

POSSIBLE MOTION

I MOVE TO approve Ordinance 2012-35 on
first reading.

1
2 **Sponsor: Administrator**
3

4
5 **CITY AND BOROUGH OF SITKA**

6
7 **ORDINANCE NO. 2012-35**

8
9 **AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA CONSENTING**
10 **TO THE ASSIGNMENT OF THE AGREEMENT FOR MATERIAL SALE &**
11 **LEASE OF MUNICIPAL PROPERTY TO ASRC CONSTRUCTION HOLDING**
12 **COMPANY, LLC**
13

14 **1. CLASSIFICATION.** This ordinance is not of a permanent nature and is not
15 intended to become a part of the Sitka General Code (“SGC”).
16

17 **2. SEVERABILITY.** If any provision of this ordinance or any application to
18 any person or circumstance is held invalid, the remainder of this ordinance and
19 application to any person or circumstance shall not be affected.
20

21 **3. PURPOSE.** The purpose of this ordinance is to consent to the assignment of
22 the Agreement For Material Sale & Lease Of Municipal Property (“Agreement”) from
23 McGraw’s Construction (“Lessee”), to ASRC Construction Holding Company, LLC
24 (“ASRC CHC” or “Assignee”). City and Borough of Sitka (“CBS”) is the Lessor/Owner
25 regarding municipal property at Quarry Tracts 2 and 3 of the Granite Creek Industrial
26 Area. CBS consents to the assignment of the Agreement for the remainder of the 10-year
27 term, which terminates on February 15, 2022.
28

29 McGraw’s Construction has had an agreement since November 2001 with CBS,
30 that had been extended, to lease municipal property to operate a quarry as well as a
31 disposal site for overburden waste disposal, including trees, stumps, brush, and other
32 debris, at Quarry Tracts 2 and 3 of the Granite Creek Industrial area.
33

34 On February 14, 2012, the Assembly passed Ordinance 2012-04, replacing the
35 prior agreement with the current 10-year Agreement, beginning on February 15, 2012 and
36 ending on February 15, 2022,
37

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

44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82

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.

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

85

86

87

88

89

Mim McConnell, Mayor

90 **ATTEST:**

91

92

93

94

95 _____
Colleen Ingman, MMC

96 Municipal Clerk



ASRC Construction Holding Company
THE ACHC FAMILY OF COMPANIES

Dear Assembly:

ASRC Construction Holding Company, LLC (ACHC) and McGraw's Construction (Dormand McGraw) requests the City & Borough Of Sitka to approve the planned Assignment of the lease of Tracts 2 & 3 of the Granite Creek Industrial Area of approximately 14.5 acres more or less from Mr. Mr. McGraw ACHC.

ACHC would assume the operation of the quarry and waste area under the same terms and conditions as currently exist between CBS and McGraw's Construction. ACHC would be responsible to pay all royalties and fees due the CBS under the terms of the current lease. Upon obtaining the Assignment, ACHC intends to explore expansion of 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.

We would ask that you consent to the assignment so we can move forward on these projects in a prompt manner, which we believe will inure to the benefit of all parties involved.

Sincerely,

Paul C. Millwood
SVP Finance and Administration
ASRC Construction Holding Company, LLC

After Recording Return To:
Municipal Clerk
City and Borough of Sitka
100 Lincoln Street
Sitka, AK. 99835

**CONSENT TO ASSIGNMENT OF AGREEMENT
FOR MATERIAL SALE & LEASE
OF MUNICIPAL PROPERTY**

City and Borough of Sitka (“CBS” or “Owner”), 100 Lincoln Street, Sitka, Alaska 99835, entered into an Agreement For Material Sale & Lease Of Municipal Property (“Agreement”) with McGraw’s Construction (“Lessee”), P.O. Box 185, Sitka, Alaska 99835, for lease of municipal property and extraction and sale of materials located on that property described as Quarry Tracts 2 and 3 of Granite Creek Industrial Area, executed on February 23, 2012, that terminates on February 15, 2022.

The current Lessee has requested assignment of the Agreement to ASRC Construction Holding Company, LLC (“ASRC CHC” or “Assignee”), 3900 C St., Suite 301, Anchorage, Alaska 99801. ASRC CHC is wholly owned by Arctic Slope Regional Corporation.

CBS consents to the assignment of the Agreement to ASRC CHC in accordance with Section IV.M of the Agreement, with all rights, title, interest, obligations, and liabilities. ASRC CHC shall be subject to all terms and conditions of the Agreement.

