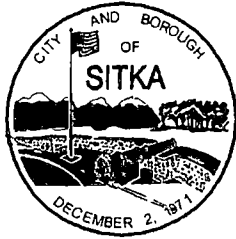


If this item is pulled from the consent agenda the following motion would be in order:

POSSIBLE MOTION

I MOVE TO approve a material sale and/or lease agreement with Little Bit Heavy Equipment Rental to facilitate topsoil extraction and screening contingent on receipt of proof of the required insurance coverage



City and Borough of Sitka

PUBLIC WORKS

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

To: Mayor McConnell and Assembly Members
Mark Gorman, Municipal Administrator

From: Michael Harmon, Public Works Director *MH*
Gary E. Baugher Jr., Maintenance and Operations Superintendent *GEB*

cc: Jay Sweeney, Finance Director
Robin Koutchak, Municipal Attorney *RK*

Date: 23 February 2015

Subject: Little Bit Heavy Equipment Rental

Background

The topsoil lease agreement was formalized in 2007 when Todd Miller Construction started operating and extracting topsoil from behind the Central Garage building. In August of 2014 Todd Miller sold his topsoil screen to Little Bit Heavy Equipment Rental. Harry Greene from Little Bit Heavy Equipment Rental asked if the lease could be brought up to date and he could continue the lease agreement. The topsoil lease that Todd Miller had long since expired. This would bring the agreement up to date and provide the Parks Division top soil for the flower beds, and other projects that require top soil.

Analysis

The terms of this lease is on a month to month basis, and commences on the first day of each month. The terms and conditions of this lease are as described in Items 1-6 of the terms section of the agreement.

Fiscal Note:

In lieu of a cash royalty, the contractor shall provide the bid quantity (10CY) of topsoil to the City and Borough of Sitka (CBS) for every 100CY produced. Topsoil shall be delivered to a location identified by the Public Works Superintendent and neatly stockpiled.

Recommendation:

Approve material sale and/or lease agreement with the owner of Little Bit Heavy Equipment Rental contingent on receipt of proof of the required insurance coverage.

AGREEMENT

MATERIAL SALE and/or LEASE

OF

MUNICIPALLY OWNED 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

Little Bit Heavy Equipment Rental
Harry Greene
PO Box 361
Sitka, AK 99835

hereinafter called the Lessee or the Contractor, does hereby agree to purchase and/or lease the material and/or property designated herein, subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. LEASE AREA: **Tract 4A2 / 4B USS 3695 (Public Services Center)**

The lease area available for material extraction has not been surveyed and thus is only graphically defined on the attached aerial photo.

B. TERMS.

The terms of this lease is month to month, and commences on the first day of each month. The terms and conditions of this lease are as described in Items 1-6 of this section.

1. The intent of this lease is to facilitate topsoil extraction and screening.
2. No more than 400 cubic yards can be removed from the site at any one time (event).
3. In lieu of a cash royalty, the contractor shall provide the bid quantity of topsoil to the City and Borough of Sitka (CBS). Topsoil shall be delivered to a location identified by the Public Works Superintendent and neatly stockpiled.
4. The bid royalty amount shall be based on 100 cubic yard lots of contractor generated material.
5. The minimum bid is 10 cubic yards per 100 cubic yard lot of contractor generated material.
6. Prior to commencing with a new lot, Little Bit Heavy Equipment Rental, shall provide CBS with the bid amount of topsoil.

Bid Amount = 10 CY per Lot. Lessee shall provide 10 CY for the first 100 CY Lot.

As soon as 100CY is removed from the lease area, an additional 10 CY shall be provided to CBS prior to removing material for the second lot from the lease area.

SECTION II. PAYMENTS

A. MATERIAL SALE:

1. Lessee shall be required to submit a yearly performance bond in the amount of \$5,000 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 performance 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.

