

Should this item be pulled the corresponding motion would be in order.

POSSIBLE MOTION

I move to authorize a temporary, month-to-month lease with Coastal Excavation for approximately 17,000 square feet of municipal property in the Granite Creek Industrial Area, Pit Run Site as outlined in Exhibit A for \$382.50, plus city sales tax per month.

MEMORANDUM

To: Mark Gorman, Administrator
Mayor McConnell and Members of the Assembly

From: Mark Buggins, Acting Director of Public Works *B*
Dan Tadic, P.E., Municipal Engineer *DT*

cc: Jay Sweeney, Finance Director *JMS*
Robin Koutchak, Municipal Attorney *RK*
Randy Hughes, Municipal Assessor *RH*

Date: August 19, 2014

Subject: Temporary Property Lease, Granite Creek Industrial Area - Coastal Excavation

Background:

Coastal Excavation (CE) is a local General Contractor. CE has been leasing an approximately 8,100 square foot area in the Granite Creek Industrial Area, Pit Run Site since July 1, 2013 which they have used for material stockpiling and equipment staging/storage. The existing lease expired on July 1, 2014 and CE desires to extend the lease indefinitely on a month-to-month basis with an increased lease area of approximately 17,000 square feet as outlined in Exhibit A.

Pursuant to Sitka General Code, Chapter 18.12.010D, the lease of any municipal property on a temporary basis may be made by the Municipal Administrator upon motion of the Assembly without ordinance. Temporary shall be defined as any lease terminable at the will of the municipality where no more than thirty days prior notice of intent to terminate is required. The proposed lease document is attached.

Fiscal Note:

CE shall pay the City rent in the amount of \$382.50 per month plus city sales tax, for the temporary lease of an approximately 17,000 square foot area in the Granite Creek Industrial Area, Pit Run Site. This rate was determined by the City Assessor.

Recommendation:

Authorize the Municipal Administrator to execute a temporary, month-to-month lease with Coastal Excavation for approximately 17,000 square feet of property in the Granite Creek Industrial Area, Pit Run Site as outlined in Exhibit A for \$382.50 per month plus city sales tax.

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Exhibit A – Diagram of Lease Area

**LEASE AGREEMENT BETWEEN CITY AND BOROUGH OF SITKA
AND COASTAL EXCAVATION LLC**

PREAMBLE

This lease agreement ("Lease") is effective as of the ____ day of _____, 2014, between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and Coastal Excavation LLC, PO Box 2421, Sitka Alaska 99835 ("Lessee") This Lease consists of the Special Provisions, the General Provisions, and the attached Exhibit A. Exhibit A is a pictorial representation of an approximately 17,000 square foot area leased on Granite Creek Industrial Area in Sitka, Alaska 99835.

SPECIAL PROVISIONS

ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease.

Lessor, for and in consideration of the rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Property or Premises as shown on Exhibit A, located at the Granite Creek Industrial area site. Exhibit A shows the Property as approximately 17,000 square feet.

Section 1.2 Termination of Lease.

This Lease may be terminated by either party upon 30 days written notice to each party.

Section 1.3 Disposition of Improvements and Lessee's Personal Property Following Term of Lease

Lessee shall remove from the Property any Personal Property or Improvements constructed, installed, or deposited on the Property at the termination of this Lease or any extension unless Lessee makes a separate written agreement with Sitka to do otherwise. Any Improvements or Personal Property not removed after thirty (30) days have passed after termination of this Lease shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such Improvements or Personal Property from the Property if Sitka does not exercise such option. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Property in a neat, clean, and weather-tight condition at the end of the term of the Lease.

Section 1.4 Covenants to Perform

This Lease is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II: RENT

Section 2.1 Calculation & Method of Payment of Rent

Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$382.50 per month payable. Sales tax is to be paid in addition to the stated Rent.

ARTICLE III: RESTRICTIONS UPON USE OF PROPERTY

Section 3.1 Lessee's Obligations as to Maintenance, Access and Safety

(a) Except as provided in this Lease, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements.