This Consent To Assignment Of Agreement For Material Sale & Lease of Municipal Property (“Consent”) shall not release McGraw’s Construction from any obligations and liabilities as Lessee under the Agreement.

In accordance with Section IV.M of the Agreement regarding assignment, the Lessee and Assignee have submitted the terms of the proposed assignment or production agreement at Attachment B, entitled “Assignment and Sublease Agreement” (“Assignment”). Section IV.M also requires the time of assignment and potential volumes of production prior to approval of such an assignment. As far as the volumes of production, Assignee intends to explore expanding the rock extraction in the quarry. No rock extraction has occurred in the quarry in the past five years. Regarding the time of the assignment, the proposed Assignment 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 Assignment 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, but is expected to soon occur.

This Consent is contingent upon the following provisions occurring before any execution of this document:

1. ASRC CHC is to provide the following documented proof as outlined in the Agreement:
 - a. Payment and issuance bonds required by the Agreement at Section II.A; and
 - b. All insurances required by the Agreement at Section IV to remain in effect and provide all required coverage without any gaps, including any warranties of services and material and against any claims;
2. ASRC CHC shall provide copies of any required licenses, permits and certificates in order to perform under the Agreement;
3. ASRC CHC shall provide the name and address of the official contact of ASRC CHC, who shall receive all future notices required by the Agreement;

This Consent is also based on the Assignee and Lessee providing the following assurances:

1. ASRC CHC and McGraw's Construction will be jointly and severally liable under the Agreement for any breach of Agreement;
2. ASRC CHC and McGraw's Construction affirm that they are legally bound by the Agreement and that they would comply with all the terms and conditions, royalty fees and prices, contained in the Agreement.
3. ASRC CHC and McGraw's Construction agree that they are liable to defend, indemnify and hold harmless CBS pursuant to indemnity obligations set forth in the Liability and Indemnification at Section V of the Agreement.
4. ASRC CHC and McGraw Construction agree that they are liable to defend, indemnify and hold harmless CBS pursuant to any claims, actions, or damages arising from this Consent.

As consideration for this Consent, ASRC CHC agrees to provide a buffer between its property and operation under the Agreement, and the adjacent golf course, Sitka Golf Association, Inc., as set out in Attachment A. ASRC CHC shall not extract materials or operate in any manner in this buffer area, with the buffer limits beginning at the road indicated on Attachment A which marks the end of the existing pit, and ends at the golf course property.

Assignee shall also record and pay for the recording of this Consent.

This Consent is subject to approval by the City and Borough of Sitka Assembly before it becomes effective.

CITY AND BOROUGH OF SITKA

Jim Dinley, Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this ____ day of _____, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared JIM DINLEY, who is the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized by to execute the foregoing document, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

McGRAW'S CONSTRUCTION

Dormand McGraw Jr.

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, personally appeared before me DORMAND McGRAW, JR., whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swear or affirm that he is the Owner of McGraw's Construction and is authorized to sign this document, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

