. All final royalty payments will be adjusted based on survey cross section quantities.
- D. The overburden removed and disposed is incidental to the quantities measured. However, Purchaser may at its discretion provide additional cross sections with the overburden removed prior to blasting to be used as a base of the quantities measured.

SECTION IV. OPERATING REQUIREMENTS

- A. **Boundary Lines and Survey Monuments** – Upon execution of this Agreement, Purchaser shall have the Material Site surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the Material Site or any survey lines or witness tree to any survey corner or monument, shall be severed or removed, nor shall any survey corner or monument be damaged or destroyed. Any violation of this subsection will require Purchaser to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

Purchaser shall also have the Material Site as it exists when this Agreement is executed, cross sectioned within thirty (30) days of the Agreement execution date and prior to the removal of any material. The purpose of this initial cross section is to establish the beginning configuration of the Material Site and base line to be used for any quarterly cross section.

- B. **Erosion Control and Protection of Waters** – Road construction or operations in connection with this Agreement shall be conducted so as to avoid damage to streams, lakes or other water areas and lands adjacent to the Material Site. Vegetation and materials shall NOT be deposited into any stream or other waste area. Locations and/or improvements such as road crossings over streams shall be approved, in advance, by CBS.

All roads or other areas to be abandoned or an area to cease being an active portion of Purchaser's operation shall be treated with such measures to prevent erosion and shall be reclaimed in accordance with the required reclamation plan. Purchaser shall repair any damages resulting from any failure to perform to these requirements to the satisfaction of CBS. This includes, but is not limited to, waters defined in Alaska Administrative Code at Title 5 – Fish and Game.

All operations shall be performed in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP). This plan shall be prepared by Purchaser and approved by CBS and the Alaska State Department of Environmental Conservation before work begins in the Material Site. The SWPPP may require the installation and maintenance of siltation control structures at Purchaser's expense.

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

Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and Purchaser will, at its own expense, provide all proper drainage and routine settlement ponds for permanent uses.

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

- C. **Reclamation Plan** – Attached and appended to this Agreement is Appendix A – Reclamation Plan – Granite Creek Material Site. Purchaser shall be responsible for the adherence to this plan. Purchaser shall demonstrate compliance to the reclamation plan on a yearly basis. Substantial non-compliance shall be grounds for termination or cancellation of the Agreement.
- D. **Mining Plan**- Purchaser shall conduct all operations in accordance with industry standards, and an approved MSHA mining plan. This plan shall be prepared by Purchaser and approved by CBS and MSHA before work begins in the Material Site. Operations shall also be in accordance with the following:
 - 1. Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs shall be 12" x 12" in size with the legend "Warning, Steep Embankment" clearly displayed. They will be installed on metal sign posts. Signs shall be painted safety orange in color.
 - 2. Slopes of back walls of rock cuts and benching shall be as determined by MSHA requirements.
 - 3. Upon completion of a rock cut the back wall shall be scaled back of all loose rock rubble.
 - 4. Storage and handling of explosives shall be performed under the direction of persons holding proper certifications for such work.
- E. **Continuation Plan**- In addition to the mining plan, operations shall be performed in a manner designed to leave the Material Site in a condition conducive to additional mining after termination of this Agreement. A continuation plan shall be prepared by Purchaser and approved by CBS before work begins in the Material Site.
- F. **Fire Protection** – Purchaser shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Material Site, resulting from any and all operations involved under the provisions of this Agreement. Purchaser shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.
- G. **Roads** – Before constructing any haul road, secondary or spur roads across CBS property, Purchaser shall obtain written approval of the location and construction standards of such roads from CBS.
- H. Access over any route not under CBS control is the sole responsibility of Purchaser. Purchaser agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.