(b) Lessor reserves the right to expand or modify the Property. In that event, the Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Property. Some anticipated disruptions could be to any utilities that may be provided or serve adjacent properties (i.e. electric, water, wastewater) or operational disturbances from noise, dust and other construction activities.

(c) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(d) Lessee shall also use the Property and any Improvements placed on the Property only for lawful uses, and for the designated purpose of storage, sorting and staging of Lessee's material.

(e) Lessee shall confine its equipment and materials, storage and operation to the leasehold area.

(f) Lessee shall not permit the accumulation of waste or refuse matter on the Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Property except as may be permitted by Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the term of this Lease to remove any dangerous condition from time to time existing on the Property as the result of the use by Lessee.

(g) Lessee shall take necessary measures to prevent siltation of Granite Creek from its activities. Access will be maintained through the site for others at all times.

(h) Access as allowed prior to this Lease shall continue to be allowed through the Property for others permitted such access.

(i) Lessee will assume responsibility for compliance with any applicable requirements of the existing Storm Water Pollution Prevention Plan (SWPPP) for the Property.

Section 3.2 Lessor's Approval of Certain Alterations or Improvements

Lessee shall not make or permit to be made any alteration of, addition to, or change in Improvements, nor demolish all or any part of the Improvements without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. In requesting consent Lessee shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease any Improvements or Personal Property as described in Section 1.4.

Section 3.3 Rights of Access to Property

(a) Lessor reserves for itself and any public utility company the right to access the Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease. Sitka also reserves for itself the right to access the Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of Improvements; (2) showing Property for exhibiting Property in connection with renting or leasing Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent Improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

(c) Lessee acknowledges that the Property may be subject to agreements for ingress and egress, utilities, and parking, as described on attached Exhibit A. Lessee agrees that it shall comply with the terms of such cooperative agreements, in accordance with the terms of such agreements, those portions of such maintenance expenses that are attributable to the Property, as more fully set forth therein.

Section 3.4 Additional Conditions of Leasing

Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Property to recognize that:

(a) Lessee will cooperate with the City and Borough of Sitka Public Works Department and will notify this Department of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify the Lessor of any event that requires immediate response by the Lessor.

(b) Lease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.

(c) Lease payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of \$25 and interest accrued from the due date at 12% annum.

(d) The charges and fees paid by Lessee to Lessor must be separated according to the City and Borough of Sitka accounting standards.

(e) Lessor will only invoice if the Lease payments are delinquent. Lessor will only invoice if failure to make Lease payment within 30 days of due date. Lessor at its option can terminate the Lease for Lessee's failure to make payment, in accordance with this Lease.

(f) Lessee covenants and agrees that as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, sex, religion, age, physical handicap, marital status, pregnancy or parenthood, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(g) Lessor may sell the Property in the future and all agreements regarding the Property, including this Lease, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Property to any such entity shall not create any restrictions upon use of the Property in addition to those set forth in this Lease.

(h) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(i) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.

(j) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from the City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.

(k) Lessee guarantees that during the period that the Lease is in effect, Lessee shall keep current on all accounts owed to the City and Borough of Sitka (i.e., utilities, sales taxes, property taxes), beyond the payments owed under this Lease.

Section 3.5 Control of Rodents and Other Creatures on Property

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to Property or any portion of the Granite Creek Industrial area any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, or bears.

ARTICLE IV: UTILITY SERVICES & RATES

Section 4.1 Provision of Utility Services

No utility services are currently provided to the Property. If and when any utility services are provided, Lessee shall pay the cost of use of such utilities, to be paid monthly upon billing by the City and Borough of Sitka.

Section 4.2 Lessor's Limited Liability and Non-Liability

In the event utility services are provided, and except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the Property, or leakage of sewer, or plumbing works, or from any other place, or for sewer or plumbing works, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

ARTICLE V: LIABILITY AND INDEMNIFICATION

Section 5.1 Liability of Lessee and Indemnification of Lessor

Except as provided in Section 7.3, Lessee agrees to indemnify, defend, and save harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Property and to any Improvements, including liability arising from products produced on the Property. Lessee also agrees to indemnify, defend, and save Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease from: (a) any condition of the Property or Improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease in or on the Property. Lessee agrees to indemnify, defend, and save harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims

of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the Lessor to perform acts or render services in its municipal capacity.