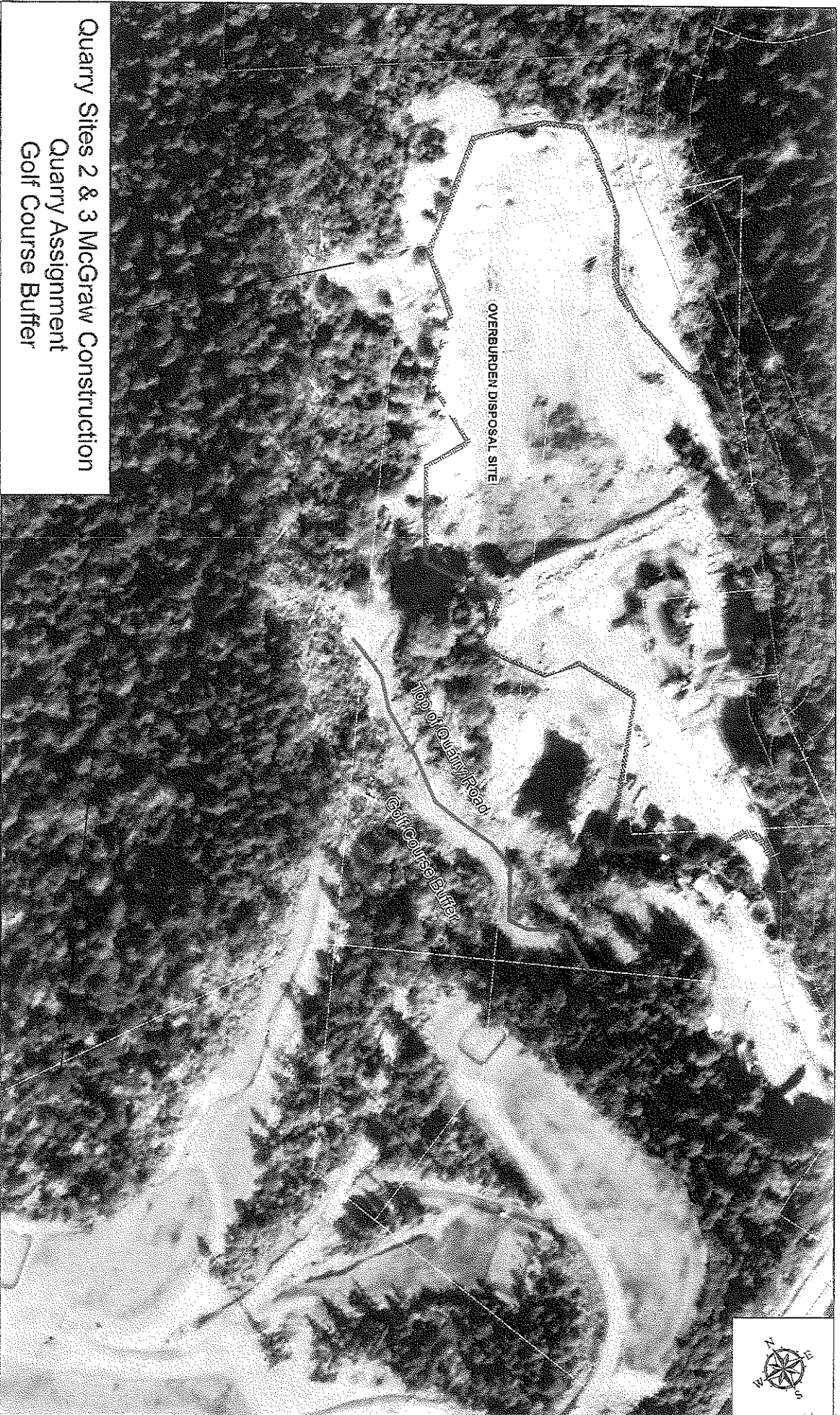
ASRC CONSTRUCTION HOLDING CO.,
LLC

James Mendenhall
Title: _____

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, personally appeared before me JAMES MENDENHALL, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swear or affirm that he is the _____ of ASRC CHC and is authorized to sign this document, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____



Quarry Sites 2 & 3 McGraw Construction
Quarry Assignment
Golf Course Buffer



ASSIGNMENT AND SUBLEASE AGREEMENT

Parties

This Assignment and Sublease Agreement (“Agreement”) is by and between Dormand McGraw d/b/a McGraw’s Construction (referred to herein as “Assignor”), an individual, and ASRC Construction Holding Company, LLC (referred to herein as “Assignee”), an Alaska limited liability company.

Recitals

A. Assignor leases from the City and Borough of Sitka (“CBS”), Tracts 2 and 3 as shown on CBS’ plat of the Granite Creek Industrial Area dated April 5, 2005, containing 14.5 acres, more or less (“Material Site”), pursuant to the terms and conditions set forth in that certain Agreement for Material Sale & Lease of Municipal Property dated February 23, 2012, between CBS and Assignor in the form attached hereto as Exhibit A (“Prime Lease”).

B. Assignor wishes to assign its rights under the Prime Lease to Assignee for the stated Term (defined herein) and to sublease the Material Site to Assignee throughout that Term, and Assignee wishes to assume Assignor’s obligations under the Prime Lease and sublease the Material Site from Assignee for a stated Term, pursuant to the terms and conditions contained in this Agreement and at all time subordinate and subject to the terms and conditions imposed by the Prime Lease.

Consideration

For good, valuable and sufficient consideration received and to be received, the parties have agreed and hereby agree as follows:

Terms and Conditions

1. Assignment of Rights. Assignor hereby assigns, transfers, and conveys to Assignee, and Assignee hereby assumes all of Assignor’s rights, duties and obligations under the Prime Lease, which assignment shall remain in full force and effect through the expiration of the Term, as may be extended pursuant to this Agreement.