- I. Purchaser shall maintain adequate supervision at all times when operations are in progress to insure that the terms and conditions of this Agreement and all applicable Federal, State and local laws, rules and regulations governing such operations are enforced. At all times, when operations are in progress, Purchaser or a person authorized by Purchaser to assume the responsibilities imposed by this Agreement, shall be present on the Material Site.
- J. The terms and conditions of this Agreement shall apply with equal force upon any agent, employee or contractor designated by Purchaser to perform any or all of the operations of severance, extraction or removal of the materials sold under this Agreement, and Purchaser shall be liable for non-compliance caused by any such agent, employee or contractor.
- K. Purchaser shall be responsible for the accurate location of operations under this Agreement, including any survey that may be necessary for such location unless otherwise specified in this Agreement.
- L. **Special Provisions** – It is mutually agreed that:
 - 1. Sound engineering practices and procedures shall be adhered to at all times during removal operations. Engineering plans for roads, drainage and other components of the project shall be submitted for review. The plans shall be sealed and signed by a registered engineer, licensed to practice in the State of Alaska.
 - 2. Stumps and any other debris shall be disposed of by burning (subject to ADEC approval) or burying at the Granit Creek Overburden Site and in a manner considered suitable by CBS representatives.
 - 3. In working the land to effect the removal of the Agreement entitlement, Purchaser agrees to so manage that upon completion of the removal, a reasonable degree of level land is maintained, per the continuation plan, from which material has been taken, and no holes-of-water are formed.
 - 4. At the expiration of this Agreement, Purchaser shall notify the Director of Public Works so an inspection of the Material Site can be scheduled. This inspection shall include general clean-up, compliance with the reclamation plan, removal of all Purchaser's equipment and any other item felt a responsible element of any final inspection.
 - 5. All responsibilities and liabilities of Purchaser shall remain in effect until this Agreement terminates, and all of its conditions are met, including cleanup of site and.
 - 6. Purchaser agrees to submit the Standard Accounting Voucher and payment for material removed within fifteen (15) working days of the expiration date or completion, whichever occurs earlier.

7. If Purchaser is forced to end, restrict or curtail its operations due to State or Federal law or regulations or for any other cause over which CBS has no control, CBS shall have no liability, whatsoever.
8. Purchaser shall coordinate its activities insofar as possible with the other purchasers who now or in the future may hold material sale agreements. Before removing material under any roadway or otherwise interrupting access to any other operations, Purchaser shall make arrangements satisfactory to the affected parties for coordinating operations. The affected parties cannot unreasonably withhold such approval if proper alternate arrangements have been made. In the case where the affected parties cannot reach agreement, CBS shall be the sole arbitrator to reach a satisfactory result.
9. The Material Site may be used for the processing and storage of material to be removed from the Material Site, and for the temporary location and operation of an asphalt batching plant, scales, crushers and other such equipment necessary to produce marketable materials products. Other material incidental to the production of asphalt or mineral products such as asphalt, fillers, or coagulants needed for the settlement ponds may be stored on the Material Site, as needed. A temporary small one bay gravel equipment maintenance shop may also be allowed specifically for equipment used at the site.

Granite Creek is, in fact, a long term source of gravel and other mineral products. As such, it is not a purchaser's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed.

10. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, Purchasers operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M. daily. CBS reserves the right to restrict operations on weekends and holidays, with liability to Purchaser for violating this restriction.

- M. Purchaser may not assign its rights under this Agreement or allow other parties to produce rock, gravel or finished material on the site without prior written approval of CBS.

Prior to the approval of any such assignment, CBS shall be provided with all the terms of the proposed assignment or production agreement. This shall include time of assignment and potential volumes of production. If such terms are deemed inflationary or of such a type to be considered an abandonment of further interest in the Material Site by the original party, the assignment may be denied.

- N. Maintenance of the main road, culverts and other such improvements shall be maintained by Purchasers at no expense to CBS.

- O. Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and Purchaser, at its own expense, shall

provide all proper drainage and routine settlement ponds for permanent uses. This is covered in the Reclamation Plan, as attached.

- P. Purchaser shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION V. LIABILITY AND INDEMNIFICATION

Purchaser shall defend, hold harmless, and indemnify CBS from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the exercise of the Purchaser's privileges granted by this Agreement, or arising out of any incident whatsoever which may occur on the Material Site or commonly used facility. This includes but not limited to damage to power lines, poles and facilities, telephone lines and poles, survey monuments, roads, bridges and culverts, pollution and/or damage to water systems, or personal injury.

