


Amendment No. 2
To Granite Creek Lease Lot #4

Between the City and Borough of Sitka
And
Tisher Construction Sitka


1. The land area leased is modified as described in the attached "Granite Creek Waste Area Expansion", dated October 1, 2004.
2. The intent of this lease amendment is to facilitate rock mining and processing for commercial purposes on the Remaining Portion of the Reconfigured Lease Area 4.
3. Section B.1 of the original lease dated June 18, 1996 is deleted and replaced with the following:
" The lease shall expire on June 18, 2011. An additional five (5) years may be granted if it is determined, after inspection by municipal staff, that there has been adherence to the approved reclamation plan and that it is in the best interests of the Municipality. The Assembly must approve such extension.
4. Tisher Construction shall maintain access to Harbor Mountain Road via the existing access road located on the south edge of the Tisher lease area.

City and Borough of Sitka

Tisher Construction



 Hugh R. Bevan
 Administrator



 Michael Tisher

11-29-04

 Date

12/9/04

 Date

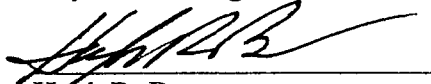
5. Tisher Construction retains ownership of existing stockpile of rock (shot) on portion of Lease Area 4 to be re-acquired by CBS.
 CBS will give Tisher 30 days notice to removed shot rock stockpile.

Amendment No. 1
To Granite Creek Lease Lot #4

Between the City and Borough of Sitka
And
Tisher Construction, Sitka

1. The land area leased is modified as described in the attached Exhibit A. The previous lease parcel description is hereby vacated.
2. All other terms and conditions of the original lease remain in full force and effect.
3. The intent of this lease amendment is to facilitate rock mining and processing for commercial purposes.
4. A Storm Water Pollution Prevention Plan (SWPPP) will be prepared by the Lessee per EPA regulations by April 1, 2001.
5. Tisher Construction agrees to develop rock mining areas on Lease Lot #4 as follows:
 - Warning signs shall be placed every 50 feet along the top of all rock cuts over 20 feet in height. The metal signs will be 12"x12" with the legend "Warning Steep Embankment". They will be installed on metal signposts. Signs shall be painted orange or red color.
 - Back walls of rock cuts shall not be constructed steeper than ^{0.25 H/B}~~0.5~~ feet horizontal to 1.0 feet vertical.
 - A 10-foot wide horizontal bench shall be constructed for every 30 vertical feet of rock cut. The bench shall be used to prevent rock fall from reaching the floor of the pit.
 - Upon completion of a rock cut the back wall will be scaled of loose rock rubble.

City and Borough of Sitka



Hugh R. Bevan
Director of Public Works

12/20/00

Date

Tisher Construction



12/28/00

Date

CITY AND BOROUGH OF SITKA
100 LINCOLN STREET
SITKA, ALASKA 99835

A G R E E M E N T
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

Mick Tisher
Tisher Construction
315 Seward Street, Suite B
Sitka, AK 99835

(name and address of lessee)

hereinafter called the Purchaser, 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. SALE OR LEASE AREA:

Site 4 as shown on the plat of the Granite Creek Gravel Pit Lease areas dated March 22, 1985.

B. TERMS

1. The term of this lease is ten (10) years. An additional five (5) years may be granted if it is determined, after inspection by municipal staff, that there has been adherence to the approved reclamation plan and that it is in the best interests of the Municipality. Any extension must be approved by the Assembly.

2. The Purchaser agrees to pay the following royalty fees for the material removed from the material site:

 \$.35 Per Ton

3. The Purchaser agrees to pay the following lease fee for the lease of the property, upon award of the site as follows:

 \$100.00 Per Acre Per Month

4. It is not the intent of the Municipality to allow indeterminate holding of lease areas without development. The Contractor shall be required to begin development within three (3) months of execution of this lease and pay royalties for a minimum of 15,000 tons of materials during the ten year term of this lease.

SECTION II. PAYMENTS

A. MATERIAL SALE:

1. Purchaser shall be required to submit a yearly performance bond in the amount of \$25,000 issued by a Surety licensed to do business in Alaska. At the time each year that the pit cross sections are accomplished and purchaser is inspected for adherence to a reclamation plan, the Municipality shall release the prior year's 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 Purchaser. 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.

2. The standard \$.35 per ton Royalty Fee shall be paid monthly.
3. The lease fee payment may be paid in advance either monthly, yearly or for the full term of the lease. If paid monthly, it shall be included with the payment for material as specified in Section I, Item B, 2.
4. Royalty payments shall be based on records required in Section III, and shall be submitted to the Municipality no later than the tenth (10th) working day following the month for which the payment is to be made.