2. Grant of Leasehold. Coincidentally with the assignment of rights under the Prime Lease, Assignor shall demise and sublease to Assignee, for use only by Assignee, the Material Site, pursuant to the terms and conditions stated in this Agreement. Assignor makes no warranties, express or implied, concerning the condition of the Material Site. Assignee accepts the Material Site in its present condition, but expressly disclaims any obligations and/or liabilities arising out of or relating to the condition of the Material Site prior to commencement of the Term. Assignor shall indemnify, defend and save Assignee, its affiliates and their respective directors, employees and other agents harmless from any and all obligations and/or liabilities arising out of or relating to the

condition of the Material Site prior to the commencement of the Term.

3. Initial Term. The term of this Agreement ("Term") shall commence on the Effective Date, and shall remain effective for a period of five (5) years unless the Term is extended by Assignee pursuant to Section 2.1 or by mutual written agreement of the parties.

3.1 Extension of Term. Assignee shall have the option to extend the Term for an additional five (5) years beyond the Term ("Optional Term") on the same terms and conditions set forth herein, provided that: (a) Assignee is not in default and is in good standing under this Agreement both at the time it exercises its option for, and the time it commences, any such Option Term, (b) Assignee duly notifies Assignor and CBS of its election to exercise its option for any such Option Term not later than ninety (90) days prior to the then-scheduled expiration of the existing Term and (c) the Optional Term may not extend beyond the term of the Prime Lease.

4. Monthly Rent. Assignee shall pay Assignor monthly rent ("Monthly Rent") during the Term in the amount of Four Thousand and 00/100 Dollars (\$4,000.00), plus any local, state or federal tax due. In addition, Assignee shall pay all rent and royalty fees as required by the Prime Lease directly to CBS. Monthly Rent payments to Assignor shall be due and owing on the first (1st) day of each calendar month ("Due Date") at the office of Assignor or at such other place designated by Assignor, without prior demand therefore, and shall continue throughout the Term and any Option Term of this Assignment. Monthly Rent for any partial month throughout the Term shall be prorated based on a thirty (30) day month.

5. Permitted Use of Material Site. Assignee shall use the Material Site for the purposes allowed in the Prime Lease and shall comply with the operating requirements, restrictions, and conditions set forth therein. Assignee shall not use the Material Site for any purpose other than that expressly stated by the Prime Lease without the prior written consent of CBS.

6. Entry by Assignor. Assignor reserves, and shall at all times have the right to enter the Material Site at reasonable times and upon advance notice to inspect same to determine whether Assignee is complying with its obligations hereunder.

7. Taxes. Assignee shall timely satisfy all applicable sales taxes and leasehold property taxes associated with the Material Site and any business operations conducted therein by Assignee. Assignee shall provide Assignor with verification of payment of all applicable service fees, maintenance costs and taxes upon advanced request.

8. Indemnification. Assignee will indemnify Assignor and hold it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to the Material Site to the same extent that Assignor is required to indemnify CBS under the Prime Lease; provided that Assignee will have no obligation to indemnify Assignor or hold it harmless from any claims, actions, damages, liability or expenses in connection with loss of life, personal injury and/or damage to the Material Site to the extent such claims, actions, damages, liability or expenses arise from or relate to any act or failure to act by any person

prior to the commencement of the Term. Assignor will indemnify, defend and hold Assignee harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to the Material Site to the same extent that Assignor is required to indemnify CBS under the Prime Lease for any act or failure to act by any person prior to the commencement of the Term.

9. Insurance. Throughout the Term, Assignee shall be required to procure and maintain insurance at limits that meet or exceed those required of the Assignor under the Prime Lease. Assignor and CBS shall be named as additional insureds on all such policies. Such policies of insurance shall provide Assignor and CBS with thirty (30) days' written notice prior to any reduction of cancellation of coverage.

10. Subordinations. The leasehold interest assigned hereby, to the extent it creates a sublease in favor of Assignee, shall be subject and subordinate to the Prime Lease, which is incorporated herein by reference. In the event any provision of this Agreement should conflict with the Prime Lease, the Prime Lease shall control.

11. Assignment or Subletting. Assignee shall have the right and the power to voluntarily assign, transfer, encumber, sell, convey or sublease any of its right, title or interest in or to this Agreement or the Material Site with the prior written consent of CBS. If CBS approves any such assignment, Assignor shall not object to or withhold its consent to such assignment.

12. Governmental Regulations. Assignee shall, at Assignee's sole cost and expense, comply with all the requirements of all municipal, borough, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the Batch Plant Premises and Assignee's operations thereon.