SECTION VI. INSURANCE

- A. Purchaser shall carry Workers' Compensation insurance, in accordance with the rules and regulations of the State of Alaska. This policy shall also include Employers' Liability limits of no less than \$500,000. If applicable, the policy shall also cover USL&H and Maritime employees that may be employed by purchaser, as it relates to the activities of this Agreement.
- B. Purchaser shall carry Commercial General Liability insurance with occurrence limits of \$1,000,000 and aggregate limits of \$2,000,000. This policy shall in no way limit or exclude blasting operations and any other significant exclusions of coverage shall be shown on the certificate of insurance. This policy shall name the City & Borough of Sitka as an additional insured.
- C. Purchaser shall carry Business Automobile insurance with limits of \$1,000,000. This shall cover all owned, non-owned and hired automobiles that are used in the operations related to this Agreement. The policy shall name CBS as an additional insured.
- D. Purchaser shall carry Excess or Umbrella Liability insurance with limits of no less than \$5,000,000. This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability.

Purchaser shall provide a Certificate of Insurance that evidences the above. This Certificate shall also allow for a 30 day notice of cancellation or material change of coverage.

SECTION VII. IMPROVEMENTS AND OCCUPANCY

- A. Any improvements to transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by Purchasers in connection with this Agreement and within the Material Site area shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the

responsibility of Purchaser, and not the responsibility of CBS. Purchaser agrees to follow all applicable safety and building codes, regulations, and permits.

- B. The Purchaser shall, within sixty (60) days after the expiration of termination date of this Agreement, remove all equipment and other personal property from the Material Site, and comply with Subsection IV.L.4.

SECTION VIII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the Material Site.
- B. At all times when operations are in progress, Purchaser shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of Purchaser, any notices and instructions given by authorized CBS personnel in regard to the performance under this Agreement, and to take such action as is required by the terms of this Agreement.

SECTION IX. TERMINATION AND SUSPENSION

- A. This Agreement may be terminated by CBS if Purchaser breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon Purchaser.
- B. Failure of Purchaser to take immediate action to correct unwarranted damage to natural resources may be corrected by CBS to prevent additional damage. Any cost incurred by CBS shall be paid by Purchaser.
- C. This Agreement may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.

SECTION X. RESERVATIONS

- A. CBS makes no representations as to the suitability of the property as a material source for any particular use. Purchaser shall determine the suitability of the material for any application.
- B. CBS reserves the right to enter into other agreements regarding other material sites in the Granite Creek Quarry area to other parties during the term of this Agreement.
- C. CBS reserves the right to permit other compatible users, including the sale of materials, on the lands near the Material Site provided CBS determines that such uses will not unduly impair Purchaser's operations under this Agreement.

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

SECTION XI. PERMITS

- A. Purchaser must prepare and submit a Storm Water Pollution Prevention Plan (SWPPP). The plan shall be approved by CBS and the Alaska State Department of Environmental Conservation before work begins in the Material site.
- B. All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit, as it now exists or as modified in the future.

Purchaser shall obtain any other permits required as needed to construct and operate at the Material Site.

SECTION XII. PASSAGE OF TITLE

All rights, title and interest in or to any material included in this Agreement shall remain with CBS until it has been paid for, or removed from the Material Site, provided however, that the right, title and interest in or to any material which has been paid for, but not removed from the Material Site by Purchaser within the period of the Agreement or any extension there shall vest in CBS.

SECTION XIII. EXPIRATION AND EXTENSION

This Agreement shall expire on April 1, 2016.

SECTION XIV. WARRANTIES

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

SECTION XV. WAIVER

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

PURCHASER

Print Name

STATE OF ALASKA)

) ss:

FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2011, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign the Purchase Agreement and does so freely and voluntarily.

Notary Public for Alaska

My Commission Expires: _____

CITY AND BOROUGH OF SITKA

Jim Dinley

Municipal Administrator

STATE OF ALASKA)

) ss.

FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the ____ day of _____, 2011, before me, a Notary Public in and for the State of Alaska, personally appeared Jim Dinley, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, and by signing this document verifies that he has been authorized to execute this document on its behalf, and he signs freely and voluntarily.

Notary Public for Alaska

My Commission expires: _____