Payment shall be accompanied by an accounting voucher provided by the Municipality.

SECTION III. RECORDS

1. Once a year, on the anniversary of this lease, the Purchaser shall cause the lease area to be fully cross sectioned, by a registered engineer, licensed to practice in the State of Alaska. The cross sections shall be certified by said engineer and submitted to the Municipality. A swell factor of 1.5 shall be used in determining final quantities of material removed from the pit site, less quantities wasted and used for cover material. Surveyed volume will be compared to royalty tonnage paid as a method of quality control. Royalty adjustments, if required will be based on survey quantities.

SECTION IV. OPERATING REQUIREMENTS

1. Boundary Lines and Survey Monuments -- Upon execution of this lease, the Purchaser shall bear the responsibility to have the lease area surveyed and control monuments placed by a registered engineer or land surveyor to fully identify the boundaries. No boundary mark of the sale area or any survey lines nor 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 clause will require the Purchaser to bear the expense of re-establishing the lines, corners, or monuments by a registered land surveyor.

The Purchaser shall also bear the responsibility of having the lease area, as it exists when the lease is signed, cross sectioned within thirty (30) days of lease execution and prior to the removal of any material. The purpose shall be to establish the beginning configuration of the lease area and base line to be used when the year end cross section is accomplished.

The area applicable to the lease fee shall be determined as follows:

The initial and yearly survey of the pit shall locate the most advanced limit of clearing and stripping. At this point a line at right angle to the centerline of the pit shall be established between the sidelines of the lease area. The area within the lease boundary to the line thus established shall determine the lease fee for the next year.

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

All roads or other areas to be abandoned or an area to cease being an active portion of the Lessee's operation shall be treated with such measures to prevent erosion and shall be reclaimed per the required reclamation plan. Any damages resulting from any failure to perform to these requirements shall be repaired by the Purchaser to the satisfaction of the Municipality. This includes, but is not limited to waters defined in Title 5 - Fish and Game and Title 6 - Protection to Anadromous Fish; State of Alaska.

3. Attached and appended to this agreement is Appendix A - Reclamation Plan - Granite Creek Material Site. All lessees shall be responsible for the adherence to said plan. The leaseholder shall demonstrate compliance to said reclamation plan on a yearly basis and substantial non-compliance shall be grounds for termination or cancellation of the affected lease.
4. Fire Protection - The 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 contract area resulting from any and all operations involved under the provisions of this contract. The Purchaser shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.
5. Roads - Before constructing any haul road, secondary or spur roads across Municipal lands, the Purchaser shall obtain written approval of the location and construction standards of such roads from the Municipality.

Access over any route not under Municipal control is the sole responsibility of the Purchaser. The Purchaser agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to the Municipality.

6. The Purchaser shall maintain adequate supervision at all times when operations are in progress to insure 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 Purchaser or a person authorized by him to assume the responsibilities imposed by this contract, shall be present on the contract area.

7. The terms and conditions of this contract shall apply with equal force upon any agent, employee or contractor designated by the Purchaser to perform any or all of the operations of severance, extraction or removal of the materials sold under this contract, and the Purchaser shall be liable for non-compliance caused by any such agent, employee or contractor.
8. The Purchaser shall be responsible for the accurate location of operations under this contract, including any survey that may be necessary for such location unless otherwise specified in this contract.
9. Special Provisions -- It is mutually agreed that:
 - a. Sound engineering practices and procedures shall be adhered to at all times during removal operations;
 - b. Trees, stumps, overburden and any other debris shall be disposed of by burning (subject to ADEC approval) or burying in an authorized location and in a manner considered suitable by the Municipality representatives.
 - c. In working the land to effect the removal of the contract entitlement, the Purchaser agrees to so manage that upon completion of the removal, a reasonable degree of level land is maintained, per the reclamation plan, from which material has been taken and no holes-of-water are formed.
 - d. The Purchaser shall coordinate his 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, the 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, the Municipality shall be the sole arbitrator to reach a satisfactory result.
 - e. Should the Municipality determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to the Department of Environmental Conservation, the U.S. Fish and Wildlife Service, after all reasonable attempts have been made to have the Purchaser correct the problems, this contract shall be void upon notification to the Purchaser by the Municipality. The lease shall hold harmless the Municipality from any litigation whatsoever which may result from this action.
 - f. At the expiration of this contract, the Purchaser shall notify the Director of Public Works, so that an inspection for release can be scheduled. This inspection shall include general clean up, compliance with the reclamation plan, removal of all Purchasers equipment and any other item felt a responsible element of any final inspection.
 - g. All responsibilities and liabilities of the Purchaser shall remain in effect until this lease contract file shall be closed. This includes cleanup of site and compliance with all contract items.
 - h. The Purchaser agrees to submit the Standard Accounting Voucher and payment for material removed within ten (10) working days of the expiration date or completion, whichever occurs earlier.