13. Termination. This Agreement may be terminated by either party if the other commits a material breach and fails to commence action to cure such breach within thirty (30) days after receipt of a written notice to cure. This Agreement may be terminated at any time by mutual written agreement of the parties.

14. General Provisions.

14.1 Successors. All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties.

14.2 Waiver. The waiver by Assignor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Assignor shall not be deemed to be a waiver of any preceding breach by Assignee of any term, covenant or condition of this Agreement, other than the failure of Assignee to pay the particular rental so accepted, regardless of Assignor's knowledge of

such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Agreement shall be deemed to have been waived by Assignor, unless such waiver be in writing.

14.3 Entire Agreement. This Agreement and all exhibits hereto sets forth all covenants, promises, agreements, conditions and understanding between Assignor and Assignee concerning the Material Site and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Assignor or Assignee unless reduced to writing and signed by them.

14.4 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.5 Independent Counsel. Each party to this Agreement acknowledges that it has enjoyed the advice and representation of competent independent legal, business, tax and financial counsel (or opportunity to seek same) in negotiating, entering into and executing this Agreement. The fact that this Agreement may have been drafted in whole or in part by one such party's counsel shall not cause any party of this Agreement to be construed against such party.

14.6 Warranties of Authority. Each party and natural person who executes this Agreement on behalf of such party acknowledges, warrants and represents for the benefit of the other party to this Agreement that such person is duly authorized and empowered to execute this Agreement on behalf of such party and that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable and binding against such party in accordance with its terms and conditions.

14.7 Attorney's Fees and Legal Costs. All of the attorney's fees and legal costs incurred by the respective parties in negotiating and forming this Agreement shall be borne by the respective parties. All reasonable attorney's fees and legal costs actually incurred by any party to this Agreement to enforce any obligations or any other party under this Agreement or any instruments executed in connection herewith shall be paid to the prevailing party by the other party.

14.8 Recording. Assignee shall not record this Agreement without the written consent of Assignor. Upon request of Assignee, Assignor shall execute and deliver to Assignee a Memorandum of Lease in recordable form satisfactory to Assignee confirming Assignee's rights under the Prime Lease. Assignee shall pay costs of preparation and recording of any Memorandum of Lease.

14.9 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Alaska. Venue shall be vested in the Superior Court at Sitka, Alaska.

Formation

Assignor and Assignee have executed, delivered and formed this Agreement, effective the ___ day of October, 2012 (“Effective Date”).

Assignor:

Dated: _____

DORMAND McGRAW d/b/a
McGraw’s Construction

Assignee:

ASRC CONSTRUCTION HOLDING CO, LLC
An Alaska Limited Liability Company

Dated: _____

By: _____
James Mendenhall

Its: _____

DRAFT

**AGREEMENT
FOR MATERIAL SALE &
LEASE OF MUNICIPAL PROPERTY**

COPY

City and Borough of Sitka ("CBS") agrees to sell certain materials and lease municipal property to McGraw's Construction, P.O. Box 185, Sitka, AK 99835 ("Lessee") in this Agreement For Material Sale & Lease of Municipal Property ("Agreement"), subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. MATERIAL/LEASE SITE ("Site"):

The Site as shown on the attached July 3, 2001 CBS plat of the Granite Creek Industrial Area consists of Tracts 2 and 3.

The Site contains 14.5 acres more or less.

B. TERMS:

1. The term of this Agreement begins on February 15, 2012, and ends on February 15, 2022. This Agreement replaces the original agreement regarding the same property, dated November 20, 2001, and which was extended on July 21, 2005.
2. In return for the 10 year term of this Agreement, Lessee agrees to allow controlled access across the lease area to other CBS property for material extraction by other commercial private or public operations.
3. Lessee agrees to pay the following royalty fees for the material removed from the Site:

 \$1.55 per cubic yard, in place.
4. The Lessee agrees to pay the following rent for the lease of property, as follows:

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

 \$325.00 per acre, per month for that acreage used for operations of a concrete batch plant.
5. Lessee is willing to develop, operate and manage a land clearing landfill within the northern portion of leased Tracts 2 and 3. The subject waste area will accept overburden, stripping, brush, stumps and other debris from private development work and CBS Projects.