SECTION III. OPERATING REQUIREMENTS

1. All topsoil provided to CBS shall meet the topsoil specifications identified in the City and Borough of Sitka Standard Specifications 2002.
2. Quantities will be based on end dump box measurement, in place.
3. All loads shall be inspected by the Public Works Superintendent, or his designee, prior to leaving the property. The site shall be available Monday thru Friday, from 7AM to 4PM local time, excluding holidays. Work shall not take place, and material shall not be transported from the site, outside of the period identified in the previous sentence. Lessee shall coordinate inspections.
4. No topsoil shall be removed from the subject property after the expiration of the lease without the permission of the Director of Public Works.
5. Erosion and Pollution Control:
 - a. All activities 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 and Borough before any work begins in the lease area (including mobilization).
 - b. The SWPPP shall be prepared to EPA standards. The SWPPP may require the installation and maintenance of siltation control structures at the Lessee expense.
 - c. Should the City and Borough determine that the operations cause silting or pollution of adjacent wetlands or other areas, this lease shall be void upon notification to the Lessee by the City and Borough.
 - d. No earthmoving shall be allowed during heavy rains, and the Lessee will, at their own expense, provide all proper drainage.
 - e. Access road construction or operations in connection with this contract shall be conducted so as to avoid damage to wetlands or water bodies.
6. The Contractor shall clean all asphalt surfaces daily if they become contaminated with topsoil or other silty debris generated from the contractors operations.
7. Excavations shall be contoured in such a manner that there is no hazard presented.
8. The Lessee shall maintain adequate supervision at all times when operations are in progress to ensure 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.
9. 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 discussed under this contract, and the Lessee shall be liable for non-compliance caused by any such agent, employee or contractor.

10. Tree stumps, overburden, and any other debris generated from the excavation or screening shall be disposed of off-site, by the Lessee at a location determined by the Lessee.

11. The Lessee shall coordinate his activities with the Public Works Superintendent.

12. At the expiration of this contract, the Lessee shall notify the Director of Public Works, so that an inspection for release can be scheduled. If the Lessee does not remedy any deficiencies, including but not limited to inadequately contoured slopes, leftover debris, etc., the City and Borough reserves the right to address the deficiencies. Costs incurred by the City and Borough shall be paid by the Lessee. The Director of Public Works shall be the sole authority regarding the release requirements.

13. 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 City and Borough has no control, the City and Borough shall have no liability, whatsoever.

14. Lessee may not assign its rights under this lease or allow other parties to produce topsoil on the site without prior written approval of the City and Borough.

SECTION III. LIABILITY

1. The Lessee shall indemnify the City and Borough 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 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.

2. The City and Borough shall be named as an additional insured on Lessee's Comprehensive Liability Insurance Policy.

3. The Lessee shall carry Workers' Compensation Insurance covering all employees and shall also carry \$2,000,000 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.

4. Waiver of Subrogation: Whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease, or anyone claiming under it in connection with the Property or improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease to be so insured, then the Party so insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost (provided that, in the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect).

SECTION IV. 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.

SECTION V. 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 VI. TERMINATION AND SUSPENSION

1. The lease may be terminated by the City and Borough 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 City and Borough to prevent additional damage. Any cost incurred by the City and Borough 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 VII. RESERVATIONS

1. The Municipality reserves the right to utilize the site 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 VIII. 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 (attached to lease), as it now exists or modified in the future.

SECTION IX. 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 X. EXPIRATION

1. The terms of this lease is month to month, and commences on the first day of each month, starting on the first day of _____, 2015.

SECTION XI. 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 XII. 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.

SECTION XIII. AMENDMENT AND AUTHORITY

No amendment of this Agreement shall be effective as against the City and Borough unless the City and Borough Administrator executes a written amendment on behalf of the Assembly. Each person affixing his or her signature on this Agreement represents by such act that he or she has the legal authority to bind legally any organization or entity he or she purports to bind.

IN WITNESS WHEREOF, on this _____ day of _____, 20 _____.

Little Bit Heavy Equipment Rental

CITY AND BOROUGH OF SITKA

By _____
Harry Greene, Owner

By _____
Mark Gorman, Municipal Administrator

(SEAL)

ATTEST:

By _____
Colleen Ingman, Municipal Clerk MMC