- i. The lease area may be used for the processing and storage of material removed from the municipal lands of Upper Granite Creek 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 contractor's storage yard area. Permanent or long term improvements such as garages and shops or other type buildings and uses shall NOT be allowed. Further, storage of materials not associated with operation/maintenance of the lease area shall NOT be allowed.

- j. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, the Purchasers operations shall be confined to the hours of 7:00 A.M. to 7:00 P.M. daily. The Municipality reserves the right to restrict operations on weekends and holidays without liability to Purchaser or its customers.
 - k. If the Purchaser 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 Municipality has no control, the Municipality shall have no liability, whatsoever.
10. Purchaser may not assign its rights under this lease or allow other parties to produce gravel material on the site without prior written approval of the Municipality.

Prior to the approval of any such sub-lease, the Municipality 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 a total abandonment of further interest in the lease by the original party, the assignment may be denied.
 11. There is a grievance board established consisting of all material purchasers in the Granite Creek Quarry and the Municipal Director of Public Works to handle problems arising between Purchasers in the area. This board shall attempt to reach agreement among all Purchasers. Unsolvable disputes shall be brought before the Administrator and/or to the Assembly for final decision. (See Section IV,9, a.)
 12. Maintenance of the main road, culverts and other such improvements providing access or available for common use by all Purchasers shall be maintained by the Purchasers at no expense to the Municipality
 13. Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and the Purchaser will, at their own expense, provide all proper drainage and routine settlement ponds for permanent uses. This is covered in the Reclamation Plan, as attached.

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

SECTION V. LIABILITY

1. The Purchaser shall indemnify the Municipality 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 the privileges granted the Purchaser 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.

In addition, Sitka shall be named as an additional insured on Purchaser's Comprehensive Liability Insurance Policy.

2. The Purchaser shall carry Workers' Compensation Insurance covering all employees and shall also carry \$1,000,000 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.

SECTION VI. IMPROVEMENTS AND OCCUPANCY

1. Any improvements or transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by the Purchaser 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 Purchaser not the Municipality. Purchaser agrees to follow all applicable safety codes and regulations.
2. The Purchaser shall, within sixty (60) days, after the expiration of termination date of this contract, remove all equipment and other personal property from the contract area, and pay the prescribed lease fees. (See Section IV,9,f.)

SECTION VII. INSPECTION

1. Authorized agents of the Municipality shall have access at all times to the sale area.
2. At all times, when construction or operations are in progress, the Purchaser shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of the Purchaser, 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 VIII. TERMINATION AND SUSPENSION

1. This contract may be terminated by the Municipality if the Purchaser breaches the contract and fails to correct this breach within thirty (30) days after written notice is served upon the Purchaser.

2. Failure of the Purchaser to take immediate action to correct unwarranted damage to natural resources may be corrected by the Municipality to prevent additional damage. Any cost incurred by the Municipality shall be paid by the Purchaser.
3. This contract may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.

SECTION IX. RESERVATIONS

1. The Municipality reserves the right to lease additional sites in the Granite Creek Quarry area to other parties 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 contract area provided the Municipality determines that such uses will not unduly impair the Purchasers operations under this contract.

Should the Municipality lease any other such areas, within the Granite Creek area, the Purchaser shall pay lease fee and royalties not less than amounts as set forth in Sec. II of this document.

SECTION X. PERMITS

1. Any permits necessary for operations under this contract shall be obtained by the Purchaser prior to commencing such operations.
2. All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit, as it now exists or modified in the future.

SECTION XI. PASSAGE OF TITLE

1. All rights, title and interest in or to any material included in this contract 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 Purchaser within the period of the contract or any extension there of shall vest in the Municipality.

SECTION XII. EXPIRATION AND EXTENSION

1. This contract shall expire July 1, 2006

SECTION XIII. 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 XIV. 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.

IN WITNESS WHEREOF, on this 18th day of June, 19 96.

CITY AND BOROUGH OF SITKA

By Michael J. Fisher
Lessee

By [Signature]
Administrator

(SEAL)

ATTEST:

By [Signature]
Municipal Clerk