- a. Rates for waste material disposal will be charged as follows:
 - i. Through December 31, 2012, the base unit rate shall be \$3.30 per cubic yard;
 - ii. This base unit price shall be adjusted annually on January 1 of each year, commencing on January 1, 2013, at a rate of three (3%) percent; and
 - iii. There will be no free dumping
- b. The rate will include \$0.50 royalty that will be collected by the Lessee and reimbursed to the CBS on a monthly basis.
- c. Lessee shall be reasonable for all elements associated with operating, managing and maintaining the waste area including but not limited to the following:
 - i. Daily oversight of the acceptance and disposal of overburden, stripping, brush and other organic materials;
 - ii. Collecting fees for disposal at the Site and collection of CBS sales tax on all transactions at the Site and remit the tax along with CBS payment;
 - iii. Controlling access to the Site, with operating hours from 7:00 AM to 7:00 PM, Monday through Saturday;
 - iv. Maintaining access road within the lease area as well as ponding and drainage to limit leachates, sediment load and turbidity entering Granite Creek;
 - v. Providing material for berm construction as well as any required cover material;
 - vi. Maintain records of imported material and reimbursing CBS \$0.50 per cubic yard for material imported, regardless of its source. Payment shall be made on a quarterly basis to CBS and copies of all records shall be included with payment;
 - vii. Slope failures due to mishandling of materials or improper slope construction shall be repaired by the Lessee at no cost to CBS;
 - viii. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation;

- ix. Maintain access roads and drainage within the Site to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting in the Site. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on the inside face of berms, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan (SWPPP);
 - x. Update and submit a SWPPP for all activities on the Site subject to approval by the CBS Municipal Engineer, adhere to the Granite Creek TMDL, maintain water quality compliance and maintain regulatory compliance; and
 - xi. Maintain existing stream side vegetated buffers along the North Fork.
6. It is not the intent of CBS to allow indeterminate holding of the Site without development. Lessee shall be required to continue existing development prior to February 15, 2012 and pay minimum royalty payments for material removed or disposal fees of \$5,000.00 per year during the term of this Agreement. The minimum royalty payment shall be made on a monthly basis. The Lessee shall make a minimum monthly payment of \$416.67.
7. At a future date within the 10 year term of this Agreement, Lessee may request an additional 6 acres of CBS property to extend the lease area. The area requested shall be a mutually agreed area between the CBS and the Lessee. If the area has not been subdivided, zoned and permitted by CBS, Lessee shall have the area subdivided, zoned and permitted. The operations of the lease area will be reevaluated at that time to determine if the royalty fee for material removal should be changed based on fair market value of the material at that time.

SECTION II. PAYMENTS

- A. Lessee shall be required to submit a bond upon executing this Agreement in the amount of \$100,000.00, issued by a Surety properly licensed to do business in Alaska. On the yearly anniversary date of this Agreement, and after the pit cross sections are accomplished and Lessee is inspected for adherence to a continuation plan, CBS shall release in writing the prior year's bond, 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 Lessee. 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 for material removed from the Site 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 month's 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; or

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 shall 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, Lessee shall use the first method of calculating the payment bond.

- D. Whatever method is used to determine payment and verification, if it becomes apparent that the Lessee is consistently under-reporting the material removed by more than 15% and or falsifying the records to under-report the material removal, Lessee 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 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 end of the term of this Agreement, Lessee shall have the quarry fully cross sectioned by a registered engineer/surveyor, properly 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, Lessee 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; or
 - 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, 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, Lessee 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, Lessee shall have the Site surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the 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 Lessee to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

Lessee shall also have the Site as it exists when this Agreement is executed, cross sectioned within thirty (30) days of the beginning date of this Agreement and prior to the removal of any material. The purpose of this initial cross section is to establish the beginning configuration of the 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 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 Lessee's operation shall be treated with such measures to prevent erosion and shall be reclaimed in accordance with the required reclamation plan. Lessee 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 Lessee and approved by CBS and the Alaska State Department of Environmental Conservation (DEC) before work begins in the Site. The SWPPP may require the installation and maintenance of siltation control structures at Lessee's expense.

Should CBS determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to DEC and/or the U.S. Fish and Wildlife Service after all reasonable attempts have been made to have Lessee correct the problems, this Agreement shall be void upon notification to Lessee by CBS. Lessee 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 Lessee 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. Lessee 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. Lessee shall be responsible for the adherence to this plan. Lessee 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** – Lessee shall conduct all operations in accordance with industry standards,~~
and an approved MSHA mining plan. This plan shall be prepared by Lessee and approved by CBS and MSHA before work begins on the 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; and
 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 Site in a condition conducive to additional mining after termination of this Agreement. A continuation plan shall be prepared by Lessee and approved by CBS before work begins on the Site.
- F. **Fire Protection** – Lessee shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Site, resulting from any and all operations involved under the provisions of this Agreement. Lessee 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, Lessee 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 Lessee. Lessee agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.
- I. Lessee 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, Lessee or a person authorized by Lessee to assume the responsibilities imposed by this Agreement, shall be present on the Site.