Section 5.2 Liability of Lessor and Indemnification of Lessee

Except as provided in Section 7.3 and to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and save Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the term of this Lease from (a) any condition of the Property or Improvements placed on it; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; (c) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease in or on the Property. Lessor agrees to indemnify, defend, and save harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease.

Section 5.3 Reimbursement of Costs of Obtaining Possession

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease against all costs and charges, including but not limited to, full reasonable counsel and legal fees lawfully and reasonably incurred in enforcing any provision of this Lease including obtaining possession of the Property and establishing the Lessor's title free and clear of this Lease upon expiration or earlier termination of this Lease.

GENERAL PROVISIONS

ARTICLE VI: DEFINITIONS

Section 6.1 Defined Terms

For the purposes of this Lease, the following words shall have the meanings attributed to them in this Section:

- (a) "Event of Default" means the occurrence of any action specified in Section 14.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Property, any part of the Property, any

right or interest regarding the Property, or any Rent and income received from the Property, as well as sales taxes on Rent.

(c) "Improvements" or "improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Property, including any buildings, structures, fittings, appliances, machinery, garage equipment, heating equipment, lighting equipment, cooling equipment, air conditioning and ventilating equipment, wiring, controls, communications equipment, plumbing, switchboards, antennae, floor coverings, and all other appliances and equipment; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the Property, from the Property with the portion of the Property from which such items are removed being returned to a condition at least as good as that existing on the date of this Lease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.

(d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Property.

(e) "Premises" means the "Property."

(f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease for the use of the demise.

(g) "Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(h) "Sublessee" and "Sublease" -- any reference to "sublessee" shall mean any subLessee, concessionaire, licensee, or occupant of space in or on the Property holding by or through the Lessee; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee rents or leases the Property from Lessor.

ARTICLE VII: INSURANCE

Section 7.1 Insurance

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

Section 7.2 Notification of Claim, Loss, or Adjustment

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss on the Property under all policies of the character described in Section 7.1.

Section 7.3 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).

ARTICLE VIII: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF PROPERTY

Section 8.1 Lessee Without Power to Assign Lease or Transfer or Encumber Property

Lessee has no power under this Lease to assign the Lease or transfer the Property, except with approval of Sitka's Public Works Director. Lessee has no power to encumber Property or pledge its interest in Property as collateral for a loan or mortgage.

Section 8.2 Limitations on Subleases

Lessee shall not sublease the Property.

ARTICLE IX: USE AND PROTECTION OF THE PROPERTY

Section 9.1 Property As Is - Repairs

Lessee acknowledges that it has examined the Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the improvements located on the Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

Notwithstanding anything to the contrary set forth in this Lease, Lessee is leasing the Property, "AS IS", "WHERE IS," with all faults and defects. Lessee acknowledges and agrees that Lessor (or any agent of Seller) has not made and does not make, and Lessor specifically disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the following:

(a) nature, quality or condition of the Property, including without limitation, the water, soil and geology of, or the presence or absence of any pollutant, hazardous waste, gas of substance or solid waste on or about, or deriving from the Property,

- (b) income to be derived from the Property,
- (c) suitability of the Property for any and all activities and uses which Purchaser may intend to conduct on the Property,
- (d) compliance of or by the Property or its operations with any laws, rules, ordinances or regulations of any government authority or body having jurisdiction over the Property, including but not limited to environmental laws, such as CERCLA and RCRA,
- (e) habitability, merchantability or fitness for a particular purpose of the Property,
- (f) any matter regarding tax consequences, the presence of asbestos, utilities, valuation, governmental approvals, the truth, accuracy or completeness of the items delivered, and
- (g) any other matter related to or concerning the Property, except as expressly set forth in this Lease or any of its exhibits.

Lessee shall not seek recourse (or seek any remedy, including rescission) against Lessor on account of any loss, cost or expenses suffered or incurred by Lessee with regard to any of the matters described in this section.

Section 9.2 Compliance with Laws

- (a) Lessee shall throughout any term of this Lease, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.
- (b) Lessee will assume responsibility for compliance with all requirements of the existing Storm Water Pollution Prevention Plan (SWPPP).