- J. The terms and conditions of this Agreement shall apply with equal force upon any agent, employee or contractor designated by Lessee to perform any or all of the ~~operations of severance, extraction or removal of the materials sold under this~~ Agreement, and Lessee shall be liable for non-compliance caused by any such agent, employee or contractor.
- K. Lessee 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, properly 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 Lessee's entitlement under this Agreement, Lessee 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, Lessee shall notify the Director of Public Works so an inspection of the Site can be scheduled. This inspection shall include general clean-up, compliance with the reclamation plan, removal of all Lessee's equipment and any other item felt a responsible element of any final inspection;
 5. All responsibilities and liabilities of Lessee shall remain in effect until this Agreement terminates, and all of its conditions are met, including cleanup of the Site;
 6. Lessee 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 Lessee 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. Lessee shall coordinate its activities insofar as possible with the other Lessees 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, Lessee 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 Site may be used for the processing and storage of material to be removed from the 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 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 Lessee's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed; and

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

M. Lessee 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 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 Lessees 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 Lessee, 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. Lessee shall adhere to all State and local regulations regarding the storage and handling of explosives.

~~SECTION V. LIABILITY AND INDEMNIFICATION~~

Lessee 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 Lessee's privileges granted by this Agreement, or arising out of any incident whatsoever which may occur on the 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.

SECTION VI. INSURANCE

- A. Lessee shall carry Workers' Compensation insurance, in accordance with the rules and regulations of the State of Alaska. This policy shall also include coverage of Employers' Liability limits of no less than \$500,000, or the minimum required by State law, whichever is greater. If applicable, the policy shall also cover USL&H and Maritime employees that may be employed by Lessee, as it relates to the activities of this Agreement. A sole proprietor without employees is not required to carry this insurance; however they must provide documentation supporting the exception.
- B. Lessee 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. Lessee 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. Lessee shall carry Excess or Umbrella Liability insurance with limits of no less than \$2,000,000. This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability. This insurance requirement is based on current activity. If the activity changes to include blasting, work adjacent to a public Right of Way or other higher risk activities the insurance limits may be adjusted upward by CBS to address the higher risk activity.

Lessee 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 Lessees in connection with this Agreement and within the Site area shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the responsibility of Lessee, and not the responsibility of CBS. Lessee agrees to follow all applicable safety and building codes, regulations, and permits.
- B. The Lessee shall, within sixty (60) days after the expiration of termination date of this Agreement, remove all equipment and other personal property from the Site, and comply with Subsection IV.L.4.

SECTION VIII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the Site.
- B. At all times when operations are in progress, Lessee shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of Lessee, 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 Lessee breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon Lessee.
- B. Failure of Lessee 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 Lessee.
- 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. Lessee 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 Site provided CBS determines that such uses will not unduly impair Lessee's operations under this Agreement.

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

SECTION XI. PERMITS

- ~~A. Lessee must prepare and submit a Storm Water Pollution Prevention Plan (SWPPP). The~~
plan shall be approved by CBS and the DEC before work begins on the Site. For lease extensions the current SWPPP will be reviewed to determine if modifications are required.
- 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.
- C. Lessee shall obtain and pay for any other permits required as needed to construct and operate at the 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 Site, provided however, that the right, title and interest in or to any material which has been paid for, but not removed from the Site by Lessee within the period of the Agreement or any extension, shall vest in CBS.

SECTION XIII. EXPIRATION AND EXTENSION

This Agreement shall expire on February 15, 2022.

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.

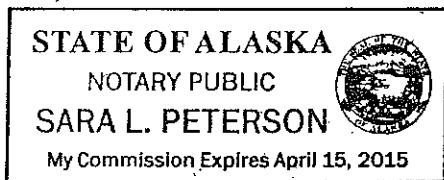
McGRAW'S CONSTRUCTION

Lessee

[Signature]
Dorman McGraw, Jr.

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this 23 day of February, 2012, personally appeared before me Dorman McGraw, Jr., sole proprietor of McGraw's Constructiton, 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 this Agreement and does so freely and voluntarily.



[Signature]
Notary Public for Alaska
My Commission Expires: 4-15-2015

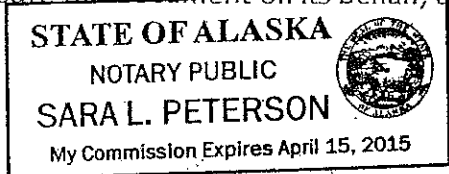
CITY AND BOROUGH OF SITKA

Lessor

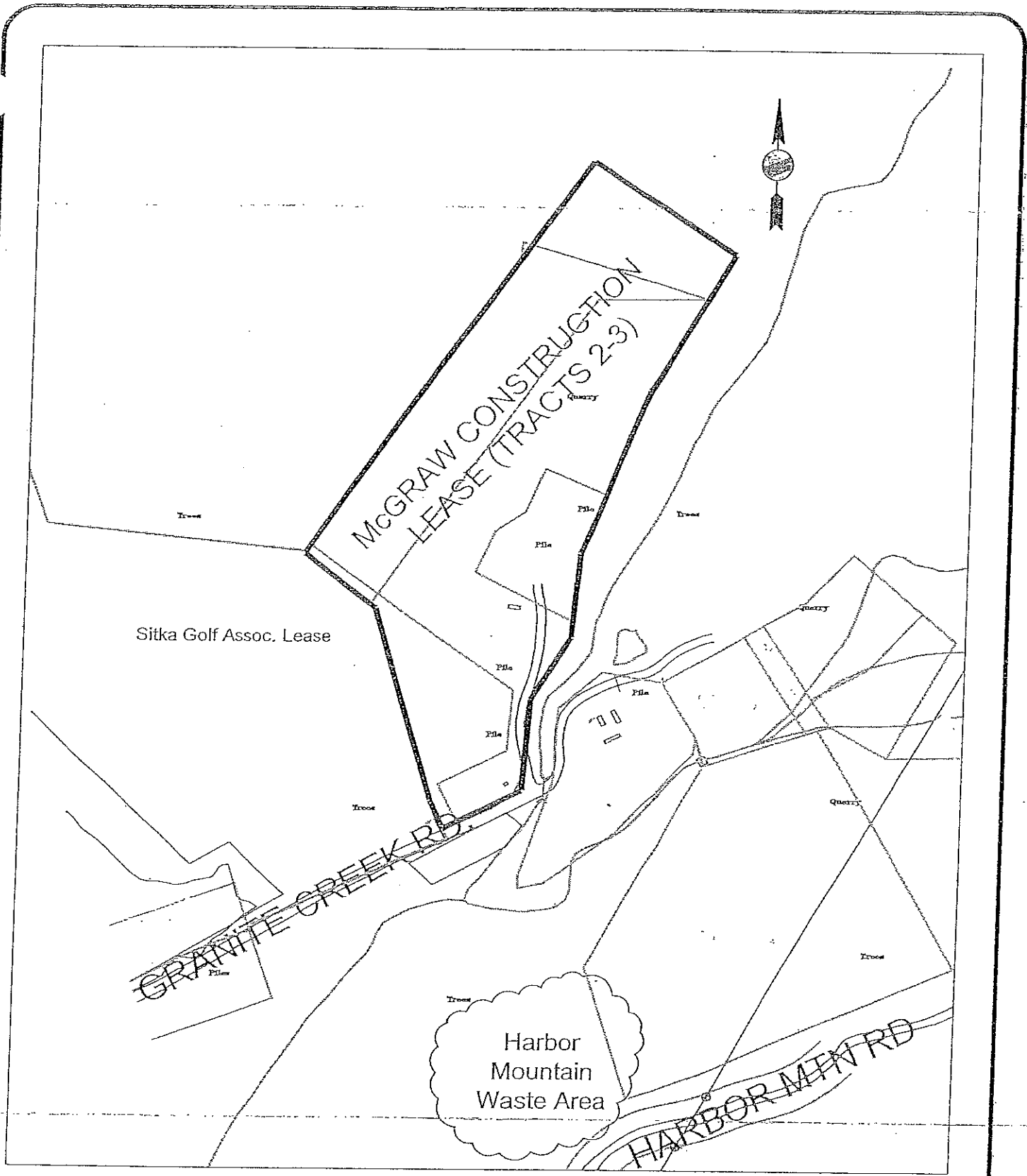
[Signature]
James Dinley
Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the 23 day of February, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared James 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.



[Signature]
Notary Public for Alaska
My Commission expires: 4-15-2015



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

Location
 McGraw Lease
 Granite Creek Area

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