Section 9.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Property, adjoining property, and/or buildings caused by or attributed to Lessee through its operations on the Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

Section 9.4 Use of Utility Lines

No utility services are currently provided to the Property. If Lessee desires utilities, Lessee and Lessor shall negotiated and enter an amendment to this Lease regarding which utility services to provide, the costs associated with such services, and the rate of pay for such utility services.

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electric, water and/or wastewater, as are approved by the appropriate City and Borough of Sitka, which may include the Department of Public Works and/or Electric Department Director, and shall obtain any permits and comply with any conditions specified by the Director of Public Works and/or the Electric Department Director for such connections.

Section 9.5 Permits and Approvals for Activities

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans. The result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply any applicable laws.

ARTICLE X: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED

Section 10.1 Performance of Lessee's Covenants to Pay Money

The Lessee covenants that if it shall at any time default or shall fail to make any other payment (other than Rent) due and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease, may terminate the Lease.

Section 10.2 Lessor's Right to Cure Lessee's Default

If there is a default involving the failure of the Lessee to keep the lease area in good condition and repair in accordance with the provisions of this Lease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease or to take any other action required by the terms of this Lease, then the Lessor shall have the right, but shall not be required, to make good any default of the Lessee. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to the Lessee by reason of bringing materials, supplies and equipment onto Property during the course of the work required to be done to make good such default, and the obligations of the Lessee under this Lease shall remain unaffected by such work, provided that the Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to the Lessee.

ARTICLE XI : DAMAGE OR DESTRUCTION

Section 11.1 Repair and Replacement of Improvements Following Damage

(a) If the Property shall be destroyed or damaged by any cause as to be unfit, in whole or in part, for occupancy and such destruction or damage could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay Rent under this Lease cease, without the mutual consent of the Parties; in case of any such destruction or damage, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Premises, a proportionate allowance shall be made to Lessee from the Rent corresponding to the time during which and to the portion of the Premises of which Lessee shall be so deprived of the use.

(b) If such destruction or damage cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease and further liability under this Lease, or to extend the Term of this Lease by a period of time equivalent to the time from the happening of such destruction or damage until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease, Lessor shall restore the Premises to their former condition within the time specified in the notice, and Lessee shall not be liable to pay Rent for the period from the time of such destruction or injury until the Premises are so restored to their former condition.

(c) The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII : MECHANIC'S LIENS

Section 12.1 Discharge of Mechanics' Liens

The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Property, nor against the Lessee's interest in the Property, nor against the improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone having a right to possession of the Property or improvements as a result of an agreement with or the assent of the Lessee. If any mechanics' lien shall at the time be filed against the Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES

Section 13.1 Lien for Rent

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, utility charges, insurance premiums and other charges and impositions paid by the Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which

may be incurred by the Lessor in enforcing the provisions of this Lease or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease, shall be and they are declared to constitute a valid and prior lien upon the Property and the improvements, and upon the Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV: DEFAULT PROVISIONS

Section 14.1 Events of Default

Each of the following events is defined as an "Event of Default":

(a) The failure of the Lessee to pay any installment of Rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from the Lessor to the Lessee.

(b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease including payment of any taxes on the part of the Lessee to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

(c) The filing of an application by the Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of the Lessee's interest in this Lease): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.

(d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating the Lessee bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days, or if this Lease is taken under a writ of execution.

Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee

In the event that this Lease is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), and the trustee shall cure any default under this Lease and shall provide adequate assurances of future performance of this Lease as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this

Lease shall be deemed rejected automatically and the Lessor shall have the right immediately to possession of the Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease.

Section 14.3 Remedies in Event of Default

The Lessor may treat any one or more of the Events of Default as a breach of this Lease and at its option, by serving written notice on the Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which the Lessor shall have received notice in writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) The Lessor may terminate this Lease and the Term created, in which event the Lessor may repossess the entire Property and improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease, of the Rent provided to be paid by the Lessee for the balance of the stated term of this Lease less the fair rental value as of the date of termination of this Lease of the fee interest in the Property and improvements for the period, and any other sum of money and damages due under the terms of this Lease to the Lessor and the Lessee. Any Personal Property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) The Lessor may terminate the Lessee's right of possession and may repossess the entire Property and improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to the Lessee (except as above expressly provided for) and without terminating this Lease, in which event the Lessor may, but shall be under no obligation to do so, relet all or any part of the Property for Rent and upon terms as shall be satisfactory in the judgment reasonably exercised by the Lessor (including the right to relet the Property for a term greater or lesser than that remaining under the stated term of this Lease and the right to relet the Property as a part of a larger area and the right to change the use made of the Property). For the purpose of reletting, the Lessor may make any repairs, changes, alterations or additions in or to the Property and improvements that may be reasonably necessary or convenient in the Lessor's judgment reasonably exercised; and if the Lessor shall be unable, after a reasonable effort to do so, to relet the Property, or if the Property are relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the Rent accruing from it, to satisfy the Rent above provided to be paid, then the Lessee shall pay to the Lessor as damages a sum equal to the amount of the Rent reserved in this Lease for the period or periods as and when payable pursuant to this Lease, or, if the Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the Lessor may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any Personal Property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease, the Lessor shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease.

(d) Upon the termination of this Lease and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Property and dispose of Personal Property and Improvements as described in Section 1.4. If possession is not immediately surrendered, the Lessor may reenter the Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that the Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which the Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, the Lessor may treat the default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, the Lessor shall have the right to carry out or complete the work on behalf of the Lessee without terminating this Lease.

Section 14.4 Waivers and Surrenders To Be In Writing

No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Lease or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

ARTICLE XV: LESSOR'S TITLE AND LIEN

Section 15.1 Lessor's Title and Lien Paramount

The Lessor retains title to the Land under this Lease. Any Lessor's lien for Rent and other charges shall be paramount to all other liens on the Property.

Section 15.2 Lessee Not To Encumber Lessor's Interest

The Lessee shall have no right or power to and shall not in any way encumber the title of the Lessor in and to the Property. The fee-simple estate of the Lessor in the Property shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by the Lessee, and any claim to the lien or otherwise upon the Property arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Property and the Lessee's interest in any improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Property.

ARTICLE XVI: REMEDIES CUMULATIVE

Section 16.1 Remedies Cumulative

No remedy conferred upon or reserved to the Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 16.2 Waiver of Remedies Not To Be Inferred

No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

Section 16.3 Right to Terminate Not Waived

Neither the rights given to receive, sue for or distrain from any Rent, moneys or other payments, or to enforce any of the terms of this Lease, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of the Lessor to declare ended the term granted and to terminate this Lease because of any event of default.

ARTICLE XVII: SURRENDER AND HOLDING OVER

Section 17.1 Surrender at End of Term

Lessee shall peaceably and quietly leave, surrender and deliver the entire Property to the Lessor at the termination of the Lease, subject to the provisions of Section 1.4, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Property.

Section 17.2 Rights Upon Holding Over

At the termination of this Lease, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the rent paid or payable to Lessor during the last month of the term of the Lease the day before the termination of the Lease. The provisions of this Article shall not be held to be a waiver by the Lessor of any right or reentry as set forth in this Lease, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy,

operate as a waiver of the right to terminate this Lease for any breach of the Lessee under this Lease.

ARTICLE XVIII: MODIFICATION

Section 18.1 Modification

None of the covenants, terms or conditions of this Lease to be kept and performed by either Party to this Lease shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

ARTICLE XIX: INVALIDITY OF PARTICULAR PROVISIONS

Section 19.1 Invalidity of Provisions

If any provision of this Lease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XX: APPLICABLE LAW AND VENUE

Section 20.1 Applicable Law

This Lease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

ARTICLE XXI: NOTICES

Section 21.1 Manner of Mailing Notices

In every case where under any of the provisions of this Lease or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

Section 21.2 Notice to Leasehold Mortgagee and Secured Parties

The Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of, this Lease. All notices, demands or requests which may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from

time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, as the case may be.

Section 21.3 Sufficiency of Service

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 21.4 When Notice Deemed Given or Received

Whenever a notice is required by this Lease to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXII : MISCELLANEOUS PROVISIONS

Section 22.1 Captions

The captions of this Lease and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

Section 22.2 Conditions and Covenants

All the provisions of this Lease shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 22.3 Entire Agreement

This Lease contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

Section 22.4 Time of Essence as to Covenants of Lease

Time is of the essence as to the covenants in this Lease.

ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE PROPERTY

Section 23.1 Covenants to Run with the Property

All covenants, agreements, conditions and undertakings in this Lease shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Property. Wherever in this Lease reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS

Section 24.1 Absence of Personal Liability

No member, official, or employee of the Lessor shall be personally liable to the Lessee, its successors and assigns, or anyone claiming by, through or under the Lessee or any successor in interest to the Property, in the event of any default or breach by the Lessor or for any amount which may become due to the Lessee, its successors and assigns, or any successor in interest to the Property, or on any obligation under the terms of this Lease. No member, official, or employee of the Lessee shall be personally liable to the Lessor, its successors and assigns, or anyone claiming by, through, or under the Lessor or any successor in interest to the Property, in the event of any default or breach by the Lessee or for any amount which become due to the Lessor, its successors and assigns, or any successor in interest to the Property, or on any obligation under the terms of this Lease.

Section 24.2 Lease Only Effective as Against Lessor Upon Approval

This Lease is effective as against Lessor only upon the approval of this month to month Lease by the Assembly upon motion, but not requiring an ordinance.

Section 24.3 Binding Effects and Attorneys Fees

This Lease shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

Section 24.4 Duplicate Originals

This Lease may be executed in any number of copies, each of which shall constitute an original of this Lease. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

Section 24.5 Declaration of Termination

With respect to Lessor's rights to obtain possession of the Property or to re-vest title in itself with respect to the leasehold estate of the Lessee in the Property, the Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka Recording District, a written declaration of the termination of all rights and title of Lessee in the Property, and the re-vesting of any title in the Lessor as specifically provided in this Lease.

Section 24.6 Authority

The Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease and perform its obligations. Both Parties also represent that this Lease has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

COASTAL EXCAVATION LLCLLC

CITY AND BOROUGH OF SITKA

Kristopher C. Pearson, Owner

Mark Gorman
Municipal Administrator

STATE OF ALASKA)
) **ss:**
FIRST JUDICIAL DISTRICT)

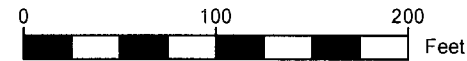
On this ____ day of _____, 2014 Kristopher C. Pearson, of Coastal Excavation LLC, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease on behalf of the Coastal Excavation LLC and affirms by signing this document to be authorized to sign on behalf of the Coastal Excavation LLC and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) **ss:**
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2014, Mark Gorman, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____




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

GRANITE CREEK
PIT RUN SITE LEASE AREA
COASTAL EXCAVATION - EXHIBIT A

DRAWN: JJH	SCALE: = 100'
CHECKED: D. Tadic	DATE: 08.18.2014
DRAWING NAME: CoastalExcavation.dwg	
SHEET NO. 1 / 1	

Memorandum

TO: Stephen Weatherman, Senior Engineer
Dan Tadic, Municipal Engineer
Michael Harmon, Public Works Director

FROM: Randy Hughes, Assessing Director 

SUBJECT: Valuation of a land lease located adjacent and east of existing Granite Creek Lease Site #7, CBS Parcel 2-6004-000, and further described as a portion of Lot 1 Alaska State Land Survey 3670.

DATE: August 18, 2014

Per your request, I did review existing assessments of large parcels near the proposed lease site. These parcels are assessed at approximately \$3.00 per square foot. The proposed site, while smaller in size, should be treated as an economic unit equal in per square foot values to the larger properties.

The lease area proposed is 17,000 square feet, I would assess the land value to be \$51,000 (17,000 square feet X \$3.00 = \$51,000).

The annual rent would be \$4,590 (\$51,000 X .09 = \$4,590).

The monthly rent would be \$382.50 (\$4,590 / 12 = \$382.50).